

Breaking Tax News

Practical application of Development tax allowance

In contrast to our monthly Tax News+, in our Breaking Tax news you will be informed immediately of regulatory changes affecting your business but without commentary by our experts.

Companies that have development tax allowance may be subject to an increasing amount of tax inspections carried out by the tax authorities. These inspections serve to establish whether the company in question has complied with the relevant legal regulations applicable to the tax incentive. Several issues may arise during a potential tax audit. Often these issues will be completely new to the taxpayer. One reason for this is that taxpayers are often unfamiliar with the details of the criteria set forth by the relevant regulation. Furthermore, the rules themselves are ambiguous and as such may be interpreted in a variety of ways.

In order to mitigate the potential risks and uncertainties, please, find below some typical issues/uncertainties that should be taken into account by taxpayers when making use of developmental tax allowance.

Reporting obligations for the completion of a project

Pursuant to an amended regulation, as from 1 January, 2013, the taxpayer is required to report the date upon which a project is completed to the minister in charge of taxation within 90 days following the completion date. It is not clear whether this amended regulation is applicable solely to development tax allowance applications submitted after 1 January 2013. According to a recent ruling issued by the Ministry for National Economy, it is not the date of submission but rather the date of completion that should be taken into account; ie, if the completion date falls on 1 January, 2013 or later, then the 90day reporting obligation must be applied.

Eligibility of the taxpayer and the project

In order to be eligible for development tax allowance, the taxpayer is obliged to fulfil certain criteria stipulated by law. However, taxpayers often fail to take into account that certain issues d. If a taxpayer fails to comply with reporting obligations, the obtaining of a work permit or exceeding specified environmental limit values, then such taxpayer may be faced with the loss of its tax allowance.

Please, also note that under EU regulations certain activities (such as activities in the steel industry or certain activities in the food or agricultural industries) are not eligible for development tax allowance. In certain cases a detailed analysis may be required to determine whether a given activity is eligible for the tax allowance.

Calculation of the aid content of the cash grants

Several projects are entitled to both a development tax allowance and a non-refundable cash grant simultaneously. Therefore, several factors should be taken into account for the calculation of the maximum amount of the available tax incentive at current value. It should be assessed to what extent the eligible costs overlap, what is the regional aid intensity maximum and what is the theoretical maximum amount of available state funding. It is important to bear in mind that the calculation methods used to determine the aid content of non-refundable grants and the development tax allowance (i.e. present value of the grant) differ somewhat from each other.. Should the calculations be made incorrectly, then the taxpayer may lose a part of the potential tax allowance. Additionally, it may occur that a certain portion of the tax allowance used may – due to a simple error in calculation – qualify as state aid unduly received.

In addition to the above, several other issues may arise that are specific to the taxpayer or the project, and which require further consultation. Therefore, we recommend that the taxpayer be fully aware of compliance with the various criteria

Should the evaluation of any previous or future R&D project fall under dispute and you wish to qualify for R&D tax allowances or minimize tax risks prior to a tax authority audit please do not hesitate to contact us!

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