



## General rules for the application of the Technological Research and Development tax incentive

The General Rules for the application of the Technological Research and Development tax incentive contained in article 202 of the Income Tax Law, were published in the Official Gazette on February 28, 2017.

These rules are issued by the Inter-agency Committee, which is comprised by representatives of the National Council of Science and Technology (CONACYT), the Ministry of Economy, the Office of the Executive Power, the Tax Administration

Service (SAT) and the Ministry of Finance (SHCP).

A summary of the most significant aspects of these rules is presented below:

### Tax incentive computation

It was confirmed that the tax credit equals 30% of the incremental expenses and investments incurred during the relevant fiscal year ("FY") for technological research and development ("R&D"), as compared to the average of those items incurred in the

prior 3 FYs, applicable against the Income Tax due for the FY in which this credit is determined.

In this regard, it is interesting to note that no special consideration was given for taxpayers that have been investing in R&D projects on a recurring basis which, in principle, will face less favorable conditions than taxpayers that start investing in R&D projects as of 2017.

## Tax and Legal Services

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### Qualifying expenses / investments for the tax incentive

- Fees paid to external researchers
- Experiment testing
- Fieldwork
- Experiment testing tools
- Expenses incurred to provide training in techniques or the use of equipment that are indispensable for the project
- Specialized equipment that is indispensable for the development of the investment project
- Payment of external services to Mexican third parties
- Specialized laboratory equipment that is indispensable for project development
- Specialized machinery that is indispensable for project development
- Living organisms (animals or plants that are indispensable for experimental testing)
- Lease of specialized equipment that is indispensable for project development
- Test prototypes
- Reagents, materials and inputs required to design experiments
- Payments made for collaboration with public or private Higher Education Institutions and/or Mexican Public Research Centers registered with the National Registry of Scientific and Technological Institutions and Companies ("RENECYT")
- Experiment pilot plant
- Payment of services provided by CONACYT national laboratories

### Non-qualifying expenses / investments for the tax incentive

- Civil works
- Acquisition and/or rental of real property
- Administrative expenses
- Manufacturing expenses
- Equipment maintenance

- Project-related employee wages and salaries
- Advertising expenses
- Expenses incurred for studies and permits related to federal, state or municipal regulations
- Freight
- Debts and provisions created for possible losses
- Interest
- Purchase and sale of currency
- Financial expenses
- Taxes
- Fines, surcharges and restatement
- Expenses financed through other support granted by CONACYT or the Federal Government
- Fees for handling of procedures

### Procedure for applying the tax incentive

- Taxpayers must access the Online System (hosted on the CONACYT website) to complete the application form and submit the required project information.
- The application must include the digitized documents in PDF format specified by the General Rules and the Operating Guidelines issued by CONACYT.

These documents should include, for example, a positive opinion regarding compliance with tax obligations pursuant to article 32-D of the Federal Tax Code; the annual tax returns of the three FYs immediately preceding that for which the tax incentive is requested; the annual breakdown of expenses and investments made for R&D projects during the three FYs preceding that for which the tax incentive is requested; a document specifying the commitment to develop prototypes, pilot plant, patents, register intellectual property rights and prepare manuals, among other commitments.

- Taxpayers must sign the document by utilizing their Advanced Electronic

Signature.

- Applications will be assessed by the CONACYT Evaluation Commission, a collegiate entity composed by researchers, technologists and experts (according to the CONACYT Registry of certified evaluators), which will assess and issue a report on the technical suitability of projects within 45 business days following the application reception deadline.

Note that the reports issued by the Evaluation Commission are not binding for the Inter-agency Committee.

- If applicable, the Inter-agency Committee will grant authorization to beneficiary taxpayers, together with the applicable tax incentive amount. In this case, the Inter-agency Committee will notify the taxpayer of this authorization through the Online System within 15 business days following the date on which the meeting that authorized their project took place.
- Applications must be processed within a maximum three-month period as of the project submission deadline.
- When granting the tax incentive to support different projects, the Inter-agency Committee will consider the following criteria in a preferred order:
  - Continuation of multi-annual investment projects with favorable technical evaluations for the immediately preceding FY.
  - Formal generation of patents, profit models and intellectual property rights.
  - Development of prototypes and other equivalent deliverables.
  - Collaboration with Higher Education Institutions and Public Research Centers. In this regard, collaboration is deemed to exist when more than 20% of the total project expense involves these institutions or centers.
  - Increase productivity and generation of highly-qualified and well remunerated employment.
  - Those forming part of a broader strategic project or that is located in a geographic development area

where companies and institutions are engaged in a collective productive activity to obtain a high level of profits and efficiency, or which generate increased employment or economic benefits.

- The order in which taxpayers submit their applications.

### Application submission deadline

Taxpayers must submit their applications from 00:00 am CST of March 1 until 18:00 pm CST of April 30 of the relevant FY. Temporary provisions establish that, for 2017, the deadline for submitting and receiving applications will be from 00:00 am CST of April 1 until 18:00 pm CST of May 31, 2017.

### Possibility of submitting more than one application

Taxpayers carrying out more than one R&D project may submit an application to request the tax incentive for each of their projects, as long as the sum of the requested amounts does not exceed the maximum amount permitted for each taxpayer in conformity with article 202 of the MITL (MX\$50 million).

### Beneficiary taxpayer obligations

- File, in the FY immediately following that in which they receive the tax incentive, a report on the effects and benefits obtained by the approved projects.
- File, in February of each FY following that in which they have received the tax incentive, a report prepared by a public accountant registered with the SAT

containing his/her opinion and certifying that the authorized resources were exclusively applied to the expense items detailed in the tax incentive application.

- Provide the SAT, on a permanent basis, with information related to the application of the resources derived from the tax incentive as regards each of the respective expense and investment items through a computer system compliant with the technical security characteristics and information requirements determined by the administrative guidelines issued by the SAT.
- Accept technical visits from CONACYT and comply with all other evaluation mechanisms established by that entity.
- As part of their accounting records, conserve the documentation submitted to the Inter-agency Committee for authorization and follow-up regarding the tax incentive, together with the documentation received by the taxpayer from such Committee.
- Register in Mexico and in their name any patentable advances resulting from authorized projects.
- Fulfill their commitments as regards authorized project deliverables.
- Comply with the technical provisions established in the Operating Guidelines published by CONACYT.

### Causes for withdrawal of the tax incentive

- When it is determined that the information or documentation provided by the taxpayer to the Inter-agency Committee is false or does not reflect its records, databases, application systems, files or any other means of information or documentation concentration.
- When it is determined that the taxpayer is responsible for tax omissions, infractions or crimes.
- When the investment in the authorized items is not concluded or performed within the deadlines established by the Inter-agency Committee, unless this occurs for reasons that are not attributable to the taxpayer.
- When the taxpayer does not allow CONACYT to perform technical visits to monitor and provide follow-up on authorized projects.
- When the taxpayer fails to comply with the terms of any of the General Rules established for applying the R&D tax incentive.
- In all the above cases, the taxpayer must pay, within one month following the date on which it receives the respective withdrawal notification, the Income Tax it would have incurred had it not applied the tax incentive, together with restatement and surcharges. Furthermore, the taxpayer will not be eligible for the tax incentive in subsequent FYs.

## Tax and Legal Services

Tax Flash 07/2017 | March 2nd, 2017

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