

Tax Alert

18 March 2015

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Legislative Updates

The Norms regarding the deduction for corporate income tax purposes for the research and development expenses, approved through the joint set out Order 2086/4504/2010 were modified through a new order published in the Official Gazette on 16th March 2014. The changes bring both an allignment to the Fiscal Code and a series of new elements.

The Official Gazette no. 178 / 16.03.2015 contains the new order jointly set out by the Ministry of Public Finances (Order no. 256 / 10.03.2015) and the Ministry of Education and Research (Order no. 3331/10/03/2015).

The Order contains the methodological norms for the application of the research and development ("R&D") tax incentives introduced by the Romanian Fiscal Code (Art. 19[^]1).

The main changes to the actual legislation brought by this new order are the following:

- The rate for the additional tax deduction of the eligible expenses from R&D activities was updated to **50%**, to align it with the rate provided in the Fiscal Code.
- **Fundamental research** was excluded from the eligible activities, to align it with the Fiscal Code.
- The R&D activities should be **creative activities** which bring a significant **element of novelty** in solving **scientific or technological uncertainty**; the solution should not be obvious for a competent professional in the field.
- When assessing the eligibility of the R&D activity, reference to **Frascati Manual** issued by OECD should be made.
- The R&D activities should be **included in a project** detailing the objective, period, field of research, financing, type of result and the novelty component.

- The R&D tax incentive is granted to taxpayers:
 - performing R&D activities **by own means or in collaboration/association/ agreement**, in view of **valorification**;
 - performing R&D activities through an **allocation agreement** at the level of the group with the condition to receive **full rights to use the results** of the research in their own activities.
- The **valorification of the R&D results** may be obtained by the taxpayers through: **using** the results in the own activity, **selling** the results or **exploiting** the corresponding intellectual property.
- Where part of the R&D activities are performed by a third party, upon command, **the tax incentive is granted to the initiator of the command** (i.e., entity subcontracting part of the R&D activities).
- The list of the eligible expenses is updated with various expenses, the most important being the **expenses with services rendered by third parties**.
- The R&D deduction is applicable also when the R&D **expenses are capitalized** according to the accounting regulations, this could be applied also at the capitalization moment.
- Taxpayers may require **certifications/expertizes** regarding their conformity with the conditions for the eligibility of the tax incentives. A register of experts would be constituted at the level of the Ministry of Education and Research.

Please do not hesitate to contact us if further clarifications are needed:

Dan Bădin

Tax and Legal Partner-in-Charge
+40 21 207 53 92

Silviu Sandache

Senior Manager – Direct taxes
+40 21 207 53 19



For further information please contact us at:
Romania@deloittece.com or visit the web page
<http://www2.deloitte.com/ro/tax-alerts>

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