



EMEA R&D incentives guide

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Contents

EMEA R&D incentives overview	4
Related considerations	6
EMEA R&D incentives summary table	7
Austria	8
Belgium	10
Czech Republic	15
France	17
Germany	20
Hungary	24
Ireland	27
Italy	32
Lithuania	36
Netherlands	39
Norway	43
Poland	46
Romania	48
Russia	51
South Africa	55
Spain	59
Sweden	63
Switzerland	65
United Kingdom	68

EMEA R&D incentives overview

This second edition of KPMG's Europe, Middle East & Africa region (EMEA) research and development (R&D) incentives guide sees a number of revisions since the first edition was published in 2012.

This guide seeks to provide country-specific information that summarizes the tax treatment of R&D expenditure, together with specific R&D incentives available throughout the region. In a globally mobile business world, R&D investment is considered to be a key factor to enhance skills, jobs and economic growth. Governments increasingly recognize the attraction of tax benefits to encourage companies to invest in high-value, knowledge-intensive industries and technologies.

This edition includes the following developments:

- Austria has increased its R&D premium from 10% to 12% of qualifying expenditure as of 2016.
- Czech Republic has increased the special tax allowance, which can be deducted from the tax base, by 10% to 110% of the associated R&D costs.
- France has introduced a new R&D tax incentive for operations in relation to prototype designs incurred by small- and medium-sized enterprises (SMEs).
- Hungary has increased the R&D investments threshold available for the R&D tax credit to 340,000 euros (EUR).
- Italy introduced two new incentives in 2015 to encourage enterprises to invest in R&D: a renewed R&D tax credit and a Patent Box regime.
- Romania has introduced personal income tax exemption for salaries of researchers and other people working in R&D.
- South Africa has introduced additional benefits for expenditure on pilot/prototype plants exclusively used for R&D.
- Spain has introduced cash refunds for taxpayers who are in a tax loss position or who have reached the annual limit on tax credits applications.
- Sweden has introduced an R&D tax relief regime to stimulate investments into R&D activities. The maximum relief is 230,000 Swedish krona (SEK) per month for all R&D personnel for the entire group of companies.
- UK has introduced 10% taxable cash credits for large companies which can be used to settle taxes or be payable in cash. A more generous regime also applies for SMEs, which includes a tax credit.

The pace of change is expected to continue as R&D incentives develop and mature.

R&D in the EMEA marketplace

In today's globalized business world, EMEA businesses face competition from efficient, well-capitalized foreign companies as well as from familiar local competitors. It has become increasingly apparent that innovation driven by high-quality R&D is vital to the long-lasting success of almost any business in the region. Tax competition is not always acknowledged by governments but it exists. For companies dependent on undertaking R&D incentives, the more cash that can be channeled from savings in other areas, the more they can invest in R&D activities to support growth and profitability. Tax savings are one of those areas, and multinational companies increasingly focus on bringing tax into the equation when considering their R&D strategy.

Many EMEA countries that may once have inadvertently discouraged investments in R&D by requiring expenditure to be capitalized, now permit a current tax deduction for the costs of R&D activities. Many also allow enhanced deductions and/or special tax credits for R&D costs. Tax incentives are also often granted to businesses that contribute to universities and other research organizations to encourage basic research and investment in assets used in R&D activities.

Although the basic definition of R&D is similar in many countries, there are variations in country-specific taxation legislation and incentive regimes. In some countries, incentives are limited and qualification is difficult, while in others, incentives are lucrative and easily attained.



Related considerations

The practical details of the R&D incentives programs are covered in the following pages, but there are several related matters that decision makers should consider when determining the best location and structure for their R&D activities within the EMEA region.

The net cost of R&D

The relative costs of performing R&D in one country versus another, net of respective available R&D incentives, are important in evaluating where and under what circumstances R&D activities should take place.

Intellectual property (IP)

The net cost of performing R&D should be considered in conjunction with the strategy for managing the potential IP created by successful research, including which entity within the group funds the creation of IP, legal and economic ownership, and the tax consequences of any income arising. Moving IP within the group once it has been developed can create significant tax liabilities, and so the strategy for subsequent IP ownership is crucial when considering R&D activities. Several countries have introduced or are about to introduce favorable tax regimes for income arising from IP.

Transfer pricing

Whatever strategy is adopted for R&D activities and IP ownership, transfer pricing rules are likely to be relevant. Transfer pricing rules require that intra-group arrangements are priced for tax purposes in the same way as similar arrangements between unrelated parties; this is referred to as the arm's length principle. Therefore, intra-group arrangements covering, for example, R&D services, funding of R&D, management of R&D, cost-sharing arrangements for the development of IP, and the licensing of IP, all need to be priced in accordance with the arm's length principle. These aspects are complex, particularly because within a multinational group, activities and responsibilities are often

organized on a regional, transnational basis, and activities can be split up in a way that independent parties cannot do. One area which is currently receiving a lot of attention is the importance of the management of risks associated with R&D, and the employees who are uniquely placed to make decisions about the conduct of that R&D, and how these contributions are evaluated for transfer pricing purposes.

Country specific tax benefits

Many countries provide tax credits for taxes paid by a resident business to other countries, and offer other tax incentives to attract investment and encourage exports. The net cost of R&D performed in the country and the impact of R&D costs on other tax benefits have to be considered in determining the value of these benefits.

Short-term economic stimulus measures

Short-term measures implemented by governments as economic stimulus packages in response to the global financial crisis, such as accelerated deduction programs for investment in tangible depreciable assets, are worth taking into account as these may top up existing benefits delivered through R&D incentive schemes.

The equation to be solved

The tax treatment of R&D costs, technology transfers, transfer pricing and other related local tax issues, is a vital consideration. It is therefore critical to evaluate all of the R&D incentives available and the impact of all R&D costs on other tax benefits in countries around the EMEA region, as well as the wider IP strategy, before coming to a decision on where to locate your R&D programs.

We hope this publication will deliver long-lasting value for your organization by assisting you in identifying current and future opportunities to obtain R&D incentives throughout the EMEA region.

EMEA R&D incentives summary table

Country	Enhanced deductions	Tax credit	R&D incentives
Austria		X	X
Belgium	X	X	X
Czech Republic	X		
France		X	X
Germany	X		
Hungary	X	X	X
Ireland		X	X
Italy		X	
Lithuania	X		X
Norway		X	X
Poland	X	X	X
Romania	X		X*
Russia	X	X	
South Africa	X		X
Spain		X	X
Sweden			X
Switzerland			X
Netherlands	X	X	X
United Kingdom	X	X	X

*personal income tax exemption for R&D activities



Austria

The Austrian system for R&D tax incentives provides for an R&D premium which is effectively a cash payment that is credited to the taxpayer's tax account. Further, the Austrian R&D premium can be claimed for in-house R&D as well as for outsourced contract R&D. From 1 January 2016 onwards, the R&D premium has been increased from 10% to 12% of qualifying expenditures. Overall, the Austrian system is very attractive, as the R&D premium is granted to the taxpayer irrespective of the company's profit situation.

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Overview of R&D incentives

Headline rate

An R&D premium at a rate of 12% of qualifying expenditure is available. For financial years starting before 31 December 2015, a rate of 10% is applicable.

Definition of R&D

For the purposes of the R&D premium, the Austrian R&D definition is related to the R&D OECD definition in the Frascati Manual¹. According to the relevant law (Section 108c of the Austrian Income Tax Act 1988) and a decree of the Austrian Federal Ministry of Finance (BGBl II 2002/506), R&D is any inventive activity that is conducted in a systematic manner and is using scientific methods. The purpose of R&D must be the increase of knowledge, the achievement of scientific technological advancement or development of new applications of the knowledge. This includes fundamental, applied, experimental as well as failed research. In the case of in-house R&D, the research activities must be carried out in Austria. If R&D activities are outsourced, the research activities need to be carried out in the European Union (EU) or in the European Economic Area (EEA).

R&D tax relief

An R&D allowance was abolished in 2010. For financial years 2011 onwards, only the R&D premium at a rate of 12% (respectively 10% for FYs starting before 31 December 2015) of qualifying expenditure is available. The R&D premium is a cash payment that is payable irrespective of the profit position of the company. Further, the R&D premium itself is not subject to CIT in Austria.

Eligibility requirements

In order to be entitled to claim the R&D premium, the taxpayer needs to meet the requirements set out in Section 108c of the Austrian Income Tax Act 1988 (see point 'R&D tax relief — Other relevant information'). Individual taxpayers and companies are entitled to claim the R&D premium unless they are exempt from CIT.

¹ OECD (2015), Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development, The Measurement of Scientific, Technological and Innovation Activities, OECD Publishing, Paris.

Registration/claim process

- For R&D premium claims filed for financial years starting after 31 December 2011, the fulfillment of the eligibility requirements for in-house R&D activities must be confirmed by the Austrian Research Promotion Agency Forschungsförderungsgesellschaft (FFG) or by a ruling according to Section 118a Bundesabgabenordnung (BAO).
- In the case of contract R&D, the principal must inform the agent (until the end of the financial year) if, and to what extent, he is planning to claim the R&D premium for contract R&D. This information exchange must be documented. The agent is then not allowed to claim a premium for in-house R&D for the expense, which form the principal's basis for the R&D premium for contract R&D.
- The R&D premium can be claimed at the end of the financial year at the earliest. The claim must be submitted before the (company's) income tax assessment enters into legal force.

R&D tax relief Other relevant information

According to the Decree BGBl II 2012/515 of the Austrian Federal Ministry of Finance, the following expenses can be added to the tax base for the R&D premium (if they are related to R&D activities):

- actual salaries and wages including incidental wage costs
- material for continuous R&D expenses
- capital investments including investments into properties
- finance costs attributable to R&D activities
- other indirect allocable costs
- expenses must be reduced by tax-free income.

Section 108c of the Austrian Income Tax Act 1988 distinguishes between in-house R&D activities and outsourced contract R&D (third-party).

- In the case of **contract research (outsourcing)** the following rules must be observed:
 - the R&D order must be assigned by an Austrian entity, permanent establishment or branch
 - only expenses to companies or organizations based in the EU or EEA can be included
 - the agent cannot be controlled by the principal; neither can both be in the same group of companies
 - the R&D tax credit is only available for expenses in the amount of up to EUR1 million per financial year (i.e. 12%. ►EUR120,000 from 2016 onwards, respectively 10% ► EUR100,000 for FYs starting before 31 December 2015). This amount has to be reduced proportionately if the fiscal year covers less than 12 months.
- There is no limit on the premium for **in-house R&D**.

Other grants and incentives

The tax premium is also granted in case the company is in a loss position. The tax premium will be credited to the taxpayer's tax account.

There are no other tax incentives with respect to R&D activities available in Austria.



Belgium

Since the introduction of the notional interest deduction and the patent income deduction in 2007, Belgium has been a prime location for companies involved in R&D activities and in the exploitation of patents. Belgium offers a full range of tax incentives enabling companies to structure their R&D activities, as well as the valorization of the intellectual property resulting from R&D activities, in a tax efficient way. This comprehensive R&D regime consists of tax deductions on qualifying IP income, deductions on R&D investments and (refundable) tax credits, cash savings on payroll cost of researchers and full tax exemption of R&D subsidies. On 2 February 2017, the Parliament has approved a new tax regime for R&D called 'Deduction for Innovation Income'. The new regime has a broader application than patent income, while meeting the concerns of the OECD and EU as laid down in the so-called modified nexus approach.

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Overview of R&D incentives

Headline rate

For qualifying patent income, a reduced corporate income tax rate of maximum 6.8% applies (20% of income taxable at the nominal corporate income tax rate of 33.99%).

Costs for research can be deducted immediately as business cost, while for development costs (including salary costs) one has the option to record an intangible fixed asset that can be depreciated over a period of at least 3 years.

An additional deduction from taxable income or a tax credit is available on top of the normal depreciation cost for R&D related assets. For R&D investments made in the 2017 assessment year, the rate of the deduction is a one-off 13.5% of the investment value or 20.5% of the annual depreciation on the assets. The alternative R&D tax credit (calculated as the investment deduction multiplied with the nominal corporate income tax rate) is cash refundable if not utilized after 4 years.

As of 1 July 2016, a deduction for innovation income will be available, which broadens the scope of qualifying intellectual property rights (IPR) beyond patents and reduces the corporate taxation level on the net qualifying income to 5% (15% of the income at 33.99%).

Definition of R&D

The definition of R&D is in line with the OECD Frascati Manual² and defines R&D as:

- Fundamental research: the experimental or theoretical activities directed towards greater knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications for processes or products in mind.
- Industrial research: systematic research aimed at the discovery of new knowledge and skills for the development of new products, processes or services, or to significantly improve existing products, processes or services. It comprises the creation of components of complex systems necessary for industrial research; notably for the validation of general technologies with the exception of prototypes.
- Experimental development: the acquiring, combining, shaping and using of existing scientific, technical, business and other knowledge and skills for plans, schemes or designs for new, altered or improved products, processes or services. This also comprises the conceptual formulation and design of new products, processes or services and capturing information thereof. These activities may also comprise producing drafts, drawings, plans and other documentation provided that they are not intended for commercial use.

R&D tax relief

Patent income deduction

Patent Income Deduction — grandfathered until 30 June 2021

Corporate taxpayers are entitled to an 80% deduction of patent income from their taxable base. The deduction results in an effective tax rate of maximum 6.8%. IP development and overall operational expenses remain fully tax deductible, so combined with notional interest deduction and/or finance expenses, the effective tax rate will be even lower.

All companies subject to corporate income tax in Belgium may also benefit from the patent income deduction.

The deduction is applicable to the income derived from:

- the licensing of patents (or extended patent certificates) by the company
- the use of patents (or extended patent certificates) in the production process of patented products/delivering of patented services by the company itself or on its behalf.

In order to avoid double deduction, the deductible qualifying patent income is subject to certain limitations when the company acquired the patent. The following elements must be deducted from the deductible patent income:

- compensation due to other parties for these patents if it is deducted from the Belgian taxable income (this compensation does not include the contribution due by the company in the costs of R&D borne by other parties)
- depreciation of acquired patents to the extent that they were deducted from the Belgian taxable income.

The law of 30 June 2016 abolished the current regime as from 1 July 2016 since the regime was not in line with the 'modified nexus approach'. However, a grandfathering period for qualifying patent income to benefit from the old regime until 30 June 2021 is available provided a.o. that the patent in question has been acquired or applied for before 1 July 2016.

² OECD (2002), Frascati Manual 2002: Proposed Standard Practice for Surveys on Research and Experimental Development, The Measurement of Scientific and Technological Activities, OECD Publishing, Paris.

R&D tax relief

Deduction for innovation income

New regime in line with the modified nexus approach

According to the 'modified nexus approach', there should be sufficient substance and an essential link between the R&D expenses, the qualifying IPR and the related income in order for a taxpayer to benefit from a Patent Box type of tax regime. To meet these requirements, the Belgian government has created a new income tax regime called the 'deduction for innovation income' which replaces the patent income deduction while improving the fiscal stimuli for R&D activities.

The headlines of the deduction for innovation income include:

1. Broadening of qualifying IPR:

Not only patents and extended patent certificates qualify, but also copyrighted software developed by the taxpayer in a research project, breeders' rights, orphan drugs and certain data and market exclusivity rights based on European directives or other international legislation in the field of medicine and food regulation.

2. Broadening of types of qualifying income:

The qualifying income will include royalties and license fees, IPR income embedded in the sales price of goods and services, process innovation based on the IPR (reflecting what a third-party would be willing to pay to have access to the IPR), as well as capital gains (the latter subject to reinvestment in qualifying R&D within 5 years).

