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Italy finally issues the R&D tax credit implementing decree



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Law Decree no. 145/2013 (article 3) introduced a tax credit for enterprises investing in R&D. However, this facility never went live, as the Italian authorities failed to issue a decree implementing the new rules on time.

Budget Law for 2015 (Law no. 190/2014 - article 1, par. 35 - 36) swept away the previous rules and introduced an updated version of the R&D tax credit regime. Also in this case the effectiveness of this provision was conditional upon publication of an implementing decree (please refer also our [Tax Alert of 2 December 2014](#)).

On 27 May 2015 the Italian Ministry of Finance together with the Ministry of Economic Development finally approved the decree that contains the implementing measures of the new R&D tax credit provision (the implementing decree). The implementing decree was published in the Official Gazette no. 174 of 29 July 2015 and is in force since that date. The implementing decree confirms what the Budget Law for 2015 (and accompanying report) already contained and provides some additional clarifications.

Eligible activities

Article 2 of the implementing decree confirms that eligible R&D activities (i.e. the activities whose extra spending benefits from the tax credit) include fundamental research, industrial research and experimental development, according to the EU classification found in the 'Community Framework for State Aid for Research and Development and Innovation', and namely:

- fundamental research: experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view
- industrial research: planned research or critical investigation aimed at the acquisition of 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 of complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes as covered by point below

- experimental development: the acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for example, other activities aiming at the conceptual definition, planning and documentation of new products, processes and services. The activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use. The development of commercially usable prototypes and pilot projects is also included where the prototype is necessarily the final commercial product and where it is too expensive to produce for it to be used only for demonstration and validation purposes
- production and testing of products, processes and services are also eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially.

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.

Beneficiaries

Article 3 of the implementing decree confirms that the tax credit will be available to any enterprise, irrespective of its legal form, business sector, accounting standards and size, that bears costs for one or more of the R&D activities mentioned above, as from fiscal year following that ongoing on 31 December 2014, until that ongoing on 31 December 2019 (for calendar year taxpayers: from 2015 to 2019).

Eligible expenses

Article 4 of the implementing decree clarifies which expenses (regarding the R&D activities mentioned above) accrued during the fiscal year (under rules set forth by art. 109 Italian income tax code) are eligible for the computation of the tax credit, namely:

- a) highly qualified staff engaged in eligible R&D activities, i.e. staff with an Italian or equivalent foreign PhD and/or a Master's degree in a scientific or technical subject (in comparing qualifications reference should be made to ISCED, the International Standard Classification of Education developed by UNESCO). The implementing decree further clarifies that the staff can be either an employee or an independent professional; moreover, it clarifies that this cost must be the actual cost borne by the enterprise (i.e. salaries gross of income taxes and social security contributions that are compulsory by law)

- 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 €2,000 or more per unit (net of VAT). The decree clarifies that laboratory equipment must be purchased by the enterprise, that must be the owner or the user. The decree provides for specific criteria to determinate the cost in case of use under a (financial or non-financial) lease contract
- c) R&D conducted in collaboration with universities, public research institutes (and equivalent bodies), innovative start-ups regulated by article 25 of Legislative Decree no. 179/2012 (converted into Law no. 221/2012) and other enterprises, resident in a EU Member State or in a State party to the EEA, or in a State granting adequate exchange of information with Italy. The decree points out that expenses related with R&D conducted with enterprises belonging to the same group (i.e. controlling the enterprise that benefits from the R&D tax credit, controlled by it or under common control with it) are excluded from the fiscal advantage
- d) technical expertise, industrial and biotechnological patents, semiconductor topography rights or plant variety rights, even if acquired from external sources.

Moreover, enterprises that are not subject to audit and devoid of a statutory board of auditors, can deduct expenses borne for audit of the accounts up to €5,000.

Computation of the tax credit

The tax credit is granted provided that the taxpayer invests at least €30,000 per year in R&D, and that the total R&D yearly spending exceeds the average spending of the three tax years preceding that in progress on 31 December 2015. Tax credit facility is capped at €5,000,000 per year (for each beneficiary). The R&D tax credit must be computed as follows:

- 25% of the enterprise's extra spending on the R&Ds mentioned under b) and d) above, and
- 50% of the enterprise's extra spending on the R&Ds mentioned under a) and c),

measured against the average spending (on the corresponding R&Ds) of the three tax periods preceding that in progress on 31 December 2015 (i.e. 2012, 2013 and 2014 for calendar-year taxpayers). The extra spending per category of expenses, on which the R&D credit is computed, cannot exceed the comprehensive extra R&D spending.

There are specific rules for enterprises that have been in business for less than three years.

How the credit can be used

Under article 6 of the implementing decree, the tax credit:

- must be indicated in the tax return in which the eligible R&D expenses are declared
- is not included in the corporate income tax (IRES) nor in 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 in the payment form (Modello F24) since the year following that ongoing when expenses were borne.

Documentation required

To benefit from the tax credit, certain accounting documentation must be certified by an audit firm, the company's board of statutory auditors or by 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. Enterprises with audited financial statements are exempt from the obligation to provide the certified documentation.

Article 7 of the implementing decree clarifies that enterprises must keep documentation in order to prove that costs were actually incurred and that are entitled to the tax credit, and namely:

- for staff, timesheets with hours spent each day on R&D activities, duly signed by the legal representative or by the head of R&D department of the enterprise
- for laboratory equipment, a statement signed by the legal representative or by the head of R&D department, regarding the extent and time up to which they were used in R&D activities
- for contracts signed with universities and other enterprises, the contracts in force together with a report signed by the counterparties regarding R&D activities performed in each fiscal year.

Controls

The implementing decree clarifies that Italian Revenue Agency (together with Italian Ministry for development, where needed) will carry out controls aimed at assessing the existence of conditions for the benefit and compliance of costs and activities with the requirements set forth by the decree itself. If it discovers during an inspection that a taxpayer was, even partially, not entitled to a tax credit (because, for example, the taxpayer considered costs not entitled or because the conditions required are not fulfilled), the Revenue Agency will claw back the tax credit and charge penalties and interest.

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