



Italy: Further clarifications on R&D tax credit

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As already outlined in our previous Tax Alerts, dated [11 August 2015](#) and [6 July 2018](#), a tax credit is granted to Italian companies and Italian PEs of foreign companies investing in R&D from the fiscal year following that in progress on 31 December 2014, up to that in progress on 31 December 2020. On 2 November 2018, the Italian tax authorities issued some important clarifications, which are particularly relevant to foreign companies which have R&D activities in Italy or which may consider setting up an R&D center in Italy. Furthermore, the 2019 Budget Bill includes changes to the R&D regime.

Tax ruling no. 58 of 2 November 2018: clarifications on the calculation of the average R&D investment made in the three fiscal years prior to that in progress on 31 December 2015

To understand the context of this tax ruling, a quick recap of the Italian R&D tax credit rules will be useful. Basically, the 2017 Budget Law added a new paragraph 1-*bis* to article 3 of Law Decree no. 145/2013. This paragraph 1-*bis* allows Italian entities and Italian PEs of foreign companies to benefit from the R&D tax credit even if they engage in R&D under contracts with foreign companies. However, those foreign companies must be resident in other EU or EEA Member States or in countries that have signed an agreement on the exchange of information with Italy. This amendment has been in force since the fiscal year following that in progress on 31 December 2016 (for calendar-year taxpayers: since fiscal year 2017).

The November tax ruling implicitly confirms that R&D expenses incurred when carrying out research on behalf of a foreign company fall within the scope of the R&D tax credit mechanism. The tax ruling application presented the case of an Italian company that, between 2012 and 2016, had engaged in R&D on its own behalf and also on behalf of a French company. However, since 1 January 2017, the Italian company had no longer conducted any R&D on behalf of the French company. The applicant wished to know whether, when calculating its average R&D expenditure in fiscal years 2012, 2013 and 2014 in order to determine the tax credit available for fiscal year 2017, it had to include the R&D costs of the activities performed on behalf of the French company.

The Italian Tax Authority replied that, based on the reasoning behind the tax credit, it is necessary - when calculating whether there has been an increase in expenditure - to consider all the eligible R&D expenditure of the three fiscal years prior to that in progress on 31 December 2015 and all the eligible R&D expenditure of the tax period in relation to which the company intends to claim the benefit, whether or not the costs were incurred for its own R&D or that conducted on behalf of the French company.

Further developments

The current 2019 Budget Bill includes a number of amendments to the R&D tax credit regime and, with specific reference to article 3(1-*bis*) of Law Decree no. 145/2013, mentioned above, narrows the range of eligible expenses. If approved, only the costs of R&D carried out directly and in laboratories or facilities located in Italy will be eligible for the R&D tax credit.

According to the current version of the Budget Bill, the tax credit eligibility requirements remain unchanged.

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