3. Increase of the deduction percentage from 80% to 85%.

4. Determination of the net amount of qualifying income:

A specific requirement of the modified nexus approach is that the beneficial tax regime is applied on the net IPR income and subject to a specific formula to weigh the taxpayer's own contribution to the creation of the IPR.

The following formula has been introduced to determine the income that can benefit from the preferential regime:

$$\text{qualifying R\&D costs} / \text{total R\&D costs} \times \text{total net income from intellectual property}$$

For the qualifying costs, the costs of outsourcing to related parties are excluded, contrary to the cost of outsourcing to unrelated parties who qualify as 'qualified costs'. A lift-up of 30% of the qualifying expenses for R&D outsourced to group companies is however foreseen.

5. Other features of the deduction for innovation income:

Unused deduction can be carried forward. The taxpayer can also claim the benefits of the regime while the patent is still pending approval (subject to recapture if the patent application is denied later). In case the new deduction for innovation income applies, one cannot benefit from the grandfathering period for the income of that particular patent.

The Belgian Parliament approved the draft law on 2 February 2017. The law will be published in the Belgian Official Gazette shortly. However, the new regime is scheduled to be applicable with retrospective effect as from 1 July 2016.

R&D tax relief (cont.)

Increased investment deduction or tax credit for R&D

A percentage of the acquisition or investment value of certain assets that have been acquired or developed during the taxable period and are related to R&D is tax deductible. This deduction comes in addition to the normal tax deduction for the depreciation of these assets, leading to an overall depreciation which is higher than 100% of the assets' value.

Qualifying fixed assets:

- patents
- fixed assets (including capitalized salary costs) that aim to promote the R&D of new products and advanced technologies that have no effect on the environment, or that aim to minimize the negative effect on the environment.

The increased investment deduction can be applied as a one-off deduction. In that case, the deduction equals 13.5% of the acquisition or investment value (assessment year 2015).

The deduction can also be spread over the depreciation period of the fixed asset (this option is not available for patents). In that case, each year the investment deduction will be equal to 20.5% of the depreciation amount (for fixed assets acquired or established during assessment year 2015).

Carry-forward to later assessment years

When the deduction cannot be fully set off against the profits of the taxable period, the proportion of the investment deduction that has not been used can be carried forward without any time limit and can be set off against the profits of the subsequent taxable periods.

Option for an R&D tax credit

Companies have the possibility to opt for the application of a tax credit instead of the increased investment deduction.

In the case of insufficient tax against which to set off the tax credit, the credit can be carried forward to the following 4 assessment years. At the end of these 4 assessment years, the balance of the unused tax credit is cash refundable.

Wage withholding tax exemption

Companies employing scientific researchers benefit from a partial exemption from payment of withholding tax on their wages. They must transfer to the tax authorities only 20% of the withholding tax due on the wages of these researchers while the latter may still credit the full amount of the professional withholding tax that would normally be due. The measure has thus no impact on the tax situation of the researchers but results in considerable cash savings for the employer and is recognized as turnover on the balance sheet in Belgium Generally Accepted Accounting Principles (GAAP).

Qualifying companies include:

- companies that pay wages to researchers engaged in research projects conducted pursuant to partnership agreements with universities/colleges in the European Economic Area or with a recognized scientific institution
- 'Young Innovative Companies' that pay wages to scientific personnel
- companies that pay wages to researchers that are engaged in R&D programs and who have a masters or doctor's degree in applied sciences, exact sciences, medicine, veterinary medicine, pharmaceutical sciences; a degree in civil engineering, or an equivalent degree in a scientific field or a combination of scientific fields.

R&D subsidies

Premiums and capital or interest subsidies on tangible and intangible assets granted by regional institutions within the framework of support to R&D are fully exempt from corporate tax.

Belgium

Other grants and incentives

Notional interest deduction

The risk capital deduction, also known as the notional interest deduction, allows companies to substantially reduce their effective corporate income tax rate in Belgium. Companies are allowed to deduct a deemed interest calculated on their adjusted equity from their taxable base. The rate of this notional interest deduction is determined each year and is linked to the 10-year government bonds. It is capped at 1.131% for assessment years 2017 (and 1.531% for SMEs).

Ruling practice

Belgium has an efficient, transparent and business-oriented advance ruling practice which provides investors the necessary legal certainty on how the tax law will be applied to their specific situation or to specific transactions. Furthermore, when deploying IP-intensive R&D activities in Belgium, the appropriate business model and related tax and transfer pricing issues may be discussed in detail with the Belgian ruling authorities upfront.





Czech Republic

In the Czech Republic, the R&D tax allowance (R&D allowance) is one of the main policy tools to promote R&D activities in the private sector. It represents an essential pillar of the R&D funding for Czech companies.

The ability to claim the R&D allowance was incorporated into the Czech Income Taxes Act (ITA) in 2004 (effective from 1 January 2005). Detailed information on the conditions based on which the R&D allowance can be claimed was published by the Ministry of Finance in the Decree D — 288 (published on 3 October 2005).

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Overview of R&D incentives

Headline rate

A taxpayer may deduct up to 100% of the costs associated with the projects of R&D as a special tax allowance. Furthermore, a taxpayer may increase the deduction by 10% for the year-over-year increase of costs related to the R&D projects.

Definition of R&D

The ITA refers to the Act on the Support of R&D where the R&D is defined as "creative work undertaken on a systematic basis in order to increase knowledge, and the use of such knowledge, which includes an appreciable element of novelty, for resolving scientific and/or technical uncertainty." This definition complies with the international definition of R&D activities published in the OECD's Frascati Manual.

The basic criteria that distinguish R&D from other activities are the presence of a measurable element of novelty and clarification of research or technical uncertainties.

Qualified activities include the introduction of new or improved technologies, systems or services, and the production of new or improved materials, products and equipment. Activities include design and verification of prototypes, pilots or demonstration equipment.

R&D tax relief

- A taxpayer may deduct up to 110% of the costs associated with the R&D projects from the tax base as a special tax allowance.
- These costs are in fact deducted twice from the tax base — as a normal tax-deductible cost and as a special tax allowance. Where the costs only partly relate to the implementation of R&D projects, only such portion of expenses pertaining to the R&D projects may be deducted from the tax base.
- The R&D tax allowance can be claimed for tax periods commencing on 1 January 2005 or later. If the R&D allowance cannot be utilized in the year it is claimed, it may be carried forward and utilized within the next three taxable periods.
- If taxpayers are not sure whether the incurred costs are eligible to be deducted as an R&D allowance, they can request a binding ruling from the tax authority confirming that in such cases the expenses were incurred during the undertaking of R&D projects.

Czech Republic

Eligibility requirements

In order to be entitled to claim the R&D tax allowance, the taxpayer needs to meet the requirements set out in Section 34b and 34c of the ITA, i.e.:

- keep separate evidence of R&D costs divided on individual projects and accounting entries
- prepare a written report regarding a particular R&D project that specifies the qualified activities before the start of the project.

Furthermore, the following should be considered regarding the eligible R&D costs:

- R&D costs must be associated either with the R&D project being in the form of experimental or theoretical work, design or drawing work, calculation, proposed technology, or the making of a functional sample or a product prototype.
- Only the costs incurred to generate, ensure or maintain the taxable income of the taxpayer qualify for the R&D allowance.
- The deduction of R&D costs cannot be applied to services, license fees or intangible results of R&D acquired from other persons (except for services received from a public university or research organization specified in the Act on the Support of R&D, or a consideration for a financial lease of tangible movable assets that is connected with the R&D project).
- The deduction cannot be applied to costs for which a public subsidy has already been provided.

Registration/claim process

There is no special registration or claim process in the Czech Republic. The R&D tax allowance is claimed in the corporate income tax return as an item deductible from the tax base.

R&D tax relief

Other relevant information

The costs which can be treated as eligible for the R&D tax allowance are defined in more detail in the Decree D — 288. The eligible groups of expenses include:

- personal expenses of relevant employees (not only the R&D employees but also other employees of the taxpayer who are involved in the R&D projects, such as workpeople)
 - tax depreciation of fixed assets used in direct connection with the R&D projects
 - other operational expenses directly related to the project, such as expenses for materials, inventory and low-value tangible and intangible assets, expenditure for books and magazines, electricity, heating, gas, telecommunication fees, water utilities, etc.
 - expenses incurred for the services received from a public university or research organization specified in the Act on the Support of R&D
 - a consideration for a financial lease of tangible movable assets that is connected with the R&D project
 - travel expenses up to the statutory limits.
-



France

Since 2008, France has offered companies a very attractive research tax credit (RTC) (*Crédit d'Impôt Recherche*) which is considered to be one of the most generous in the world. The research tax credit is a corporate tax relief measure based on R&D expenses incurred by companies subject to corporate income tax in France. This incentive helps to support companies' R&D efforts and increase their competitiveness.

Since 1 January 2013, there is a new R&D tax incentive for operations relating to prototype designs of new products or pilot installations of new products incurred by SMEs within the meaning of the EU definition (innovation tax credit).

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Overview of R&D incentives

Headline rate

The RTC, which is computed on a calendar-year basis, is equal to 30% of the portion of R&D expenses below EUR100 million and is reduced to 5% of the portion exceeding EUR100 million.

Definition of R&D

The RTC covers 'scientific and technical' research operations (i.e., fundamental research, applied research and experimental development).

- Fundamental research is research that is aimed at making a theoretical or experimental contribution to the resolution of technical problems.
- Applied research is research aimed at identifying possible applications of the results of fundamental research or at finding new solutions enabling the company to reach a given objective chosen in advance.
- The experimental development operations that fall within the scope of RTC are those carried out through the use of a prototype or pilot facilities, with the aim of gathering the information needed to provide the technical bases of decisions, in view of producing, or substantially improving, new materials, mechanisms, products and/or service systems.
- It should also be noted that, according to case law, research projects are RTC-eligible if they reflect an originality or substantial improvement that does not result from a mere utilization of the current state of existing techniques.

In practice, the RTC is not limited to traditional R&D sectors, such as the pharmaceutical and automotive industries, but also extends to other industries such as banking and insurance; notably with respect to their development of innovative IT programs.

R&D tax relief

The RTC, which is computed on a calendar-year basis, is equal to 30% of the portion of R&D expenses below EUR100 million and is reduced to 5% for the portion exceeding EUR100 million.

Since 2008, the RTC is no longer capped. Therefore, for multinationals with significant R&D expenditures, locating their R&D centers in France may present a real opportunity.

In principle, the RTC is offset against any corporate income tax for the year in question and, if need be, for the following 3 years. After this 3-year period, any remaining unused portion of the company's receivable from the State will be reimbursed to the company. This receivable is also transferable (e.g., to a bank, a credit institution, etc.) as soon as it is booked.

The RTC is immediately refundable to 'newly created' companies (for the year of creation and the 4 following years), Young Innovative Companies ("*Jeunes Entreprises Innovantes*"), SMEs (as defined by EU law) and distressed companies.

Eligibility requirements

- Eligible expenses, which must be determined on a calendar-year basis, essentially consist of those relating to the human and physical resources allocated to R&D, outsourced R&D, technological watch, patenting and patent protection.
Expenses may, in principle, relate to R&D operations located in the EU or in the EEA (excluding Liechtenstein). Hence, companies may benefit from the RTC on expenses incurred in the EU even if such expenses have been deducted locally and/or have benefited from a local R&D incentive. This opens up double-dip possibilities with certain states. Such opportunities may however be impacted in the near future by the OECD's nexus approach (BEPS program, Action number 5).
- Since 1 January 2014, patent/plant variety certificate registration costs are not concerned by this territorial restriction.
- The fact that the qualifying expenses have been deducted from the taxable results of the company benefiting from the RTC does not restrict its right to the tax credit, nor does the fact that the R&D expenses are totally or partially re-invoiced abroad, so long as they were initially incurred by the company benefiting from the RTC. This also gives rise to cross-border optimization opportunities which may be impacted by the BEPS' program (Action number 5).
- To claim the RTC, companies are not required to hold the IP rights resulting from their R&D activities.

Please note that under the 2013 Finance Act, the scope of the RTC has been extended to certain innovation expenditures incurred by SMEs, such as prototype design and pilot plants for new products (specific 20% rate and specific ceiling of EUR400,000 of expenditures).

Registration/claim process

The RTC form must be filed no later than the 15th of the 4th month following the company's financial year end. For financial years ending on 31 December, the deadline has been postponed to 15 May.

If this deadline is not met, the company is allowed to claim the RTC until 31 December of the 2nd year following the missed deadline.

France

R&D tax relief

Other relevant information

The RTC can be audited until the end of the 3rd year following that of the filing of the RTC form.

Any company may seek an advance approval from the tax authorities regarding the eligibility of an R&D project prior to engaging in the corresponding R&D operations. This advance approval procedure is a possibility offered to companies, but is by no means a prerequisite to benefit from the RTC.

Since 1 January 2013, a ruling request could be filed within 6 months prior to the filing of the RTC return.

In order to ensure that they are properly applying the RTC rules and thereby secure their RTC claims, companies may also request an RTC audit.

Other grants and incentives

Income arising from the sale or licensing of intangible property rights, such as patents, patentable inventions and know-how, may (under certain conditions) benefit from a reduced 15% corporate income tax rate.

Among other tax incentives, companies may benefit from specific accelerated tax depreciations on their R&D assets.

A temporary 40% extra tax deduction is applicable in favor of industrial investments made between 15 April 2015 and 14 April 2017. The measure applies to certain industrial assets (machinery and equipment; handling equipment; facilities for water, steam, heat or energy producing facilities; machinery and equipment used for scientific or technical research operations, etc.).

The deduction is equal to 40% of the original value of the eligible assets and spread over the utilization period.





Germany

In light of the Europe 2020 strategy, which determines the objective of 'smart, sustainable and inclusive growth', Germany set up certain funding programs in order to improve the conditions for R&D investment by the private sector. Currently the governmental overall R&D spending totals approximately 3% of the national Gross Domestic Product (GDP) per year.

Germany's effective federal corporate tax rate is approximately 15.8%. Depending on the place of business, the municipal trade tax, which is additionally to be taken into account, is imposed on rates between 7% and 17%. In total, the combined effective tax rate for German resident corporates fluctuates between 22.8% and 33%.

Although Germany offers generous public funding programs, German tax law does not provide a specific R&D tax incentive scheme as prevailed in many member states of the EU. Since 2009, the government has discussed the implementation of such a system several times, but it is not expected to be implemented in the foreseeable future.

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Overview of R&D incentives

Definition of R&D

The German tax law does not provide a specific definition for R&D. However, with reference to the German commercial law, the term 'research' is determined to be the original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge and understanding.

On the other hand, the term development is defined as the application of research results and other technical or scientific knowledge in order to substantially improve or develop goods and processes.

R&D expense deductions

For German Generally Accepted Accounting Principles (GAAP) purposes, research costs are deductible as operating expenses, while development costs can be included on the balance sheet, provided that the development and research costs can be determined separately.

German tax law, however, does not follow the above-mentioned German GAAP principles. Instead, both types of costs resulting from R&D are considered to be internally generated intangible assets and, therefore, excluded from capital expenditure. As a consequence, R&D costs are, in principle, deductible as regular operating expenses for German tax purposes.

As mentioned above, instead of establishing a specific R&D tax scheme, the German government promotes R&D activities by offering generous funding programs. R&D activities performed in Germany may be funded on a regional, federal or European level.

Germany

Funding programs

Programs at the state level depend strongly on the structure of the regional economy. The regional funding programs mainly focus on SMEs developing innovative key technologies.

