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Amendments to the R&D tax relief

Tax Alert

Dear Readers,

On 6 October 2016, the Parliament passed an act amending certain acts setting out the conditions for carrying out innovative business activity (hereinafter: the "Amendment"). The Amendment provides, among others, for modifications to the Personal Income Tax Act of 26 July 1991 (i.e. Journal of Laws of 2012, item 361; as amended; the "PIT Act") and the Corporate Income Tax Act of 15 February 1992 (i.e. Journal of Laws of 2014, item 851; as amended; the "CIT Act") in respect of R&D tax relief, which would take effect as of 1 January 2017. The R&D tax relief has been applied since 1 January 2016. For more information, please read our [Tax Alert of 12 January 2016 - New R&D tax relief](#).

Additional expenditure qualifying as an eligible cost

Pursuant to the Amendment, sub-paragraph 5 will be added to Article 18d(2) of the CIT Act which contains a list of eligible costs (costs that may be deducted from the tax base). Pursuant to this provision, expenditure incurred by a taxpayer being a micro, small or medium-sized enterprise in obtaining a patent for an invention, the right of protection for a utility model or the registration of an industrial design.

Similarly, the PIT Act has been amended by adding Article 26e(2)(5).

Increased amount of eligible costs

The Amendment increases the amount of eligible costs up to 50% for taxpayers being micro, small or medium-sized enterprises (previously applicable regulations allowed for a deduction of 30% of expenditure on payroll and 20% of other eligible costs listed in the regulations).

With respect to other taxpayers, the amount of expenditure on payroll has been increased to 50% (compared to previously applicable 30%), while for the remaining eligible costs the deduction rate has increased from 10% to 30%.

The same provisions have been incorporated into the CIT Act and the PIT Act.

Extending the period for deducting eligible costs

Article 18d(8) of the CIT Act and Article 26e(8) of the PIT Act have also been amended. The period to make use of the relief has been extended with respect to taxpayers who suffered a loss for the relevant tax year or whose income was lower than the amount of deductions to which he was entitled. In such case, the deduction

is made in return for six consecutive tax years immediately following the year in which the taxpayer used or was entitled to use the deduction.

Cash refund for start-ups

Cash refund for start-ups is an alternative to the deduction of eligible costs. Pursuant to Article 18da(1) of the CIT Act, taxpayers who, in the year in which they set up their business, suffered a loss or generated income lower than the amount of deduction to which they are entitled for the relevant year, are entitled to the amount equal to 19% of eligible costs that have not been deducted. With respect to micro, small and medium-sized enterprises, this provision also applies to the tax year immediately following the commencement of business.

However, this provision does not apply to start-ups established as a result of transformation, division or merger.

Article 26ea has been added in the PIT Act, which provides that taxpayers starting their business activity, who suffered a loss or generated income lower than the amount of deduction to which they are entitled for the relevant year, are entitled to the amount equal to 18% of eligible costs that have not been deducted, if they account for income on a scale basis, or to the amount of 19% of eligible costs that have not been deducted, if they are liable to a flat tax.

The right to make use of the above may also be exercised in the year immediately following the year of commencement of business if the taxpayer is a micro, small or medium-sized enterprise in the relevant year.

Pursuant to the two acts, if a taxpayer is declared bankrupt or goes into liquidation within three tax years from the end of the tax year for which the return was filed, the taxpayer is obliged to refund the amount shown.

Exclusion of in-kind contribution from revenue

Sub-paragraph 23 has been added to the list of exclusions from revenue referred to in Article 12(4) of the CIT Act. It provides that the nominal value of shares in a company is not included in revenue if commercialized intellectual property is contributed to such company by a commercializing entity. Article 17 of the PIT Act has been supplemented by paragraph 1e which provides that the revenue referred to in paragraph 1(9) is not established if commercialized intellectual property is contributed to such company by a commercializing entity.

The drafters of the amended legislation believe that previously applicable legislation did not provide a sufficient incentive to conduct R&D activities. The modifications are aimed at promoting enterprise innovation and consequently accelerating the transformation of the Polish economy and avoiding the so-called "middle income trap".

Under the "Europe 2020" strategy Poland undertook to increase spending on research and development (R&D) to 1.7% of GDP in 2020. The reasons behind the draft act suggest that Poland will not achieve the objective under the strategy. Given the facts of the case and statements of the incumbent officials, one may expect further tax incentives for the R&D sector to be put in place in the near future.

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Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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