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German Tax and Legal News

Draft law on R&D tax incentive submitted to upper house of parliament

Draft law is mostly in line with discussion draft from MOF.

The German government agreed on a draft law on a tax incentive for research and development (R&D) on 22 May 2019, and presented the draft to the upper house of parliament. The draft law would introduce an R&D tax incentive that is particularly intended to support small and medium-sized enterprises (SMEs). The draft law appears to be mostly in line with the discussion draft of a bill published by the Ministry of Finance (MOF) on 17 April 2019, and the incentive would be available for qualifying expenses incurred on or after 1 January 2020.

In the coalition agreement published in early 2018, the "grand" coalition partners, i.e. the Christian Democrats and Social Democrats, agreed, among other things, to introduce a R&D tax incentive in Germany. In early 2019, the MOF made available an unofficial discussion draft of a bill outlining the framework for an R&D tax incentive regime in the domestic tax law (see GTLN dated 03/04/2019). The MOF published the official draft of the bill on 17 April, reflecting some changes from the unofficial draft.

The draft law would introduce a research allowance (a cash grant) amounting to 25% of personnel expenses for qualifying R&D projects. "Personnel expenses" would be equal to 120% of the gross employee salary for qualifying projects, with the 20% above the actual cost representing lump-sum compensation for non-salary costs. The maximum annual incentive would be EUR 500,000 per company, per fiscal year, meaning that the maximum amount of qualifying expenses would be EUR 2 million per company, per year. In the case of affiliated companies, the limit would apply at the group level; in the case of projects involving cooperation between unrelated parties, it would apply to each eligible party individually.

In line with the April draft bill published by the MOF, the draft law does not include an expiration date for the incentive (the unofficial draft bill proposed ending the incentive after four years). The incentive would be reevaluated after five years (extended from the four year-period originally proposed). The maximum cumulative limitation of EUR 15 million per company, per R&D project for any allowances (including the R&D tax incentive) that had been proposed is not included in the draft law. The draft law includes a number of additional details regarding the application of the rules and would introduce a measure under which interest would accrue on refund claims relating to the R&D tax incentive.

The draft R&D tax incentive law has been submitted to the upper house of parliament (Bundesrat) for further consideration. Based on the broad support for the law from the governing grand coalition, it is likely that the draft law will be approved. Interested taxpayers should closely monitor further developments.

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