Federal programs are open to a wide range of eligible industries. In accordance with the government's so-called 'high-tech strategy' the federal ministries offer funding programs especially covering the following industries:

- climate and energy
- communication technologies
- mobility and infrastructure
- security
- healthcare and nutrition.

In particular, in order to improve the competitiveness and attractiveness of the business location by supporting highly innovative technologies, federal funding programs are set up in the areas of:

- information and communication technologies
- materials technologies
- biotechnology and sustainable agricultural production
- nanotechnology
- microsystems technology
- innovative services.

Funding programs at the EU level, such as the European Regional Development Fund, also provide funding for R&D activities performed in Germany. Those programs are highly attractive for multinational projects or companies due to their focus on collaboration projects — including partners from different member states of the EU.

In order to provide an overview of existing regional, federal and European Commission funding programs, the German Federal Ministry of Industry and Energy (Bundesministerium für Wirtschaft und Energie) offers access to a database including all available funding programs.

Application

The appropriate German authorities decide on the funding of R&D activities based on the project's level of innovation, technical and economic risk and the expected economic impact. The usually required application procedure follows a two-step approach.

Step one: the applicant submits a short outline to the relevant project management agency for evaluation purposes. This outline should at least contain a brief summary of:

- the link between the project and the funding program the application is based on
 - the project, its concept and the participating partners
 - the results of information research with respect to the state of the art
 - the description of the present and future research and development with respect to the underlying project
 - thematic, temporal and financial determination of the project
 - an assessment of the future application opportunities and the total amount of expenses.
-

Germany

Application (cont.)

Step 2: Upon approval of the first evaluation stage, the applicant submits a full application. This application will be assessed by a competent management agency and then submitted to the respective ministry in charge, who makes the final decision on whether the project will be funded.

The application for federal funding programs is filed by using the internet portal 'Easy-online'. The full application process usually takes between 6 and 12 months.

Eligibility requirements

As a general rule, funding is granted with respect to future qualified R&D activities and expenditures. Therefore, the applicant's R&D project must not have started before the application procedure starts. It is more appropriate to start the project implementation after the respective funding authority's approval.

In general, funding is only granted for qualifying research activities, such as:

- Fundamental research: experimental or theoretical work undertaken primarily to acquire new knowledge without any direct commercial application or use in view.
- Industrial research: planned research aimed at the acquisition of new knowledge and skills for developing new products, processes or services.
- Experimental research: systematic research aimed at developing prototypes and concrete drafts.

In principle, federal and local funding programs require the funded R&D activities to be conducted within Germany. Thus, the funding applicant must comply with the following preconditions:

- funding recipient must have their own legal entity in Germany
- R&D activities must be conducted in Germany
- R&D costs must be incurred within Germany
- results must be exploited in Germany (for the main part).

Qualified R&D expenditures are:

- personnel costs
 - material and equipment costs
 - overhead costs
 - subcontracting costs (if the subcontractor adds a substantial advantage to the project)
 - amortization
 - travel costs and other expenses.
-

Germany

Benefits

R&D incentives are awarded either in non-repayable cash grants or R&D loans on a 'per project' basis. A legal claim for R&D funding does not exist.

In general, the funding quota ranges from 25% to 75% of the qualified R&D expenditures depending on the funding program, the size of the company, the research category, European state aid law and whether or not the project is conducted in cooperation with research institutes.

Large companies typically receive funding up to 50% of their R&D costs. SMEs are subject to more beneficial funding programs like 'SME-innovative', 'ZIM' and 'IGF', focusing exclusively on SMEs. These funding programs offer high funding ranges up to 75% as well as bonus payments and project-specific consultation.

Jurisdictional requirements

After the acquisition of the cash, it is essential to comply with the funding regulations and reporting requirements. Therefore, it is highly recommended to establish an internal administrative system in order to properly manage the documentation and reporting process right from the beginning.

As mentioned above, the German tax law does not provide a specific R&D regime and, therefore, no specific tax credit concept for paid or accrued R&D costs are available.





Hungary

Hungary has a very favorable R&D tax incentive regime, which is in line with the government's current intention to induce and enhance the R&D activity of Hungarian enterprises as well as multinationals with Hungarian presence.

For local business tax and innovation contribution purposes, R&D expense deduction is also possible.

Furthermore, government grants and EU tenders are also available, as well as a preferential treatment of royalty income and tax exempt sale of intangibles embodying rights to royalty income.

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Overview of R&D incentives

Headline rate

For corporate income tax purposes, R&D incentives have the following three pillars:

- Any business related R&D costs are recognized for tax purposes (CIT rate is 10% up to a tax base of approximately EUR1.69 million: 500 million Hungarian Forint (HUF), and 19% above).
- Direct costs of 'own R&D activity' are also deductible and the direct costs of 'own R&D activity' purchased from a related party in certain cases from the tax base (i.e. double deduction) — four times deduction may be available under limited circumstances.
- R&D tax credit is also available in the case of R&D investments exceeding approximately EUR330 000: HUF100 million.

Definition of R&D

R&D is defined as basic research, applied research and experimental research in line with the Commission Regulation (EC) No 800/2008.

R&D tax relief

Corporate income tax

Any business-related R&D costs are tax deductible. Direct costs of own R&D activity are also deductible (i.e. double deduction for direct R&D costs).

Own R&D activity means:

- R&D activity carried out using the taxpayer's own equipment and employees for its own benefit and risk
- R&D activity carried out using the taxpayer's own equipment and employees to the order of another person
- the costs of R&D activities that are conducted in partnership by more than one party and carried out within the framework of a R&D agreement also qualify as direct costs of one's own basic research, applied research.

R&D tax relief

Corporate income tax (cont.)

The company is allowed to benefit from this tax base allowance

- a) in the tax year in which the R&D costs incur
- b) if these costs are shown under the capitalized value of experimental development (or intellectual property), over the period of the useful life, in the amount of the depreciation costs accounted.

It is possible that one part of R&D activity is contracted out to another country and still qualifies for double deduction (as long as the foreign contracting party is not ordering the R&D services from a Hungarian resident entity).

According to the interpretation of the Tax Authority, double deductions can also be claimed when the Hungarian entity is solely financing the R&D activity.

It is also possible that R&D activity is contracted into Hungary from overseas and an R&D relief/incentive is claimed in that overseas country; in this case double R&D tax relief may be claimed in Hungary.

Direct costs of R&D projects performed by the related parties in the framework of their own R&D activity could be used by other Hungarian parties of a group for corporate income tax purposes provided that the R&D expenses relate to the business activities of the respective related party (such tax relief can be applied provided that the taxpayer is in the possession of its related party's written declaration containing the direct costs of the related party's own R&D activity to support the taxpayer's tax relief).

That said, the direct cost of R&D activities is considered a non-business expense if it is not incurred in the interests of the business activity.

Additionally, double deduction can also be claimed based on R&D agreements with one or more parties under certain circumstances (four times tax base deduction may be available — up to approximately EUR170 000: HUF 50 million — connected to R&D agreements with higher education institutions, the Hungarian Academy of Sciences and certain research centers (de minimis subsidy).

Preliminary R&D qualification can be requested. The National Agency of Intellectual Property issues resolutions — in a similar system as for binding ruling requests — on taxpayer requests as to whether the activity performed qualifies as own R&D activity or not. The resolution may be used in relation to tax allowances and to verify R&D content. The tax authority may call upon the Agency to act as an expert in certain cases.

In connection with the R&D qualification procedure we note that the resolution issued by the Agency has a binding effect on other authorities as well (i.e. if the Agency qualifies an activity as an R&D activity, the Tax Authority must also accept such activity as R&D).

Other taxes

A further local business tax (LBT) incentive has been introduced. Based on the local municipality's decree, taxpayers subject to LBT in the territory of the municipality can decrease their LBT payable by 10% of their direct R&D costs, up to 100% of their LBT payable to that respective municipality.

Eligibility requirements

Direct costs of R&D can be taken into consideration as a CIT base allowance, if:

- a) the costs of R&D activities are determined in line with the Accounting Act
- b) in the case of purchased R&D services, they are not provided by a Hungarian tax resident entity, a Hungarian branch of a foreign tax resident entity or a private entrepreneur (governed by the Personal Income Tax Act)
- c) the company is in the possession of a declaration of the service provider that it has not employed a subcontractor which qualified as any of the above categories (listed in point b). For local business tax and innovation contribution purposes, only point a) should be fulfilled.

Registration/claim process

Expense deductions can be claimed in the relevant tax returns.

R&D tax relief

Other relevant information

- R&D tax credit is available under the harmonized EC state aid rules in the case of R&D investments exceeding approximately EUR330 000: HUF100 million. Previous notification of the Ministry for National Economy is necessary. The tax credit can be claimed up to 80% of the CIT liability for a maximum 10-year period. The development tax incentive should be treated as state aid, (i.e. limitations based on the relevant intensity ratios have to be taken into account).
- R&D tax credit may work parallel with the double deduction.

Other grants and incentives

Other grants and subsidies

Certain non-tax incentives such as government grants and EU tenders are also available.

Preferential treatment of royalty income

The preferential corporate income tax treatment of royalty income (profit) may also apply to the sale or utilization of intangible assets created in the course of R&D activities. Fifty% of royalty income leads to a reduction of the CIT base of up to 50% of the pre-tax profits — resulting in an effective tax rate of 5% (9.5% of that part of the tax base which exceeds HUF500 million). Such tax base allowance can only be applied for the amount of royalty income determined based on the proportion of direct in-house R&D expenditures (cost of own R&D activity) and the total direct expenditures incurred in connection with acquiring/developing the IP asset (i.e. joint R&D activity — when one party finances the R&D while the other carries out the actual development — might need to be disregarded from in-house R&D activities if it is carried out with related parties).

Tax exempt sale of intangibles embodying rights to royalty income

The tax exempt sale of intangibles embodying rights to royalty income can be opted, if the intangible is reported within 60 days of the acquisition and if it is held for 1 year. We note that only intellectual properties could be considered as reported intangible assets, thus, IP rights can no longer be reported intangibles. Additionally, gain on the sale of non-reported intangibles can be exempted if it is used to acquire similar intangibles within the subsequent 5 years.

We further note that the definition of royalty for CIT purposes has been shortened. As opposed to the full definition — that includes know-how, trade mark, trade secret, etc. — it has been narrowed to only include the profit from patents, certain protection issues, software products falling under copyright law, derivations from medicines used to treat rare diseases and the sale thereof.



Ireland

Ireland's success as an investment location for mobile R&D activities continues to grow. Companies have chosen Ireland as a prime location for their innovative projects in order to take advantage of the favorable corporation tax regime, an educated and experienced workforce and accessibility to the European market. The Irish R&D tax credit regime has proven highly effective in increasing the level of significant investments in R&D in Ireland since its introduction in 2004; since then, the regime has been amended and generally enhanced with every annual budget. This pro-business government policy helps drive the dynamic research, development, and innovation sector and ensures Ireland remains competitive as a location of choice for R&D activities, as well as maintains a strong indigenous enterprise base.

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Overview of R&D incentives

Headline rate

The R&D tax credit rate is 25% of qualifying R&D expenditure and is available in addition to the normal trading corporation tax deduction for R&D (i.e. 12.5% corporation tax deduction); this results in a potential benefit of 37.5% (i.e. 12.5% corporation tax deduction plus 25% R&D tax credit).

Definition of R&D

For the purposes of the R&D tax credit, R&D is defined as any activity whereby the company (or group) seeks to achieve scientific/technological advancement within an approved field of science/technology (e.g. natural sciences, engineering and technology, medical sciences, and agricultural sciences) that involves the resolution of scientific/technological uncertainty that is systematic, investigative, or experimental in nature, and that involves basic research, applied research, or experimental development. The tax credit operates on a group basis and is available to companies within the charge to Irish tax that undertake R&D activities in the EEA.

R&D tax credit

- The R&D tax credit rate is 25% of qualifying expenditure.
- The tax credit is available in addition to the corporation tax trading deduction available for R&D spend; this results in a potential tax benefit of 37.5%.
- Eligible expenditure can include revenue expenses (e.g. salaries, utilities, materials, etc.) that are deductible for the purposes of computing corporation tax and capital expenditure such as plant, machinery and buildings.
- Where a company does not have sufficient corporation tax liability in the current accounting period, it can choose to carry the credit back for offset against the corporation tax liability in the preceding period. Any remaining excess can be carried forward indefinitely against future corporation tax liabilities. Alternatively, a company can choose to effectively group relieve the credit between qualifying companies that are members of a group.
- Instead of carrying the credit forward, a company may elect to have any remaining excess credit paid as a cash refund by revenue over 3 years. The amount of money that a company can claim under the cash back mechanism is limited to the greater of:
 - the corporation tax paid by the company during the period of 10 years prior to the previous accounting period
 - the sum of the payroll tax liabilities for the current period (in which the expenditure on R&D was incurred) and the period prior, subject to conditions.

Eligibility requirements

- In order to be entitled to claim the R&D tax credit, the company must satisfy the requirements set out in Section 766 Taxes Consolidation Act 1997:
- the company must be within the charge to Irish corporation tax
 - the company must be carrying on a trade (pre-trading R&D expenditure may be claimed once trading commences)
 - R&D expenditure must be incurred by the company wholly and exclusively in the carrying on of qualifying R&D activities
 - R&D activities must be carried on by the company's employees
 - R&D activities must be carried on in a relevant member EEA state, as defined by the legislation
 - R&D expenditure incurred is tax deductible expenditure in respect of the trade being carried on by the company
 - capital items, on which expenditure was incurred for R&D purposes, must qualify for wear and tear allowances
 - expenditure met by grant assistance received from the State, EU, or EEA does not qualify for the credit; however, a claim may still be made for the portion of R&D expenditure not met by through grant assistance.

Registration/claim process

- Companies have 12 months from the end of the relevant accounting period in which to make a claim.
- Where a company is satisfied that it can comply with the requirements of the legislation and has maintained the necessary supporting records, a claim for relief may be made via the corporation tax return.

R&D tax relief

Other relevant information

- For periods commencing prior to 1 January 2015, the credit is claimed on incremental qualifying expenditure over the amount incurred on R&D activities in the base year (i.e. an accounting period ending in 2003).
- For periods commencing on or after 1 January 2015, the credit is claimed on all qualifying expenditure (i.e. on a volume basis).
- As part of a phasing out of the base year, a partial volume-based regime was in place for periods commencing on or after 1 January 2012, 2013, and 2014, whereby companies could avail of a 25% R&D tax credit for every euro incurred on qualifying R&D for the first EUR100,000, EUR200,000, and EUR300,000 of expenditure respectively; the base year rule applied for any expenditure above these limits.
- Expenditure on plant and machinery (P&M) can be included in an R&D tax credit claim. In order to qualify, P&M must be eligible for wear and tear capital allowances and must be used for the purposes of undertaking R&D activities. P&M expenditure must be apportioned to R&D activities based on the time it is used wholly and exclusively for the purposes of R&D activities over the P&M's useful life.
- Companies who intend to build or refurbish buildings or structures for both R&D and other activities may claim an R&D tax credit in respect of the portion (as appears to the tax inspector to be just and reasonable) of the costs that relate to R&D activities. This is based on the provision that a minimum of 35% of the building is used for conducting R&D activities for a 4-year period. The full R&D tax credit of 25% of relevant expenditure can be claimed either in the year the expenditure was incurred or when the building is first brought into use for the purpose of the trade. A 10-year claw back exists where the building or structure is sold or ceases to be used by the company for the purpose of R&D or for the purpose of the same trade.
- Expenditure incurred on R&D activities outsourced to an unconnected third-party or third-level institution can be included in an R&D tax credit claim, subject to restrictions.
- Key employees who have been actively involved in R&D activities can benefit from an employee reward mechanism, effectively allowing them to receive part of their remuneration tax free. This is subject to a large number of restrictions.

