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German Tax and Legal News

Ministry of Finance considering introduction of new R&D tax incentive

Incentive would be available for 25% of qualifying expenditure during a four-year period.

Germany's Ministry of Finance (MOF) is considering issuing a legislative proposal that would provide for the introduction of a new research and development (R&D) tax incentive equal to 25% of qualifying expenditure during the four-year period from 2020 to 2023. The R&D tax incentive would be in the form of a cash grant upon a qualifying taxpayer's successful application to the responsible local tax office.

The 2018 coalition agreement of the governing "grand" coalition in Germany (between the Christian Democrats and Social Democrats) included a new tax incentive for R&D activities, but did not include any specifics on the incentive. The MOF reportedly now is considering the introduction of a legislative proposal (which has not yet been officially published) that would provide for the implementation of this incentive.

The proposal from the MOF is based on the following parameters:

- The R&D incentive would be open to corporations and individuals that are subject to German income taxation, regardless of their size or business activities. R&D activities that would qualify for the incentives are fundamental research activities and industrial research activities. In addition, certain experimental development activities that are listed in a catalogue of activities (not yet published) could benefit from the R&D incentive. Mere market development activities or activities to improve production systems explicitly would be excluded from the incentive.
- The incentive would be available for activities carried out by a single entity, as well as for projects that are carried out through cooperation between unrelated entities. It also would apply for projects that are carried out in cooperation with research institutions and projects that are contracted for by an independent third party.
- The tax incentive would be calculated based on the salaries and wages of the employees of the taxpayer that are engaged in qualifying projects. Contract R&D activities, therefore, would not qualify for the incentive at the level of the principal. The maximum base for calculating the 25% R&D incentive would be limited to EUR 2 million annually per taxpayer (on a consolidated basis for a group of companies). As a result, the maximum annual amount for the R&D incentive would be limited to EUR 500,000 per taxpayer.
- To obtain the cash grant, the taxpayer would be required to file an electronic application with the local tax office and the application would need to be accompanied by documentation substantiating that the conditions to qualify for the incentive are fulfilled.
- The new incentive generally would be available in combination with other R&D incentives, as long as the same expenses do not benefit from multiple incentives. The incentive would be available for qualifying projects that are initiated after the law enters into force. Qualifying expenses would have to be incurred in the period on or after 1 January 2020 and before 1 January 2024.

The introduction of the new R&D tax incentive system is expected to cost approximately EUR 5 billion over the planned four-year period.

A draft law is expected to be published soon; interested taxpayers should closely monitor further developments.

Contact

Andreas Maywald

Client Service Executive | ICE - German Tax Desk

anmaywald@deloitte.com

Tel.: +1 212 436 7487

Isabel Antholz

Senior Manager I Global Investment and Innovation Incentives

iantholz@deloitte.de

Tel.: 040 32080-4910

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