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By PwC Deutschland | 27 May 2019

R&D Subsidy Bill

The government draft bill, published on 22 May 2019, provides for the introduction of a subsidy for research and development (R&D).

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The subsidy – up to a maximum amount of €500,000 - should be available to all taxpaying businesses regardless size, profitability or purpose. The aim is to make Germany more attractive for investment generally and in particular for start-ups. The promotion of small and medium-sized enterprises is a particular focus but the desire remains to promote larger enterprises also. The planned law is to be re-evaluated five years after its entry into force to examine whether its aims, in particular its contribution to the promotion of Germany as a centre of innovation, are met.

The new regulations are intended to promote R&D, specifically the categories of basic research, applied research and experimental development as defined by the legislation. The allowance is calculated on the basis of staff costs. The proposed regulations should be introduced in an independent statute ancillary to the Income Tax and Corporation Tax Acts, and will be referred to as the R&D Subsidy Act.

Overview of the main provisions of the cabinet draft

Eligible persons

Both unlimited and limited taxpayers within the meaning of the Income Tax Act and the Corporation Tax Act are eligible for relief. Only persons with business assets or with income from a trade or profession. Where the business is in the form of a partnership, the partnership itself will be the eligible person. As this is a tax incentive, exempt companies will not fall within the scope of this Act. Eligibility does not depend on the size of the enterprise or the nature of the activity carried out.

Eligible projects

Eligible R&D projects are specifically defined. The subsidy will only be available to R&D activities, which fall entirely within at least one of the categories of: basic research, applied research and experimental development. Cooperation between researching companies or with other institutions for the dissemination of research and knowledge, such as universities, etc., will also be supported.

Basis of assessment

The basis of assessment is limited to a maximum of EUR 2 000 000 per beneficiary per financial year. If the sum of the eligible costs is less than EUR 2 000 000, the lower amount will be the basis of assessment. For cooperation projects, each of the cooperation partners can apply in principle the EUR 2,000,000 assessment base for itself, provided that the cooperation partners are not affiliated companies. According to the present government draft, salaries/wages subject to salary withholding tax will form the basis of the calculation increased by a factor of 1.2. In addition to the salaries of employees working upon applicable R&D activities, the assessment basis will also include the personal contribution of individual entrepreneurs (at flat-rate hourly rate of € 30) with a maximum of 40 working hours per week. Furthermore the activities of partners in a partnership (hourly rate according to agreed remuneration but limited to € 30 per hour and a maximum of 40 working hours per week). Salaries paid by third parties are not eligible expenditure. Affiliated companies can only make use of the tax base once in total (group view).

Amount of subsidy

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The proposed research subsidy is set at 25% of the assessment basis. The maximum research subsidy per financial year for all R&D projects is thus € 500,000. In the case of associated enterprises, the subsidy will be calculated after deduction of the assessment bases already applied to calculate the bases of the other associated enterprises. If the maximum permissible assessment basis for affiliated companies has already been exhausted, the tax base for the beneficiary is reduced to zero.

Application for subsidy

The research subsidy will be granted upon application. The application should be submitted to the local tax office of the claimant. In the case of partnerships, the application should be submitted to the tax office responsible for the uniform and separate determination.The application may be submitted immediately after the end of the financial year in which the eligible costs were incurred.

In order to obtain the subsidy, a certificate of eligibility will have to be filed on a standard prescribed form.The decision on eligibility will be performed by a body selected by the Ministry of Education and Research.

Interaction with other subsidies

The research subsidy may generally be granted in addition to other project funding (accumulation). However, eligible expenditure under the future R&D Subsidy Act may not be included in the assessment basis for other grants (no double funding of the same expenditure).

Determination of subsidy

The subsidy will be determined in a separate R&D subsidy assessment after the end of the financial year and paid out within one month of the notification of the decision.

Tax treatment of subsidy

The subsidy will not constitute taxable income. The expenditure, which serves as the basis of assessment for the calculation of the subsidy, remains deductible. The subsidy will also not be included in the calculation of the progressive income tax rate.

Reclamation of subsidy

A research subsidy paid incorrectly may be reclaimed by revoking or amending the R&D subsidy assessment. In such cases, the claim for repayment will bear interest at 0.5 percent for each full month.

Period of application and entry into force

The Act will come into force after its publication in the Federal Law Gazette. The subsidy will only be available for eligible R&D projects starting after the Act has come into force. Furthermore, only expenditure incurred after 31 December 2019 i.e. salaries received by employees/individual entrepreneurs/partners working on eligible projects after 31 December 2019. If the Act only enters into force after 31 December 2019, expenditure will be eligible only from the date of entry into force of the Act.

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Source:

Government Draft Research & Development Subsidy Bill, published 22 May 2019

Keywords

Research & Development (R & D), research subsidy