Other grants and incentives

Intangible assets relief

Tax relief is available for capital expenditure incurred by companies on a broad range of intangible assets. The range of assets qualifying for the relief is extensive and includes, for example, trade names, brands, know-how, publishing titles, copyright, and goodwill directly attributable to those intangibles. This presents Irish companies with an opportunity to acquire ownership of, and manage global intangible assets from, Ireland.

How it works:

Companies carrying on a trade will be entitled to claim a tax write-off for the capital cost of acquiring or developing specified intangible assets (SIAs). Where an SIA is amortized or impaired for accounting purposes, the tax write-off will be available in line with the accounting write-off. Where an SIA is not amortized for accounting purposes, or indeed has a long life, a company can elect to take the tax write-off over a 15-year period. Where an SIA is held for more than 10 years there will be no claw back of the tax relief granted on its disposal, unless it is sold to a connected company who wishes to claim allowances.

Other grants and incentives

Intangible assets relief (cont.)

Relief is available where the SIA is purchased from a third-party. This relief can apply to an Irish subsidiary acquiring intangible assets from its overseas parent company, subject to arm's-length pricing arrangements. It is also available in respect of acquisitions from Irish related parties, although further conditions may apply in these cases.

In relation to in-house development, while revenue expenditure would generally have been deductible for tax purposes, prior to the introduction of the new provision it would have been difficult to secure a deduction for capital spend. Capital expenditure incurred by a company on the in-house development of SIAs should now also qualify for tax relief.

The principal restriction is that relief for capital allowances and certain interest costs (used, for example, to fund the purchase of an intangible) is restricted to 80% of the related annual income before capital allowances and interest.

Other grants

- State-funded grants (e.g. Enterprise Ireland for indigenous firms and IDA for international firms).
- R&D fund (available from Enterprise Ireland).
- EU funded grants (i.e. Horizon 2020).
- Innovation voucher initiative (available from Enterprise Ireland and Invest Northern Ireland).

The Knowledge Development Box (KDB), introduced in Budget 2016, is aimed at incentivizing companies to undertake innovative activities in Ireland by providing an effective 6.25% corporate tax rate for qualifying profits generated from commercializing certain intellectual property (IP).

The KDB applies to accounting periods commencing on or after 1 January 2016 and the relief must be claimed within a 2-year period from the end of the accounting period to which the claim relates. In order to qualify for the KDB rate, the income generated from the IP must flow into the same entity that undertakes the R&D activities leading to the IP creation.

The KDB follows the modified nexus approach endorsed by the OECD. This approach links the KDB relief to the proportion of qualifying R&D expenditure being incurred by the company in Ireland as a percentage of overall group expenditure. In simple terms, the higher the proportion of R&D that takes place in the Irish entity, the greater the proportion of income that may qualify for the KDB rate.

The IP must be the result of R&D activities, as defined by the R&D tax credit legislation. The IP is restricted to:

- certain patented inventions and copyrighted software
- plant breeders' rights, supplementary protection certificates for medicinal products and plant protection certificates.

Marketing related IP such as trademarks, brands and image rights do not qualify for the KDB.

Ireland

Other grants (cont.)

Smaller- and medium-sized companies (defined for this purpose as companies with annual income from IP not in excess of EUR7.5 million, employ fewer than 250 people, and have a turnover of less than EUR50 million or a balance sheet of less than EUR43 million) may be permitted to expand the definition of IP to include inventions that are certified as being novel, non-obvious and useful. In other words, the IP must be 'patentable', but does not need to be patented.

Taxpayers will be obliged to 'track and trace' and provide documentary evidence of expenditure incurred, income generated from the IP assets, and activity undertaken to generate the IP assets.





Over the years, sporadic and short-term general R&D tax incentives have been introduced in Italy. Some of these incentives are still available, while other new ones were introduced recently. In 2015, two new incentives were introduced to encourage enterprises to invest in R&D — a renewed R&D tax credit and a 'Patent Box' regime.

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Overview of R&D incentives

Headline rate

- From 2016 to 2020, an R&D tax credit facility equal to 50% of qualifying R&D expenses is available.
- Costs of labor regarding personnel dedicated to R&D activities are deductible from the IRAP (regional tax on productive activities) taxable base.
- Qualified researchers willing to establish their tax residence in Italy shall benefit of a 90% exemption from Individual Income Tax (IRPEF) and of a full exemption from IRAP.
- As of 2015, an IP-box regime 'Patent Box' is available. It excludes part of the income attributable to the use of qualifying intangible assets from the Corporate Income Tax (IRES) and the Regional Business Tax (IRAP) base.

Definition of R&D

Eligible activities (for R&D tax credit system purposes), according to the classification found in the 'Community Framework for State Aid for Research and Development and Innovation', include:

- fundamental research
- industrial research
- experimental development.

R&D does not include any routine or periodic changes made to products, production lines, manufacturing processes, existing services or other 'operations in progress', even if such changes are improvements.

R&D tax credit

The Budget Bill for 2015 sweeps away the previous rules and introduces (from 2016 to 2020) the following R&D tax credit system (as further amended by the Budget Bill for 2017).

- The R&D tax credit is 50% of the enterprise's extra spending on R&D, measured against its average spending of the three tax periods preceding that in progress on 31 December 2015 (i.e. 2012, 2013 and 2014 for calendar-year taxpayers). There are specific rules for enterprises that have been in business for less than 3 years.
- There is a minimum spending requirement of at least EUR30,000 per year and a maximum tax credit of EUR20 million per year.

Eligibility requirements

R&D tax credit facility is available to any enterprise irrespective of its legal form, business sector, accounting standards and size (previously the tax credit was limited to enterprises with turnover of less than EUR500 million). Since 2017, the credit is also available to resident companies and to Italian permanent establishments of non-resident companies which carry out R&D activities under contracts concluded with resident entities and entities resident in a EEA country or in a country which allows an adequate exchange of information with Italy (i.e., a white list country).

Registration/claim process

The R&D tax credit:

- must be indicated in the tax return
- is included in neither the Corporate Income Tax (IRES) nor the Regional Business Tax (IRAP) base
- is not relevant for the purpose of determining the deductible percentage of interest expenses and general expenses in accordance with articles 61 and 109(5) of the Italian Income Tax Code
- may be used to offset income/regional taxes and social security contributions.

To benefit from the tax credit, certain accounting documentation must be certified by an audit firm, the company's board of statutory auditors or an individual registered auditor. Enterprises without auditors (external or internal) must still prepare accounting documentation to be countersigned by a registered auditor or audit firm (with a cap of EUR5,000, these costs can be included in the calculation of the tax credit). Enterprises with audited financial statements are exempt from the obligation to provide the certified documentation. From 1 January 2015, all previous R&D incentives were abolished and the freed funding were used to finance the new R&D scheme.

The Ministry for Economic Development, in collaboration with the Ministry of Economy and Finance, issued an implementing decree (published on 29 July 2015 in the Italian Official Gazette) explaining how the new rules were to be implemented. Moreover, Italian Tax Authorities published additional clarifications on the R&D facility with Circular no 5/E dated 16 March 2016.

R&D tax relief

To calculate the tax credit, an enterprise can take the costs of the following:

- a) Staff engaged in eligible R&D activities.
- b) Depreciation charges on instruments and laboratory tools (calculated on the basis of the depreciation rates published in the Ministerial Decree of 31 December 1988) costing EUR2,000 or more per unit (net of VAT).
- c) R&D conducted in collaboration with universities, public research institutes (and equivalent bodies) and innovative startups regulated by article 25 of Legislative Decree no. 179/2012 (converted into Law no. 221/2012).
- d) Technical expertise, industrial and biotechnological patents, semiconductor topography rights or plant variety rights, even if acquired from external sources.

Other grants and incentives IRAP deduction

Costs of labor regarding personnel dedicated to R&D activities are deducible from the IRAP taxable base. The above incentives are alternative to and cannot be cumulated with other extra deductions allowed by the IRAP law (i.e. the so-called Fiscal Wedge (Cuneo Fiscale)).

Tax incentives for non-resident researchers (Law Decree no. 78/2010, converted into Law no. 122/2010 as amended by the 2015 and 2017 Budget Bills)

Qualified researchers willing to establish their tax residence in Italy shall benefit from a 90% exemption from Individual Income Tax (IRPEF) and from a full exemption from IRAP. The incentives shall apply in the year during which the researcher becomes a tax resident in Italy and for the following 3 years.

Optional Patent Box

The Budget Bill for 2015 introduced an optional IP-box regime (Patent Box), which excludes part of the income attributable to the 'use' (as defined below) of qualifying intangible assets from the Corporate Income Tax (IRES) and the Regional Business Tax (IRAP) base. In practice, the proposed provisions will enable taxable entities to benefit from lower effective tax rates.

The regime (as further amended in 2015 by the 'Investment Compact Decree' and by the Budget Bill for 2016) is based on other schemes already adopted by other EU Member States (e.g. Belgium, France, Luxembourg, the Netherlands, Spain and the United Kingdom). Conforming to common international standards, the Patent Box is designed to encourage companies to locate intangible assets in Italy and to invest in R&D.

The following taxpayers — generating business income in Italy — may opt for the Patent Box:

- resident entrepreneurs (e.g. corporate entities, partnerships and individuals)
- non-residents companies/entities with permanent establishments in Italy that are residents in a treaty country, allowing an adequate exchange of information.

This regime — which lasts for 5 years (renewable) and cannot be revoked — is only available to taxpayers that engage in R&D (also through research contracts with universities or research centers) with a view to develop, maintain and enhance the intangible assets listed below:

- software protected by copyright
- patents
- trademarks including collective brands — already registered or in course of registration
- designs and models capable of legal protection
- know-how.

The Patent Box regime is available for (i) income attributable to intangibles granted to third parties for their use and (ii) income attributable to direct use of patents and trademarks by their owner (the 'use' of intangible assets covers both situations).

As already indicated, the benefit is available for both Corporate Income Tax (IRES) and Regional Business Tax (IRAP) purposes. Essentially, a certain percentage of income attributable to 'use' of the qualifying assets is excluded from the taxable base, as follows:

- 30% in the tax year following that in progress on 31 December 2014 (i.e. 2015 for calendar-year taxpayers)
- 40% in 2016 (for calendar-year taxpayers)
- 50% from 2017 onwards (for calendar-year taxpayers).

Optional Patent Box (cont.)

Drawing inspiration from the OECD nexus approach, the qualifying income is calculated by multiplying the income derived from the intangible asset by the ratio of qualifying R&D expenditures (which can be increased by up to 30% by including the costs of acquiring the asset or the intercompany costs of R&D contracts for the asset) over the total expenditures incurred to develop the intangible asset. The Patent Box is available from the tax year following that in progress on 31 December 2014 (2015 for calendar-year taxpayers). The Ministry for Economic development, in collaboration with the Ministry of Economy and Finance, issued (in October 2015) an implementing decree which explained how the new rules were to be implemented. Moreover, Italian Tax Authorities published additional clarifications on Patent Box regime with Circular no 11/E dated 7 April 2016.





Lithuania

The Lithuanian system for R&D tax incentives was established in 2008. The current tax incentive is an additional tax deduction of 300% of R&D expenses, except depreciation costs of non-current assets, in the tax period in which they are incurred. Moreover, the accelerated depreciation on qualifying R&D non-current assets may be used based on the current Law on Corporate Income Tax (CIT).

Taxpayers are encouraged to approach the Lithuanian Agency for Science, Innovation and Technology (MITA) for explanations and guidance on what constitutes R&D.

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Overview of R&D incentives

Definition of R&D

The definition of R&D is established in the Lithuanian Law on Higher Education and Research. Research and experimental (social, cultural) development is defined as a systematic creative activity of the study of nature, humanity and society, and the use of the results of such activity. Research and experimental development covers three types of activities: fundamental research, applied research and experimental (social, cultural) development.

- Fundamental research means experimental and/or theoretical operations that are carried out primarily to acquire new knowledge about the essence of phenomena and/or observed reality without aiming, at the time of research, to use the obtained results for a specific purpose.
- Applied research means the experimental and/or theoretical operations carried out to acquire new knowledge and is primarily aimed at attaining specific practical objectives or at solving problems.
- Experimental (social, cultural) development means a systematic activity based on the knowledge acquired through research and practical experience, the aim of which is: to create new materials, products and equipment; to develop new processes, systems and services; or to improve those already created or developed. It also includes activities that aim to create, develop or improve solutions to problems faced by human beings, culture and society, based on the knowledge acquired through research and practical experience.

R&D expense deductions

The Law on CIT stipulates that a taxpayer may claim additional tax deductions for the prescribed amount of expenses incurred for an R&D project.

- Expenses incurred for R&D purposes may be deducted three times in the tax period in which they are incurred, provided that the R&D works are related to the usual or planned activities of the entity which generate or will generate income or economic benefit.
- Certain fixed assets used in R&D activities are depreciated or amortized in shorter periods (e.g. up to 50% annual rate is established for installations, machinery and equipment). Such depreciation (amortization) costs can only be deducted once.

The qualifying expenses incurred during an R&D project are as follows:

- wages and compulsory health, social insurance contributions of a person who directly participates in the R&D project
- business trip expenses, which are necessary and directly linked with the R&D works
- materials used in the R&D works, other costs of current assets
- services (scientific consulting services, premises and/or equipment rental, utilities, repair, storage, telecommunication and other services) that are necessary to perform (and directly related to) the R&D works
- services purchased, if the acquired constituent work has been carried out in the EEA or a country outside the EEA which has concluded and brought into effect a double tax treaty with Lithuania
- import and input VAT from the R&D costs that may not be deducted for VAT purposes.

R&D tax relief Other relevant information

R&D expenses have to be reduced by the funds or support received from the national budget, State Social Insurance Fund budget, Mandatory Health Insurance fund, other state money funds, Municipal funds, EU and other financial aid funds.

Eligibility requirements

- Generally, all taxpayers are entitled to claim a tax deduction for the amount of qualifying expenses which were incurred for an R&D project. The performed R&D activity must be related to the usual business activities of the entity that generated or will generate income or economic benefit. Usually, the R&D activities performed must have an element of novelty and address scientific and/or technological uncertainty.
- There are certain documentation and nature of R&D costs requirements established to qualify for an R&D project and, accordingly, to be entitled to apply the tax reliefs. The detailed requirements are prescribed by the government (see Eligibility requirements, page 38).

Registration/claim process

Lithuanian entities and permanent establishments must complete the annual CIT tax return and file it with the local tax authorities. The amount of expenditure has to be included in the annual CIT return, while the supporting documentation should be provided to the tax authorities upon request.

According to Decision No. 1183 of the Government of the Republic of Lithuania, dated 19 November 2008, in order to deduct the R&D expenses, a taxable entity has to have an approved R&D works documentation that specifies R&D works (their aim, the status of implementation, and other important information). The R&D works' documentation must include a description of the work's novelty and progress, solution of scientific or technological problem or uncertainty, method used, the results (or expected results), how these results will be used in the entity's business activities, what expenses were incurred in the performance of R&D works, total amount of these expenses and the calculations of other expenses incurred — including fixed assets — as well as criteria for the attribution of other expenses to the R&D works.

By the Decision No. 650 of the Government of the Republic of Lithuania dated 6 June 2012, the recommended description of the R&D stages' classification was approved. It sets the R&D stages from knowledge, the acquisition of the product, creation in accordance with their corresponding activity descriptions and expected performance results. In order to be clear about the qualification of a particular R&D project, it is possible for both taxpayers and tax authorities to consult with the Lithuanian Agency for Science, Innovation and Technology (MITA). They can evaluate the project and provide expert conclusions. The taxpayer may apply for approval from MITA to ensure that certain projects meet R&D Eligibility requirements.

