

Tax Alert

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The joint set out Order no. 1056/4435/2016 approving the Norms regarding the deductions for corporate income tax purposes for the research and development expenses was published in the Official Gazette no. 526/13.07.2016. It rescinds the old Order 2086/4504/2010.

The Order brings amendments to the methodological norms for the application of the tax incentives for the research and development ("R&D") activities provided for by the Fiscal Code in force (Art. 20).

The main amendments brought by the new Order to the current norms include the following:

- The provision according to which the incentive is also granted to taxpayers performing R&D activities through an allocation agreement at the level of the group, provided that they receive full rights to use the results of the research in their own activities, was excluded.
- The definition of "valorification of the research results" was extended by including the situation in which such results are used in the provision of services or performance of works.
- The provision according to which where part of the R&D activities are performed by a third party, upon command, the tax incentive is granted only to the initiator of the command was excluded.
- Instead, the new Order regulates the situation in which the R&D activities are performed in collaboration / partnership / agreement by several taxpayers. In this case, the tax incentives are granted to each, based on the eligible expenses incurred, but without allowing for the same eligible expenses to be taken into consideration by multiple taxpayers on the chain.
- Also, if part of the R&D activities carried out by a taxpayer are performed by a third party, upon command, the tax incentives are granted to the third party, if the conditions provided for by the norms are met, while the beneficiary taxpayer shall not consider the expenses incurred with the third party when computing its own tax incentive.
- The order specifies that if the objectives of the R&D project are not achieved, the deductions shall not be recomputed.
- Clarifications are made regarding certain activities which are not considered R&D activities (e.g., current testing and analysis programs for quality or quantity control purposes that are not performed to address the objectives of the R&D activities, operational research performed prior to the start of the R&D activities).
- The taxpayers' option to request an experts report regarding the fulfilment of the conditions for granting the incentive was eliminated, the new Order specifying that in order to classify activities as R&D, the Register of Experts on R&D areas shall be established.
- A restriction is introduced regarding the fixed assets for which the accelerated depreciation method may be used i.e., the fixed assets provided for in the subgroups 2.1 and 2.2 of the Catalogue regarding the useful life and classification of fixed assets.

Besides the Frascati Manual issued by the OECD, the Order refers to additional legislation (i.e., Government Ordinance no. 57/2002 on scientific research and technological development and EU Regulation no. 651/2014 declaring certain categories of aid compatible with the internal market for the application of Articles 107 and 108 of the Treaty).

For further questions regarding the aspects mentioned in this alert, please contact us.

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