Other grants and incentives

The following CIT incentives are also available for investment projects in Lithuania.

- Investment incentive for certain groups of fixed assets (applicable 2009-2018): companies may reduce their taxable profits up to 50% by the amount of expenses incurred for investment in certain fixed assets, machinery and equipment, computer hardware and software, communication equipment, and acquired rights. The incentive also applies to acquired trucks, trailers and semitrailers. Part of the acquisition costs of fixed assets, which has not been utilized during the taxable year, may be carried forward but no more than 4 years. The tax authorities should be notified that the company is performing an investment project.
- Free economic zones (FEZ): a company with investments of EUR 1 million or more, operating in a FEZ, is exempt from corporate income tax for 6 taxable years and is subject to a 50% reduced corporate income tax rate in 10 subsequent years. Such relief is applicable for FEZ companies if at least 75% of the income in the tax year is derived from production, manufacturing, processing or warehousing activities performed within a FEZ, wholesale trade in goods stored within an FEZ, as well as services related to the above mentioned activities. Information technology, aircraft and spacecraft maintenance services are also included. There is no real estate tax applicable in a FEZ territory.
- Double tax incentive for movie-making supporters (applicable 2014-2018): an entity may deduct up to 75% of the funds provided for production of a film or its part in Lithuania from its taxable profit. Furthermore, the payable corporate income tax may be reduced up to 75% by the amount provided for film production. If the amount of funds exceeds 75% of corporate income tax payable, the exceeding amount may be carried forward to reduce profits of the two subsequent tax periods.



Netherlands

The Netherlands strongly promotes companies to carry out their R&D activities in the Netherlands. Promoting R&D activities in the Netherlands is one of the leading principles for the Dutch government to improve the Dutch economy.

For many years, the Netherlands has had several very attractive R&D incentives. This has resulted in the Netherlands being a favorable location for carrying out R&D activities, also for foreign companies. Combined with the favorable Dutch corporate tax regime, an educated and experienced workforce and easy access to the European market, the Dutch R&D incentives have proven to be very successful over the years.

Companies may benefit from both Dutch R&D incentives and foreign R&D incentives. Moreover, foreign withholding tax on royalty income (if any) is creditable in the Netherlands against corporate income tax.

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Overview of R&D incentives

Headline rate

A reduced effective tax rate of 5% (instead of the general tax rate of 25%) applies for income attributable to qualifying self-produced intangible assets (the Dutch Innovation Box regime).

Definition of R&D

As of 2017 the rules for the Dutch Innovation Box were altered. Two definitions of R&D exist. The first is for purposes of the R&D tax credit against payroll tax (Dutch R&D Certificates) and is also relevant for the Dutch Innovation Box. The second definition (Patents, other legal protection, computer programs) is relevant for taxpayers deemed 'large' and is used to further describe the intangible asset classes in scope of the Dutch Innovation Box.

Dutch R&D Certificate

In order to qualify for a Dutch R&D Certificate, the activities should qualify as one of the following:

- a) development of products, processes or software
- b) technical-scientific research.

It is essential that the item to be developed is technically new for your company. Routine development is not R&D. Your own technical know-how and knowledge form the main criteria. Technical innovation (i.e. 'newness') means that there is a research component to the project, and/or the presence of technical uncertainties or risks concerning the achievement of a result. Your application must clearly show what these technical problems or bottlenecks are, how you are working on them, and the eventually chosen (or to be researched) direction taken to find a solution. The technical 'newness' criterion applies to every applicant individually, even when the work is commissioned by others or carried out in a collaborative form.

Netherlands

Patents, other legal protection, computer programs

The Innovation Box law lists the following eligible situations.

1. Company has obtained a patent or a plant breeder's right (Dutch or foreign).
2. Company has applied for a patent or a plant breeder's right (Dutch or foreign).
3. The intangible asset is a computer program.
4. Company has in connection with the asset obtained a license to distribute medication from a European Union Member State.
5. Company has in connection with the asset been granted a Supplementary Protection Certificate by the Dutch Patent Office (Octrooiencentrum Nederland).
6. Company has in connection with the asset been issued with a registered use model in order to protect innovation.
7. The intangible asset is 'connected with' one or more of the assets listed under 1 to 6, above.

The law in addition provides for a second list of eligible situations which may also, and independently of whether a first list situation exists, enable the company to access the Innovation Box. They are the situations where the company has obtained an 'exclusive license' to use an asset type listed under no. 1 to 6 inclusive, above, owned by another person. The exclusivity deal must be one about a certain method of use, a certain period of use, or use in a certain geographical area. The fact that exclusive licenses are eligible implies that foreign multinational enterprises can in their Dutch companies benefit from the 5% rate while centralizing IP protection at the parent level.

R&D income tax benefits: Innovation Box

Articles 12b and following of the Dutch Corporate Income Tax Act provide for the so-called Dutch Innovation Box. Under the Innovation Box rules, a reduced effective tax rate of 5% (instead of the general tax rate of 25%) applies for net income derived from qualifying self-produced intangible assets. Such rate is achieved by allowing the company an exemption of approximately 80% of the profits derived from eligible assets.

If the company has outsourced part of the R&D activities (whether within the Netherlands or abroad) it may still benefit from the Dutch Innovation Box.

For each eligible intangible asset the taxpayer may elect whether or not the Dutch Innovation Box is to be applied.

Not only licensing income (i.e. royalties) may fall within the scope of the Dutch Innovation Box. Also other income items attributable to such intangible assets may be in scope, including a portion of product sale or service revenues, cost savings and capital gains on disposal of the intangible asset.

The company must use a formula approach to compute the amount of profit that benefits from the Dutch Innovation Box rate. This formula approach is referred to as the Modified Nexus Approach and its main effect is a disincentive for the company to outsource development work to (foreign) group companies. In order to compute the profit amount on which the formula is applied the company is allowed to use economic analysis methods that are used to resolve transfer pricing matters.

Innovation losses are deductible at the general Dutch tax rate (i.e. 25%). Note however, that these losses will raise the threshold that must be met before the low Dutch Innovation Box rate applies again.

Netherlands

Eligibility requirements

1) General

Netherlands resident companies are allowed to make the election for the Dutch Innovation Box and also foreign companies having a permanent establishment in the Netherlands can do so. The company making the election must demonstrate that its technology intangible asset has resulted from development work done by its employees (self-production) and that in connection with that work it has been granted one or a number of R&D Certificates.

Acquired intangible assets do not qualify for the Innovation Box. However, if such an intangible asset is further developed and a new intangible asset is created, this new intangible asset may be eligible for the Innovation Box provided this further development has taken place with R&D Certificates.

If the company carries out development activity as a participant in certain cost contribution arrangements this does not cause its share of the resulting intangible asset to be ineligible for the Innovation Box.

2) 'Large' companies

A company that is 'large' must fulfill another access requirement in addition to having R&D Certificates, viz. it must be in one of the situations mentioned under Patents, other legal protection, computer programs, above.

A company is 'small' when it meets a combined IP income and revenue criterion. The test is whether or not in a five year period including the pertinent tax year the net turnover of the corporate group to which it belongs is below EUR 250million and in that period its own grossed-up revenue from intangible assets in respect of which it has been issued R&D Certificates is below EUR37.5 million. The company is 'small' when its numbers are below both of these thresholds and 'large' where it is above either of these amounts. Detailed technical rules apply to the computation methodology.

3) Threshold

The 5% effective corporate income tax rate only applies after the 'threshold' has been recaptured at the general tax rate, i.e. deducted from otherwise qualifying net intangible asset income. The threshold amount is computed for all intangible assets together and equals the cumulative development costs incurred of the intangible assets that have not yet been recaptured in prior years.

Registration/claim process

In principle, no special procedure exists for applying the Dutch Innovation Box regime. Making an election for it in the Dutch Corporate Income Tax return is sufficient. Companies that use an R&D Certificate as the basis for application of the Innovation Box are required to apply for such a certificate with RVO (a Dutch government agency independent of the tax authorities) in advance of the R&D project. In practice, most companies conclude an Advance Tax Ruling with the Dutch tax authorities on the Innovation Box. Consequently, the taxpayer can obtain certainty on the effects of applying the Dutch Innovation Box.

Generally, the Dutch Tax and Customs Administration is willing to enter into an Advance Tax Ruling/Advance Pricing Agreement with a company in which it is confirmed which of the company's intangible assets are (will be) in scope of the Dutch Innovation Box. Also, such ATR/APA will set out the method under which for the duration of the ATR/APA (say, four years) the low taxed profit amount will be computed. Information about such ATRs/APAs may be exchanged with foreign tax authorities automatically or otherwise under bilateral, EU law based or OECD agreement based rules.

Netherlands

R&D tax credit for employment cost, other cost, asset investment: R&D Certificates

If your company has employees working on R&D projects or otherwise spends money on R&D projects, a tax credit against payroll tax may be available. The tax credit must be applied for before the start of the R&D project with RVO. When the application is granted, RVO will issue an R&D Certificate confirming the amount of the credit.

The incentive is referred to as WBSO and two project types are in scope:

1. Development projects. These include, for example, the development of technically new (parts of) products, production processes or certain software projects.
2. Technical scientific research.

Three kinds of expenditure on qualifying projects may be in scope of the incentive:

- salary cost of employees working on the project
- cost items that are directly attributable to the project
- fixed asset investments that are attributable to the project; investments equal to EUR1 million or over are factored in through five installments each being 20% of the investment amount.

The amount of the tax credit (2017 rates) equals 40% of the first EUR350,000 of qualifying cost if the company is a startup (as defined) and 32% in other cases. The rate is 16% on the excess over EUR350,000. The company may set off the amount of the credit against its periodical obligations to pay over payroll tax to the Dutch Tax and Customs Administration.

Other grants and incentives

Current deductions for development costs of intangible assets

The taxpayer has the option to elect for current deductions (instead of capitalization and subsequent depreciation). In such case, the development cost of intangible assets incurred in a particular year may be expensed in that year.





Norway

In 2002 the Norwegian government introduced a program designed to stimulate industrial research and development in Norway called 'SkatteFUNN'. The SkatteFUNN incentive is a tax credit scheme that provides taxpayers with the opportunity to deduct tax liabilities and social security contributions directly, and up to the combined rate of 20%.

In addition, partially state-owned organizations and governmental agencies, such as Innovation Norway (Innovasjon Norge), also provides for financial support by grant of cash and loans with favorable terms for R&D qualifying projects.

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Overview of R&D incentives

General overview

The Norwegian R&D scheme provides different incentives that firms can apply for:

- tax credits
- cash grants
- loans
- financial support
- reduced social security contributions.

The Norwegian General Tax Act includes regulations regarding tax allowances known as SkatteFUNN to support R&D project costs. Under the SkatteFUNN scheme, any type of business enterprise engaged in R&D activities may apply to the Research Council for support for R&D projects. Support is granted in the form of a tax deduction, and in certain cases, direct funding to the company.

Definition of R&D

Core R&D activities are experimental activities where:

- the outcome is unknown
 - a systematic scientific principle of investigation is followed
 - the purpose is to acquire new knowledge or create new or improved materials, products, devices, processes or services.
-

Norway

SkatteFUNN eligibility requirements

To be eligible to apply for SkatteFUNN the business must be taxable in Norway under Norwegian domestic law. It is, however, not a requirement for the business to be profitable to apply for R&D incentives.

Tax deductions granted by SkatteFUNN are available to all industries and all types of companies. There are no restrictions as to the number of employees, or turnover to apply for R&D benefits. Furthermore, there are no restrictions in relations to the topic of an applicable R&D project. The project must, however, be limited and about developing new or improved products, or about improving service or production processes that will be useful for the business. Each project must have a clear objective and a defined scope.

In general, businesses should be eligible to apply for R&D schemes if the answer to either (1) and (3) or (2) and (3) describes the project.

1. Your business is in the process of developing a new or improved product, service or production process.
2. The goal of the project is to provide enhanced experience and functionality for the users of a common known service.
3. It is certain or possible that the project will require systematic research and/or development to provide for a good solution.

Registration/claim process

In order for a company to benefit from a tax deduction or receive funding from SkatteFUNN the Research Council (Norges forskningsråd) must approve the application for the project. All SkatteFUNN projects are approved per calendar year, which means that a company may claim tax credit for approved project costs for the whole calendar year, even if the application was approved after initiation of the project.

In addition to approval, the company must also submit a certified auditor form (Skatteetatsens RF-1053) for their project costs in connection with the tax return to get the deduction.

Tax credit

Through SkatteFUNN, small and medium sized businesses can receive a 20% deduction of the R&D costs associated with a given R&D project. Large businesses will receive an 18% deduction of such project costs.

Small- and medium-sized businesses are defined as businesses with less than 250 employees and less than EUR50 million in annual revenue or annual balances that do not exceed EUR43 million.

A large business is defined as a business that, together with its owning company, has more than 250 employees and an annual revenue exceeding EUR50 million or an annual balance that exceeds EUR43 million.

- The SkatteFUNN R&D cost ceiling for R&D projects using in-house R&D resources is 15-20 million Norwegian krone (NOK) per year.
 - The SkatteFUNN R&D cost ceiling for R&D projects also using external pre-approved R&D resources is NOK33-40 million per year. Total costs for in-house and external resources cannot exceed NOK33-40 million.
 - A maximum of 1,850 hours per employee per year is accepted in the cost plan for an R&D project. You may calculate the hourly rate as 0.12% of an employee's nominal annual salary. The hourly rate cannot exceed NOK600.
 - A company may submit multiple SkatteFUNN applications. However, the cost ceilings given above apply per company.
-

Norway

Tax credit (cont.)

The SkatteFUNN support is provided as a reduction in taxes upon profit, or a direct payment when in losses.

The tax effect for small businesses on the SkatteFUNN scheme (based on the upper limit) is NOK2 million on the use of external and in-house resources, and NOK1 million with the use of in-house resources.

The tax effect for large businesses on the SkatteFUNN scheme (based on the upper limit) is NOK1.8 million on the use of external and in-house resources, and NOK0.9 million with the use of in-house resources.

If the taxpayer is receiving other governmental aid in addition to SkatteFUNN, please note that the total amount of governmental aid must be in line with the EEA Agreement and ESAs state aid guidelines.

Other grants and incentives

Innovation Norway is a semi-governmental operated entity that administers financial supports such as loans and cash grants. Innovation Norway is owned by the Ministry of Trade, Industry and Fisheries (51%) and the county authorities (49%). The other incentive schemes by Innovation Norway are applicable to both current and future investments that will empower Norwegian business and innovative ideas.

State Budget 2017

In the State Budget for 2017, the Norwegian government proposed to increase the maximum cost ceiling for R&D projects using in-house R&D resources from NOK20 million to NOK25 million. The cost ceiling for R&D projects also using external pre-approved R&D resources is proposed to increase from NOK40 million to NOK50 million. The proposals contained in the 2017 budget will be subject to parliamentary discussions before a bill is presented to the parliament. It is due to be voted on before the end of 2016.





Poland

Poland offers a very attractive system of support for companies conducting R&D works. It is possible to benefit from tax deductions and direct grants. New investors as well as existing companies are eligible for R&D support, in the investment and operational stage of their activity.

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Overview of R&D incentives

Headline rate

There is a new tax incentive designed to encourage companies to invest in R&D — additional set-off of R&D costs against taxable income up to 30% raised to 50% in 2017 (R&D tax credit).

Additionally, companies may still benefit from tax relief for the purchase of new technologies, which allows for deducting up to 50% of costs incurred on the acquisition of innovative technology from the corporate income tax base (technological tax relief). The instrument has been replaced by the R&D tax credit but it is still possible to deduct the costs incurred until the end of a fiscal year started in 2015.

Definition of R&D

The Polish definition of R&D is generally in line with the EU legislation and the OECD Frascati Manual, which defines R&D as activities that comprise creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications. There are three stages of R&D work: fundamental research, industrial research and experimental development.

R&D tax relief

In Poland companies have the possibility to take advantage of tax bonuses for R&D works.

The R&D tax credit is given in the form of an additional set-off of eligible costs against taxable income in the amount of:

- 30% of salaries of employees engaged in research and development activities (50% from 2017)
- 20% (SME) (50% from 2017) or 10% (30% from 2017) (large enterprises) of other related expenses on research and development activities (including depreciation).

Technological tax relief gives the opportunity for deducting up to 50% of costs incurred on the acquisition of innovative technology from the corporate income tax base.

Additionally, Poland allows special tax deductions for entities having the R&D center status.

Entities with the R&D center status can establish an innovative fund within the entity. Monthly contributions to this fund amounting to 20% of the given month's revenue are treated as tax deductible costs.

Eligibility requirements

In order to be eligible for R&D incentives in Poland, enterprises must fulfill certain requirements.

In every case, the projects have to meet the definition of research and development works.

In order to utilize R&D tax credit costs for R&D, activities have to be shown separately in the accounts. Eligible costs must be listed in the tax return.

In case of technological tax relief, acquisition costs of R&D result can be considered as tax deductible if the R&D result is classified as an intangible asset by the purchaser and the technology is not older than 5 years, which is confirmed by the opinion of an independent Polish scientific institution.

In order to obtain R&D center status, the sales of R&D results must constitute at least 20% of the company's sales.

Note, R&D tax credit and technological tax relief will not apply to taxpayers running their activity in special economic zones.

Registration/claim process

Tax deductions are claimed each year in tax returns.

In order to obtain an R&D direct grant, the enterprise must file an application for co-financing during an open application round.

Other grants and incentives

Entities carrying out R&D projects in Poland may receive grants from, among others, the following sources:

- EU Structural Funds designated for Poland
- Polish R&D Programs
- Horizon 2020.

Grants can be up to 80% of the R&D costs.

In the case of R&D centers operating in the special economic zone, income from R&D activity is exempt from corporate tax up to state aid level limits.

When establishing/expanding an R&D center in Poland it is possible to apply for incentives in Poland (cash grants, corporate and real estate tax exemption) up to 70% of investment/2 years employment cost.

It is possible to combine various forms of above-mentioned incentives in order to take full advantage of the incentive opportunities in Poland, however, state aid rules have to be observed.



Romania

R&D incentives have been introduced in the Romanian fiscal legislation since 2009 and they currently consist in applying an accelerated depreciation regime for the eligible assets, as well as a super deduction available for qualifying expenses. Personal income tax exemption has been introduced recently for salaries of researchers and other people working in R&D.

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Overview of R&D incentives

Definition of R&D

R&D tax incentives apply for 'applied research' (also referred to as 'industrial research') and for 'technological development' ('experimental development').

Definitions of R&D activities are generally aligned with definitions in OECD's Frascati Manual and in European Commission Regulation (EC) No 651/2014.

Applied research (industrial research) represents an activity aimed at acquiring new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation.

Technological development (experimental development) means using knowledge and skills acquired through research or practical experience, with the aim of developing new materials, products or devices, processes, systems or services, or significantly improving existing ones. This may include, for example, planning and documentation of new products, processes or services; prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services.

R&D expense deductions Accelerated depreciation

Accelerated depreciation is granted for equipment used in R&D activities. According to the Fiscal Code, depreciation of up to 50% of the equipment's fiscal value can be deducted in the first year. Going forward, the net book value will be depreciated using the straight-line method over the remaining useful life of the asset.

Super deduction

Additional deduction of 50% may be granted for eligible expenses which can be directly related to R&D activities. The list includes:

- a) depreciation or rental expenses for fixed assets or intangibles used for R&D activities, as well as related maintenance and repairs
- b) salaries of the personnel directly involved in R&D activities
- c) operating expenses incurred in carrying out R&D activities, such as: services provided by third-party suppliers, consumables, small inventories, raw materials, parts, components, expenses related to animals included in the studies or other similar goods used in the R&D activities
- d) overheads which can be directly or proportionally allocated to the results of the research using an allocation key (e.g. rent and utilities, administrative expenses).

Eligibility requirements

The fiscal incentives are granted for R&D activities that are relevant for the taxpayer's activity, leading to results that can be used for its own benefit (e.g. used as part of its current activity, sold or licensed).

R&D activities may be performed both in Romania and in other EU/EEA Member States, including in association/collaboration with other parties or as a part of a group allocation cost agreement, as long as the taxpayer also uses the R&D results for its own activities. Tax incentives are granted separately to each entity that performs R&D activities and records the related eligible expenses.

If R&D is performed by a subcontractor, on request, tax incentives are granted to the subcontractor.

Registration/claim process

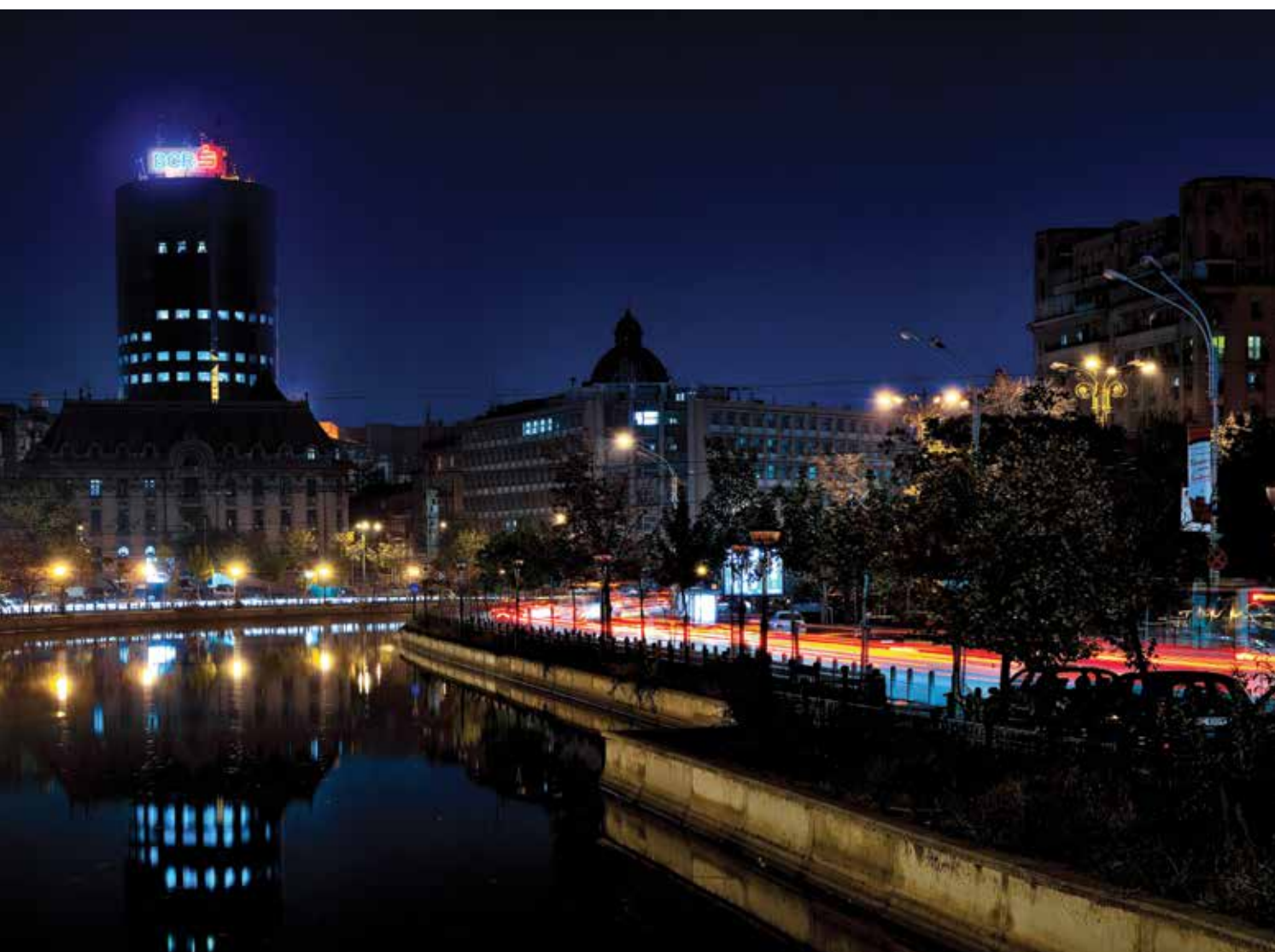
In order to benefit from the above mentioned tax incentives, companies must be subject to profit tax in Romania. Tax incentives can be claimed by taxpayers in tax returns, subject to tax audit. Although no prior registration is required, there are certain formal requirements to apply the incentives, such as documenting R&D projects (e.g. scope, financing, objectives, activities, results).

Romania

Grants and other incentives

Employees involved in software development activities may be exempt from personal income tax, subject to the fulfilment of certain conditions imposed by law.

Starting August 2016, salary income obtained by employees involved in R&D activities is also exempt from personal income tax, subject to certain conditions (e.g. eligible employees have to be part of a R&D specialized unit such as a department, laboratory, division etc., they should hold at least a university degree, and they should perform applied research and/or technological development activities as part of a formally defined applied research and/or technological development project). Definitions of eligible R&D activities are similar to the ones used for the corporate tax incentives described above, however, experimental development and testing activities carried out to solve scientific and technological uncertainties and achieve the objectives of R&D projects are also included.





Russia

To stimulate an innovative and development sector, the Russian government provides a number of tax incentives to R&D companies, in particular they may:

- deduct 150% of actual costs on R&D
- apply accelerated coefficient (up to 3) for depreciation
- create provision on R&D expenses
- obtain investment tax credit
- educational and medical R&D companies could apply 0% rate of profits tax.

Certain R&D activities are exempted from VAT.

Particular R&D activities could be taxed at lower profits tax and property tax rates (or exempt for certain companies) in certain Russian regions.

Information Technology companies may apply reduced social security contribution rates up to 2019.

A wide range of tax incentives are applicable by special economic zones, advanced development territories and Innovation Skolkovo Center residents.

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Overview of R&D incentives

Definition of R&D

R&D expenses are expenses incurred to create new, or improve current, goods, works and services provided, technologies, production and management methods, and include:

- depreciation of fixed assets (except buildings and constructions) and intangibles used for R&D activities
 - payroll expenses for employees engaged in R&D
 - material expenses related to R&D activities
 - other expenses related to R&D activities not exceeding 75% of the payroll expenses for employees engaged in R&D
 - contractual expenses for R&D activities outsourced by the taxpayer
 - contributions to the scientific and innovation fund based on the respective legislation not exceeding 1.5% of the taxpayer's sales.
-

R&D expense deductions

Irrespective of the result of the R&D activities, the above-mentioned expenses (except the latter) are deductible for corporate income tax purposes in the tax period when such activities are finished. The latter expenses are deductible in the period when such expenses are incurred.

Certain R&D expenses determined by the Russian government may be deducted up to 150% in the period when such activities are finished. A specific report complying with Russian State Standards should be provided to the tax authorities. The list of these areas is exhaustive and includes a number of areas, such as bio-information technologies, nanotechnologies, nuclear-power engineering, sea and space technologies, etc.

Taxpayers are allowed to apply a multiplying coefficient (not more than 3) to the general depreciation rate with regard to fixed assets used in R&D activities.

Taxpayers are allowed to create a provision for R&D expenses under each separate R&D research program for the planned period, but no more than 2 years.

Educational and/or medical organizations performing R&D activities may apply 0% profits tax rate if certain criteria are met (see below).

Additionally, regional tax legislation may provide reduced tax rates for certain types of R&D activities (see below).

Eligibility requirements

The costs are deductible for tax purposes within the limits (see Definition of R&D, page 51) if they are in accordance with the government-approved list for R&D expenses.

For application of 150% deduction of R&D activities, a special report should be provided.

Educational and/or medical organizations performing R&D activities may apply 0% profits tax rate if the following criteria are met:

- educational and/or medical activities are included in the list approved by the Russian government
- licenses for execution of such activities are in place
- 90% of their income is derived from educational and/or medical and R&D activities
- in the organization performing medical activities, the number of medical staff with specialist certificates out of the total number of employees is not less than 50%
- the organization has at least 15 employees
- the organization does not perform operations with promissory notes and forward financial instruments.

Registration/claim process

In relation to the investment tax credit, and reduced profits tax rates applying for R&D activities (i.e. application of 0% rate) the taxpayer should submit a request to the tax authorities and provide additional information where relevant.

The taxpayer should be registered as a resident of special economic zones, advanced development territories or the Innovation Center in Skolkovo.

R&D tax credit

An investment tax credit is granted to the companies performing certain activities, including R&D.

In general, the investment credit may be granted for a period of 1 to 5 years (10 years in relation to residents of advanced development territories) at an interest rate half to three-quarters of the effective Central Bank rate. The maximum amount of investment tax credit should not exceed 50% of tax to be paid and 100% of fixed assets that are to be used in R&D activity or the amount agreed with the tax authorities.

In order to claim investment tax credits, the taxpayer should submit a request for the tax authorities and provide supportive documentation (i.e. investment project plan).

Other grants and incentives

Property tax

Regional legislation may provide exemption from property tax to certain taxpayers (i.e. for scientific and educational organizations) for fixed assets used in R&D activities.

VAT

VAT exemption could be applied for:

- R&D activities related to the creation of new production and technologies
- R&D activities financed out of State Budget and special funds
- transfer of IP rights for software, databases, inventories and know-how, including transfer under license agreements
- import of materials without Russian analogues to be used in R&D activities.

Social security contributions

IT companies may apply for reduced social security contributions at a rate of 14% — up to 2017; 21% — 2018; 28% — 2019 (compared with the regular rate of 30% (34% starting from 2016)) if the following requirements are met (revised annually):

- the company has the state accreditation in the field of IT
- the company develops and implements computer programs, databases and (or) provides services (activity) on the development, adaptation, modification of computer programs and databases, etc.
- income from direct activities in the field of IT is not less than 90% of total revenues for the organization in the previous period
- the average number of employees of the IT company for 9 months of the previous period was at least seven people.

Special economic zones and advanced development territories

Several special economic zones for technological development have been created in Russia (industrial and production zones; technology and innovation zones; tourist and recreational zones; and port zones). Advanced development territories have been created in several regions (mainly in the Far East) and provide a wider range of benefits. Each advanced development territory has a list of permitted activities and some of them allow R&D activities.

Companies should be registered in the territory of special economic zones or advanced development territories and conclude an agreement with the managing bodies of special economic zones or advanced development territories and state authorities on the performance of eligible technological and innovation activities. To run into agreement with managing bodies of advanced development territories the company should make a certain amount of investments.

Russia

Special economic zones and advanced development territories (Cont.)

Residents of special economic zones benefit from the following tax incentives:

- reduced corporate profits tax rate (up to 15.5% compared to a general rate of 20%)
- exemption from property tax, land tax during the first 5 years (10 years for property tax) starting from the date of posting the property (vehicle) to accounts (acquiring property rights for the land plot)
- reduced social insurance contributions of development and innovation special economic zones (maximum 14% (up to the year 2017) 28% (up to the year 2019) compared to a general rate of 30%)
- delayed payment of VAT and customs duties until products are exported from a special economic zone to the rest of Russia
- exemption from transport tax and other incentives if stipulated by the local laws of special economic zones.

Residents of advanced development territories could be eligible for the following tax incentives instead of the corresponding incentives mentioned above:

- reduced corporate profits tax rate (not more than 5% in the first 5-year period, not less than 12% in the following 5 years compared to a general rate of 20%)
- VAT refund on declarative basis (as well as delayed payment of VAT and customs duties)
- reduced social insurance contributions rates to 7.6% for 10 years.

Skolkovo Innovation Center

Residents of the Skolkovo Innovation Center are permitted to apply the following tax incentives:

- exemption from corporate profits tax, property tax and land tax
- reduced rate for social contribution payments — 14% compared to the general rate of 30% (34% starting from 2019)
- ability to opt for VAT exemption.

The above incentives are available for 10 years from the moment of registration or until the resident's annual sales revenue exceeds 1 billion Russian ruble (RUB) and the profit exceeds RUB300 million.





South Africa

South Africa's R&D Tax Incentive was introduced with effect from 2 November 2006 to encourage private sector investment into R&D in South Africa. The R&D tax incentive is an effective additional 50% 'super' tax deduction on eligible R&D expenditure incurred in South Africa. This equates to an effective 14% tax benefit. For example, if 10 million South African rand (R) is spent on eligible R&D, the tax saving will be R1.4 million (R10 million eligible spend x 50% super deduction x 28% corporate tax rate).

In effect as of 1 October 2012, the additional 50% R&D tax deduction can only be claimed from the date that a pre-approval application form has been lodged with the Department of Science and Technology (DST). This means that expenditure incurred on or after the date of lodging the application will be eligible. Companies that have not submitted any application form need to do so urgently to benefit from the R&D Tax Incentive. An 'Approval Committee' will evaluate the merits of each pre-approval application. The committee will be staffed by three members from the DST, three members from the South African Revenue Service (SARS) and one member from National Treasury.

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Overview of R&D incentives

Headline rate

The R&D Tax Incentive offers an effective additional 50% tax deduction (over and above the usual 100% deduction allowed on revenue expenditure) on qualifying R&D revenue expenditure.

Additionally, a pilot/prototype plant exclusively used for R&D may be claimed at 150% and written off in the year that it is bought into use rather than writing off these assets over a period of time.

Accelerated allowance available for machinery and plant (other than a pilot/prototype plant) acquired/brought into use for the purpose of R&D — 50% in the year it is brought into use, 30% in the year thereafter and 20% in the third year.

South Africa

Definition of R&D

Effective from 1 October 2012, R&D is defined as:

Systematic investigative or systematic experimental activities of which the result is uncertain for the purpose of:

- discovering non-obvious scientific or technological knowledge
- creating or developing:
 - an invention
 - a functional design
 - an innovative computer program
 - knowledge essential to the use of the items above.
- Significantly and innovatively improve an invention, design, computer program or knowledge thereto for the purpose of:
 - a new or improved function
 - an improvement of performance
 - an improvement of reliability
 - an improvement of quality.
- Creating or developing a multisource pharmaceutical product
- Conducting a clinical trial as defined in Appendix F of the Guidelines for good practice in the conduct of clinical trials with human participants in South Africa, issued by the Department of Health (2006).

IP ownership

Any R&D undertaken must be done from within South Africa to qualify. There is no requirement that resultant IP must be held in South Africa.

Registration/claim process

From 1 October 2012, in order to claim the additional 50% tax deduction a pre-approval form must be submitted for each project to the DST. If approval is granted, expenditure may be claimed from submission date.

South Africa

Government incentives

The Department of Trade and Industry (DTI) and the Department of Science and Technology (DST) offer a variety of incentives in the form of cash grants and/or tax breaks, some of which are listed below:

	S121 - Greenfield/ Brownfield Incentive	S12L Energy Efficiency	Critical Infrastructure Program (CIP)	Business Process Services (BPS) (e.g. call centre/shared services)
Benefits available	Benefit ranges between 35% and 100% of the investment (capped between R98 million and R252 million) (evaluated based on a 10-point scorecard).	<ul style="list-style-type: none"> — An energy saving tax deduction available to taxpayers in respect of energy savings. — A deduction of 95c per kilowatt hour of energy saving. — Captive energy qualifies except for renewable captive energy that generates less than 35% energy annually. 	Between 10% to 30% of the infrastructure development cost (capped at R50 million).	Average cash incentive of R22,000 to R34,000 per job retained (2014 to 2023). 20% to 30% bonus if > 400 or 800 jobs created.
Minimum investment required	Greenfields R50 million Brownfields R30 million; or lesser of R50 million or 25% of expenditure on existing assets	N/A	None	Create at least 50 new jobs in South Africa over a 3-year period and maintain the jobs for a period of 5 years.
Type of benefit	Tax allowance	Cash incentive	Cash incentive	Cash incentive
Timeframe	Applications must be submitted and approved before contracting for, or acquiring, any assets.	Applicable from 1 November 2013. As soon as the base line has been determined.	Applications must be submitted 3 months before start of construction of infrastructure.	Must commence commercial operations no later than 6 months from the approval date.
Training benefit available	R36,000 per employee up to a maximum of R30 million.	N/A	No	N/A

Source: KPMG International 2015

South Africa

Special economic zones (SEZ)

The Special Economic zones Act came into operation on 9 February 2016. The legislation aims to boost private investment in labour intensive areas in order to stimulate job creation, competitiveness, skills and technology transfer as well as increasing exports of beneficiated products through the establishment of SEZs. SEZs are geographically designated areas of the country, attracting targeted economic activities which are supported and incentivized through a range of measures including tax incentives (e.g. VAT and customs relief, employment tax incentive, and reduced 15% corporate tax rate).

The activities targeted are businesses conducting manufacturing, businesses performing internationally tradable services as well as businesses providing warehousing and distribution and logistical services. Companies which provide goods and services to the companies in the SEZ may also apply for the dispensation.

The SEZ legislation builds on the Industrial Development Zone (IDZ) dispensation and provides for the existing IDZs at Richards Bay, Coega, East London, O.R. Tambo and Saldanha Bay to be transitioned into SEZs. In addition, the SEZs have been identified across all provinces and include Tubatse and Musina in Limpopo, Nkomati in Mpumalanga, Rustenburg in the North West province, Atlantis in the Western Cape, Upington in the Northern Cape, Mthata in the Eastern Cape, Dube TradePort in KwaZulu-Natal, Harrismith in the Free State and Gauteng.

The SEZs mentioned above are not exhaustive and any municipality may apply for an area to be designated as an SEZ within that municipality.





Spain

Spanish legislation sets out a number of incentives for R&D activities, including Technological Innovation (TI). In this regard, the following R&D tax incentives are applicable for Spanish companies/ permanent establishments:

- i) Spanish R&D and TI tax credits (RDTC)
- ii) reduction of social security contributions for R&D dedicated staff
- iii) Spanish 'Patent Box' regime
- iv) free depreciation for R&D activities.

These incentives are compatible with the others (a combination of benefit (i) and (ii) is only possible if the company qualifies as an Innovative company), establishing a lucrative R&D incentive regime.

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Overview of R&D incentives

Headline rate

The R&D tax credit is at a rate of 25% of R&D related expenses incurred in the tax period. Where the expenses of R&D activities are higher than the average of those incurred in the 2 preceding years, 25% is applied up to that average and 42% applies to the excess. For TI activities the rate is constant at 12% of related expenses incurred in the tax period.

The costs of R&D and TI activities are deductible for Corporate Income Tax (CIT) purposes (the general CIT rate is 30%, or 25% for SMEs).

A new reform of Spanish CIT law entered into force in 2013. The current percentages are maintained and a new 'cash refund' system is available for companies with tax losses or less tax due than the RDTC.

Definition of R&D

For the purposes of the R&D tax credit, 'research' is an original, planned investigation aimed at attaining new knowledge and a greater understanding in the scientific and technology field. 'Development' is the application of the results of the research or of any other type of scientific knowledge for the manufacturing of new material or products, or for the design of new processes or production systems, as well as for the substantial technological improvement of materials, products, processes or pre-existing systems.

Specifically, R&D activities include the materialization of the results of the research in a plan/draft, scheme or design; and the creation of initial, not-for-sale prototypes or demo projects, provided that they cannot be converted or utilized for industrial or business purposes. R&D activities also include the design and manufacturing of samples for the launching of new products. Additionally, R&D activities include the creation of new 'advanced software' (basic operating systems and programming languages).

Definition of R&D (cont.)

Note that the 27/2014 CIT law slightly changed the definition of R&D activities qualifying also as R&D: the creation and configuration of advanced software, new theorems and algorithm, operative systems, programming languages, inter-phases and apps destined to create new product, process or service, or significantly improved ones.

TI is defined as activities resulting in advanced technology in new products or manufacturing processes, or significant technological improvement of already existing products or processes. For this purpose, 'new' products or processes are those whose features or uses substantially differ, from a technical perspective, from already existing products or processes. Specifically, these types of activities include those consisting of the materialization of new products or processes in a plan/draft, scheme or design; the creation of a not-for-sale prototype; the initial sample project or demo project including (for FY15) those related to animation and video games, provided that these cannot be converted or utilized for business or industrial purposes. TI also includes technological diagnosis intended to identify, define and advise on advanced technological solutions made by certain qualified organizations.

R&D tax relief

The costs of R&D activities are deductible for CIT purposes (the general CIT rate is 30%).

The R&D related expenditures can be deducted in the year in which they were born, or amortized over periods even if not in accordance with Spanish GAAP. They can also be freely depreciated for Spanish CIT purposes (e.g. 100% in the first year) even if not in accordance with Spanish GAAP.

An amortization rate, which may differ from the Spanish GAAP rate, is allowed for tangible and intangible R&D assets used for R&D activity (free depreciation), except land and buildings. The portion of buildings used for R&D activities can be deducted at an annual 10% rate.

RDTC apply in the annual corporate income tax return which is due 6 months and 25 days following the end of the financial year.

Unused RDTC may be carried forward for 18 years.

Eligibility requirements

In order to be entitled to claim the R&D tax credit, the following conditions should be met:

- Expenses incurred should correspond to activities carried out in Spain or in another state member of the EU or the EEA.
- The R&D activities could be carried out directly by the company eligible for the tax credit. Additionally, amounts paid to a third-party (in EEA) for R&D activities, upon petition of the taxpayer, would qualify for the tax credit.

Registration/claim process

- Where a company satisfies the requirements of the legislation and has maintained the necessary supporting records, a claim may be made in the annual CIT return. A previous confirmation from the tax authorities is not required.
- Taxpayers are entitled to ask the Ministry of Economy and Competitiveness (MINECO) to certify (through a binding reasoned report) the eligibility of the R&D or TI activities in order to be sure that the company can apply for the tax credit.
- Taxpayers may also request rulings, which would be binding, from the tax authorities on the interpretation and application of this tax credit.
- Taxpayers may also apply to the tax authorities for the adoption of Advance Pricing Arrangements (APAs) on the valuation of expenses relating to R&D projects.

Cash refund relief

As of 1 January 2013, taxpayers who are in a tax loss position or have reached the annual limit on tax credits applications, can claim a cash refund of their RDTC (or the part in excess).

Taxpayers have to fulfill specific requirements like:

- Maintaining the average staff (general, global or exclusively assigned to R&D workforce staff) in the next 2 years after the end of the financial year.
- Claiming the refund at least 1 year after the end of the financial year of the RDTC generation.
- Reinvesting the refunded tax credit in R&D or TI activities (expenses, fixed or intangibles assets) in the next 24 months after the financial year end.
- Obtaining the corresponding binding reasoned report from the MINECO, a tax ruling or an APA with the Spanish tax authorities, on eligibility of the activities/project.

The CIT law also specifies that the taxpayer will apply for only 80% of the original RDTC. The refund will be limited up to EUR3 million for R&D and TI activities and EUR1 million in the case of TI activities only. Note that the bill for 2015 will increase the EUR3 million cap to EUR5 million for companies with R&D costs that are more than 10% of their turnover.

R&D tax relief

Other relevant information

- The R&D tax credit is at a rate of 25% of R&D related expenses incurred in the tax period. Where the expenses of R&D activities are higher than the average of those incurred in the 2 preceding years, 25% is applied up to that average and 42% applies to the excess.
- In addition, a 17% tax credit is allowed for the costs incurred that represent personnel expenses related to qualified research workers engaged exclusively in R&D activities.
- Also, an 8% credit is allowed for investments in intangible and tangible assets (excluding buildings and land) employed in the performance of R&D activities.
- A constant 12% tax credit is available for TI activities.
- For the calculation of the tax credits, the expenses are now reduced by 100% of the government subsidies granted for those activities and considered as income for the year.
- R&D and TI credits applied in a given year may not exceed a limit based on the amount of annual CIT liability; and these credits, together with other Spanish tax credits, cannot exceed 35%, or 60% on certain cases of the CIT liability for the year (these limits are 25% and 50%, respectively, for years 2012 and 2013). Any unusable credits may be carried forward for 18 years.
- In the Basque Country as well as in Navarra, percentages of the R&D and TI tax credits differ from those established in the rest of Spain.

Reduction of earnings derived from certain intangible assets

For assignments of IP carried out before 29 September 2013, the taxpayer is entitled to a 50% reduction of revenues obtained from the supply of intangible assets for tax calculation purposes. If it takes place between tax consolidation group entities, the income and payments will not be neutralized.

The intangible asset has to be created by the licensor (100%) and the benefit will end on the financial year after this benefit reaches six times the creation cost of the intangible asset.

Taxpayers can ask for a tax ruling or an APA with tax authorities in relation to the income derived from the assignment of assets and the corresponding expenses, as well as on any amounts earned on their transfer. It also foresees the possibility of requesting a prior agreement qualifying the assets as intangible assets eligible for the application of this tax incentive.

This reduction will be incompatible with the tax credit for reinvestment of extraordinary profits.

As of 29 September 2013, the taxpayer is entitled to a 60% reduction of net earnings (revenues minus deductible amounts) obtained from the transfer of intangible assets for tax calculation purposes. There is no limit in application.

The two schemes will coexist.

The intangible asset has to be created by the licensor in at least 25% of its cost.

Taxpayers can ask for a tax ruling or an APA with tax authorities in relation to the income derived from the assignment of assets and the corresponding expenses, as well as on any amounts earned on their transfer. It also foresees the possibility of requesting a prior agreement qualifying the assets as intangible assets eligible for the application of this tax incentive.

This reduction will be incompatible with the tax credit for reinvestment of extraordinary profit.

The Spanish bill for 2016, though not yet approved, proposes to change the percentage of reduction depending on the percentage of creation of the asset (if acquired and not entirely created by the taxpayer) and by the way eliminating the compulsory limit of a minimum 25% of creation.

Other grants and incentives

The Spanish Central Government and many local governments provide grants for the performance of R&D activities.

European programs such as H2020 are also available.



Sweden

Sweden offers an R&D tax incentive in the form of a reduction of employer social security contributions for R&D employees who are engaged in commercially performed R&D. The reduction is made in the monthly employer return (arbetsgivardeklaration). This relief entered into force 1 January 2014 and is intended to stimulate investments in activities with real R&D content. The maximum relief is SEK230,000 per month for all R&D personnel for an entire group of companies.

There is also an expatriate tax regime under which a 25% reduction of taxable income paid to a foreign employee is granted, provided that certain requirements are fulfilled. The relief applies to foreign key personnel, as well as foreign experts and scientists with knowledge and skills that are scarce in Sweden. Please refer to 'Other grants and incentives' for more information on this relief.

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Overview of R&D incentives

Definition of R&D

Research is defined as systematic and qualified work undertaken to acquire new knowledge for commercial purposes. Research work can be based on prior research findings.

Development is defined as systematic and qualified work for commercial purposes using existing research findings to produce new materials, products, services or processes or substantially improving those already produced or installed. The development work should be a direct consequence of research findings. 'Ordinary' product development is excluded (e.g. ongoing development of existing product by refinement, adjustment or adaptation).

R&D expense deductions

The employer social security contributions are reduced by 10% of the employee's total gross salary paid in a particular month. Under certain conditions, a reduction is also allowed in a month when the employee is absent due to sick leave, holiday, parental leave or similar. The remaining employer social security contributions must cover the contribution for old-age pension (ålderspensionsavgift), currently 10.21 % (2016).

The reduction is capped at SEK230,000 per month (equals a total salary of SEK2.3 million per month for all R&D personnel). The maximum reduction applies to an entire group of companies.

Eligibility requirements

Only remunerations paid to employees that meet the following criteria will be subject to the reduction of employer social security contributions:

- the employees need to be involved in systematic and qualified research or development work during at least 75% of actual working hours during a particular month and at least 15 working hours the same month
- the employees must be aged at least 26 but not more than 65-years-old.

Examples of employees who might qualify are: scientists, qualified product developers as well as medical or technical experts performing tasks as a part of R&D projects.

Registration/claim process

A reduction is made on the monthly employer return (arbetsgivardeklaration). There are no special registration or application formalities.

R&D tax credit

The employer social security contributions are reduced with 10% of the employee's total gross salary paid in the actual month. The reduction is capped at SEK230,000 per month (equals a total salary of SEK2.3 million per month for all R&D personnel). The maximum reduction applies to an entire group of companies.

Other grants and incentives

There is also an expatriate tax regime under which a 25% reduction of taxable income paid to a foreign employee is granted, provided that certain requirements are fulfilled. The relief applies to foreign key personnel, as well as foreign experts and scientists with knowledge and skills that are scarce in Sweden. Hence, this relief could apply to any category of employees and are not strictly referring to employees working with R&D.

As of 1 January 2012, there is a complementary ground for qualification based solely on income limit. Regardless if the employee qualifies under a certain category of personnel (mentioned above) or not, the tax relief is applicable to employees with a monthly income including benefits exceeding SEK88,600 per month (2016). This means that an employee with an income not exceeding SEK88,600 per month must fall within one of the mentioned categories. Each case is decided on its own merits.

If the relief is granted, the employment income — subject to progressive income tax rates as well as employer social security contributions (normally 31.42% with no cap) — will be reduced by 25%. The expert tax relief is valid for 3 years.

In order to be granted the tax relief, certain requirements must be fulfilled.

- The employee must not be a Swedish citizen.
- The employee must not have been a Swedish resident for any of the 5 calendar years preceding the year the employee starts working in Sweden.
- The employee intends to stay in Sweden for a maximum period of 5 years.
- The employer must be a Swedish tax resident or be a foreign tax resident with permanent establishment in Sweden.
- An application must be filed within 3 months from the start date of employment in Sweden.

Please note that the tax relief normally only applies to salary and benefits that are processed through Swedish payroll.



Switzerland

Innovation is a central source of economic growth and prosperity in Switzerland. Since the country is too small to be a production location for mass products, and also has no reserves of raw materials, it can only be successful if it develops innovative new products, processes and technologies. Therefore, Switzerland has a strong domestic industry with long-standing traditions and experience, where customers, suppliers and qualified workforce are easily available. Aside from the excellent business environment, Switzerland is also known for its high quality of life; being considered a very safe country with an excellent health care system. Finally, it also provides a very competitive tax environment. As a result, Switzerland is the perfect location for performing R&D activities and holding IP.

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Overview of R&D incentives

Headline rate

Although there are currently no specific tax incentive regimes with regard to the promotion of R&D activities in place, Switzerland generally provides a wide range of tax incentives and grants to innovative companies. However, currently the Swiss Corporate Tax Reform III (CTR III) is ongoing. The new corporate tax law will presumably enter into force as per 1 January 2019, establishing an IP box regime and a R&D super deduction (see page 67).

Definition of R&D

The tax law does not define deductible business expenses (Gewinnungskosten) and therefore no specific definition of R&D expenditure is available. Business expenses may be described as the whole of the expenses that are necessary to achieve the gross profits, or the commercially justified expenses attributed to the running of an enterprise. Commercially justified expenses are those that are made in the interest of the business and do not have the character of a hidden profit distribution.

Switzerland

R&D tax relief

R&D costs are deductible as far as an objective relationship between such costs and the business activities of a company exists (i.e. there must be the possibility to obtain a future profit). Commercially justified R&D expenses are those that are made in the interest of the business and do not have the character of a hidden profit distribution.

Furthermore, the federal tax law contains a provision which enables tax-deductible accrual for future research and development projects. For federal direct tax purposes, accruals are permitted to be used for future research and development projects executed by third parties in an amount of up to 10% of taxable profits, but not more than 1 million Swiss francs (CHF). The cantonal regulations read similarly.

However, there are currently no specific tax incentive regimes (e.g. super deduction or tax credit) with regard to the promotion of R&D activities in place, although such provisions are in political discussions (see Corporate tax reform III, page 67). In addition to existing R&D grants, most of the current tax incentives are related to income generated from IP (see below).

Other grants and incentives

Currently there are no specific tax incentive regimes (e.g. super deduction or tax credit) with regard to the promotion of R&D activities in place but in the course of the CTR III R&D tax incentives are in political discussion (see Corporate tax reform III, page 67). Along with these discussions, Switzerland generally provides a wide range of tax incentives and grants to innovative companies.

CTI grants

The application-oriented, market-based R&D is supported by the Commission for Technology and Innovation (CTI). The prerequisite for CTI funding is the collaboration between the company and a university, whereby the company must contribute at least 50% of total expenditures.

License box

As of 1 January 2011, the Canton of Nidwalden has introduced the 'license box' system. IP companies located in Nidwalden benefit from a cantonal tax rate on net license income reduced by 80%. The effective corporate income tax rate (including federal tax) amounts to 8.8%. The reduced tax rate applies to net license income from both 'old' IP (held prior to 1 January 2011) and 'new' IP as well as to self-developed IP and to IP acquired from third parties or group companies. Capital gains on IP assets also qualify as license income. In the course of the CTR III all Cantons would need to introduce a Patent Box regime on a cantonal and communal level (see Corporate tax reform III, page 67) and the Nidwalden license box would be replaced accordingly.

Mixed company

The mixed company is a statutory cantonal tax regime. It is a multi-purpose vehicle for companies with predominantly international activities. IP companies typically benefit from this status if the IP income or capital gain is predominantly received from foreign counterparties. The effective statutory tax rate of a mixed company is as low as 8.5% including cantonal and federal income tax (example of canton of Lucerne). There is no restriction regarding the type of IP held by the Swiss company and there is no obligation to further develop the IP inside or outside of Switzerland. Furthermore, existing IP contributed or sold to a Swiss IP company benefits from the same attractive tax rate as newly developed IP. In addition to IP income, the reduced tax rates also apply to all other income (e.g. trading income, which is derived from international activities). The mixed company status will be abolished assumingly as per 31 December 2018 in the context of the CTR III (see Corporate tax reform III, page 67).

Switzerland

Other grants and incentives (cont.)

Tax holiday

Cantonal and communal tax holidays are available for up to 10 years for new investments of existing companies or for newly established enterprises. The extent of such a cantonal/communal tax relief depends on various factors, such as the size of the new businesses and economic importance in its canton of residence and the number of jobs created. On a federal level, tax exemption can also be granted over varying periods up to 10 years. However, such tax holidays on federal level are only possible in developing areas if certain conditions are met.

Depreciation of IP

Depreciation is generally tax deductible if considered commercially justified by the Swiss tax authorities (i.e. in line with the safe harbor depreciation rates or justified in the specific case). The safe harbor rates for IP are 20% (straight-line) or 40% (reducing-balance), which are in line with the general 5-year depreciation period set out in the accounting principles.

Foreign IP branch

Based on domestic law, Switzerland applies a unilateral branch exemption, which means that profits attributable to foreign branches of Swiss companies are not taxable in Switzerland. This in principle leads to a 0% effective tax rate; although a head-office allocation of between 5% and 10% is customary. Such a set-up may result in an effective tax rate below 1%.

Hybrid instrument

The transfer of IP to Switzerland can be structured with a hybrid instrument. Interest paid should qualify for the participation exemption in the recipient country; while in Switzerland, interest expenses are generally tax deductible.

Principal structure

A further option is the setting up of a principal company which holds the IP in Switzerland. This requires a substantive, and not just contractual, reallocation of functions, risks, IP and respective income. The foreign branch exemption described above applies to such a setup if foreign sales entities are operating under a limited risk buy-sell arrangement. Such a structure may result in an effective overall tax rate as low as approximately 5%. The principal company status will be abolished assumingly as per 31 December 2018 in the context of the CTR III (see below for further remarks about the CTR III).

Corporate tax reform III

Switzerland is reacting to international tax developments. The CTR III underlines the aim to strengthen Switzerland as a business location; focusing on innovation, value creation and jobs. The law provisions proposed are compatible with the current international standards and will increase legal and planning certainty for companies. If the law provisions pass the public vote, it is basically expected to apply the new measures as from 1 January 2019, and the following tax policy measures will enter into force.

- Abolishment of the cantonal tax statuses for holding, domicile and mixed companies as well as for the principal structure taxation and the finance branch regime.
- Introduction of a Patent Box regime on cantonal level covering income from patents and similar rights considering R&D of the taxpayer (nexus approach) and a reduction limitation of 90%.
- Introduction of a R&D super deduction on cantonal level — the costs for domestic research and development can be deducted from the tax base by more than 100% of the effective costs (maximum 150%).
- Step-up mechanism to reveal hidden reserves.
- Other measures: Notional Interest Deduction (NID); transitional step-up; overall limitation for the Patent Box regime; the R&D super deduction as well as the NID and furthermore amortizations on step-up; and the introduction of a reduced capital tax basis.



United Kingdom

The UK R&D incentives regime continues to be enhanced and expanded, resulting in a generous set of incentive measures. The regime aims to foster the development of the knowledge economy and to increase UK productivity by 'incentivizing' the development of high-technology businesses within the UK.

There is no requirement for the R&D to be carried out within the UK, but to benefit from the regime the expenditure has to be incurred by a company within the charge to UK corporation tax or by a partnership of which it is a member. Claims can be made in respect of branches of UK companies that operate overseas and for UK branches of overseas companies.

As of 1 April 2016, large companies can claim an 11 % taxable cash credit (previously 10% prior to 1 April 2015), irrespective of the company's tax position. The credit can be used to settle taxes owed to the revenue authority or, if certain criteria are met, can be payable in cash. This has replaced the previous enhanced deduction regime, which will only continue to apply to qualifying expenditure incurred prior to 1 April 2016.

SMEs continue to benefit from the enhanced deduction regime, which has been substantially increased over recent years and now provides an additional deduction of 130 % of the qualifying expenditure and a 14.5% repayable credit in certain circumstances.

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Overview of R&D incentives

Headline rate

For large companies, the relief under the new regime is a taxable 11 % credit (10% prior to 1 April 2015) in respect of qualifying expenditure.

For SMEs the additional deduction is 130% of qualifying expenditure (or 125% prior to 1 April 2015). A SME for these purposes has <500 employees and either turnover not exceeding EUR100 million per annum or gross balance sheet assets not exceeding EUR86 million.

Definition of R&D

It is necessary for the activities to meet the definition of R&D within the Department of Business Innovation and Skills Guidelines which are themselves derived from the OECD Frascati principles for defining R&D.

Broadly, for activities to qualify as R&D the project has to be seeking an advance in science or technology through the resolution of scientific or technological uncertainty. All the activities that contribute to the resolution of the scientific or technological uncertainty will be R&D.

United Kingdom

R&D tax relief

As of 1 April 2016, large companies will be able to claim relief under the new 11 % credit regime (10% prior to 1 April 2015). The receipt is a taxable credit of 11 % of the qualifying expenditure, which at the main rate of corporation tax (20% from 1 April 2015) gives a net cash benefit of 8.8%. The credit must be used to settle corporate or other tax liabilities due to the revenue authority before any cash amount becomes payable to the company.

For SMEs the additional deduction is 130% (125% prior to 1 April 2015) of qualifying expenditure. Additionally, for loss-making SMEs only, there is the option to surrender the loss resulting from the enhanced R&D spend for a cash sum from the government. This is currently worth up to 33.35% (32.625% prior to 1 April 2015) of the original qualifying expenditure.

For both the large company and SME regimes it is only the R&D proportion of any mixed expenses that can be claimed. The main qualifying categories for relief are staff costs, payments to externally provided workers, costs of consumables used or transformed in the R&D, and costs of software licenses where the software is used in the R&D.

There are slightly different rules for large and SME companies, particularly around the use of group or third-party resource. Broadly, relief on expenditure on subcontracting R&D to other entities is generally available for SMEs, but not for large companies.

For SMEs, relief for expenditure on R&D that has been subcontracted-in is only available at the large company rate.

Eligibility requirements

Not all the detailed rules can be covered here, but the main requirements are:

- The expenditure generally has to be deductible in computing the profits of a UK trade subject to corporation tax.
 - The expenditure has to be revenue in nature for tax purposes.
 - The expenditure has to be relevant to the trade of the company.
 - The expenditure has to fall within eligible categories of expenditure. From 1 April 2015 the cost of materials consumed or transformed into products in the course of R&D activity, which are later sold to a third-party, are not eligible for relief.
 - For claims under the SME regime: the expenditure should not be subsidized; there should not have been another state aid granted in relation to the project; and the R&D should not have been subcontracted to the SME (however, in these circumstances there is a default claim available under the large company regime).
 - Where the expenditure is on producing goods or services for sale there may be a need to consider the boundary between R&D activities and ineligible production activities.
 - Costs incurred on acquiring intellectual property are not eligible.
-

United Kingdom

Registration/claim process

Claims are made within the corporation tax return. The R&D incentive must be claimed within 2 years of the end of the accounting period in which the expenditure was incurred. This can be done within the original corporation tax return or by amendment to the return within the time limits.

Claims are examined by the tax authorities, but without being subject to separate scientific review. It is considered desirable to involve the company's own competent technology professionals in the R&D identification, as this provides some reassurance to the tax authorities as to the scientific or technological merits of the claim.

Other grants and incentives

For R&D expenditure classified as capital for tax purposes there is a regime of R&D Allowances (RDAs) allowing immediate deduction of capital expenditure on R&D against taxable profits. All expenditure excluding expenditure on land is potentially eligible.

On 1 April 2013, the government introduced the Patent Box regime which applies an effective 10% tax rate on profits generated from patented innovation (which is significantly lower than the main corporation tax rate of 20%). This regime is intended to operate in conjunction with the R&D regime to provide a unified and attractive environment in the UK for the carrying out and exploitation of R&D.

In conjunction with the wider global review of tax practices through the OECD BEPS project, the Patent Box regime has been revised. In particular, as of 1 July 2016, benefits are only available in proportion to the amount of R&D activity undertaken by the claimant in developing the IP or the product incorporating it. Additional administrative requirements need to be satisfied in order to benefit, but the effective tax rate of 10% is unaffected. There are 'grandfathering' arrangements for businesses that have elected into the 'old' regime for periods beginning before 1 July 2016.

There are a number of other incentives potentially available outside the tax system.

Notes

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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