

Act No. 152/2009

on support for innovation enterprises [including amendments in chapter VIII of Act no. 165/2010, passed by the Althingi on December 18th 2010]

Chapter I

General provisions

Article 1

Objective

The objective of this Act is to strengthen research and development activity and improve the competitive condition of innovation enterprises by providing them with the right to tax credits in respect of costs of innovation projects.

Article 2

Sphere of application

This Act applies to enterprises that carry out research and development projects which have been certified by the Icelandic Centre for Research pursuant to Article 5. Universities and public agencies are not considered to be enterprises under this Act.

Article 3

Definition of terms

For the purposes of this Act the terms below shall have the following meaning:

1. *Small enterprise*: An enterprise that employs fewer than 50 persons and whose annual turnover does not exceed EUR 2 million and/or whose balance sheet total does not exceed EUR 2 million, cf. Annex I to the Commission Regulation (EC) no. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 61 and 62 of the European Economic Area Agreement.
2. *Medium-sized enterprise*: An enterprise which employs between 50 and 250 persons and which has an annual turnover not exceeding EUR 50 million and/or an annual balance total not exceeding EUR 43 million, cf. Annex I to the Commission Regulation (EC) no. 800/2008.
3. *Innovation enterprise*: Legal parties pursuant to points 1 and 3, Paragraph 1, Article 2 of the Income Tax Act no. 90/2003 that are engaged in research or development according to this Act.
4. *Rannís*: The Icelandic Centre for Research is a state agency under the auspices of the Minister.
5. *The cost of research and development*: The direct cost of a project that has been certified according to Article 5, such as in respect of staff, equipment, housing, purchased research and development services and other inputs for the exclusive use in such a project.
6. *Research*: Planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components of complex systems necessary for research, notable for generic technology validation, to the exclusion of prototypes as covered by point 10.

7. *Tax credit*: A credit against assessed income tax or a refund pursuant to the Income Tax Act no. 90/2003.

8. *Large enterprise*: An enterprise with more than 250 employees, cf. Annex I to the Commission Regulation (EC) no. 800/2008.

9. *Business plan*: A report on the business concept of an enterprise, its operations and prospects.

10. *Experimental development*: The acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans or arrangements and designs for new, altered or improved products, processes or services. These may also include, for example, other activities aiming at the conceptual definition, planning and documentation of new products, processes and services. The activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use.

Chapter II

The application process et al.

Article 4

Applications to Rannís

An application for the certification of a research or development project shall be submitted with Rannís no later than on 1 September each year.

The application shall be submitted in the form decided by Rannís. The application shall be accompanied with a detailed description of the project, including a procedure and cost projection.

Article 5

The certification of projects

Rannís shall decide upon the certification of a project pursuant to this Act. The condition for certification is that the project is considered to be a research or development project pursuant to this Act and also:

1. that the concept of the value-adding product/service and the business plan is well defined, and
2. it is documented that the amount appropriated for research and development over a 12-month period equals or exceeds ISK 1 million, and
3. that the staff have the training, education and experience in the area on which the concept of a value-adding product or service is based.

Article 6

If an innovation enterprise purchases research or development services from an unrelated enterprise, a university or an institution for use in its own certified research and development project the cost ceiling for the calculation of a credit pursuant to Article 10 increases.

Article 7

Collaboration projects

Two or more unrelated innovation enterprises may collaborate on a project and use the credit pursuant to Article 10. In case of such a collaboration project, information on all participants shall be submitted in an application pursuant to Article 4, including information on the expected share of each in the research and development cost.

Article 8

Case processing

For the purpose of assessing a research and development project by Rannís, it may seek the advice of a professional committee consisting of three representatives with experience in innovation matters. The Minister that is responsible for the state finance and the Minister that is responsible for administering industrial development and innovation and the Confederation of Icelandic Employers shall each appoint one member to the committee.

Within two months of having received an application, Rannís shall decide whether the project is certified according to Article 5. The applicant shall be informed of the decision.

Rannís shall inform the Directorate of Internal Revenue of the research or development project that has received certification pursuant to Article 5 and of the companies which carry them out. Collaboration projects shall be specified as well as information on all participants.

The processing of applications by Rannís shall be according to this Act and other acts that apply to the agency.

Decisions reached by Rannís according to this act shall be final at the administrative stage.

Article 9

The period of validity of a certification

The confirmation of Rannís according to Article 5 shall be based on the year of application and shall be valid for that calendar year. An application for the extension of certification shall be submitted annually no later than 1 April. Rannís shall process the application for an extension within two months from its submission. Should Rannís consent to the extension, it shall apply for that year.

Chapter III

Implementation

Article 10

Tax credit

A innovation enterprise that carries out research or development projects and has received the certification of Rannís according to Article 5 has the right to a special tax credit against assessed income tax of 20 per cent of the paid cost of such projects, provided that it constitutes a deductible current cost of operation as defined in Paragraph 1, point 1 of Article 31 of the Income Tax Act no. 90/2003. The cost ceiling for the calculation of a credit for each enterprise shall not exceed ISK 100,000,000 in each year of operation. In the case of

purchased research and development services according to Article 6, the maximum cost shall not exceed ISK 150,000,000. In the case of a collaboration project according to Article 7, the same ceiling shall apply to the project as a whole and the credit shall be divided *pro rata* between enterprises that participate in the project.

A condition for the credit is that the cost of each research and development project is kept separate from other expenses of an innovation enterprise and that such records are accessible to tax authorities that so request, cf. Chapter X of the Income Tax Act no. 90/2003.

A cost that is not incurred in an enterprise due to research and development is not eligible for a tax credit for the party of sale, since such a cost is deductible on part of the purchaser. The cost of application to Rannís is not eligible for a credit with an innovation enterprise.

The annual cost of research and development shall be recorded in a tax return in a manner instructed by the Directorate of Internal Revenue. The cost report shall be signed by an accountant, an examiner or a certified bookkeeper.

The Minister that is responsible for the state finance, by Regulation¹, set further rules regarding the division and handling of indirect costs, including depreciation, financing costs and wage costs incurred due to research and development projects in this context.

Article 11

The payment of tax credit

A tax credit according to Article 10 shall be credited against assessed income tax at the assessment of public dues on legal parties cf. Article 71 of the Income Tax Act no. 90/2003. In a case where the assessed income tax is lower than the determined tax credit or if no income tax is assessed on a legal party due to a tax loss, the tax credit shall be paid out, having regard to Article 112 of the Income Tax Act no. 90/2003.

Article 12 [...]

Article 13 [...]

Article 14 [...]

Article 15

Limits to the total amount of public grants

The total amount of public support for innovation enterprises according to this Act is limited by the commitments of Iceland according to the Agreement for the European Economic Area.

The sum total of public support, including tax credits according to this Act, shall not exceed the ratios of aid intensity cost listed below in respect of the same research and development project:

¹ Regulation 592/2010

1. In the case of small enterprises, the sum of the eligible cost may not exceed 70 per cent of the total grant cost for a research project, or in the case of a collaboration project, 80 per cent. The sum of the eligible cost for a development project may not exceed 45 of the total grant cost per cent or, in the case of a collaboration project, 60 per cent.
2. In the case of medium-sized enterprises, the sum of the eligible cost may not exceed 60 per cent of the total grant cost for a research project or, in the case of a collaboration project, 75 per cent of the total grant cost. The total eligible cost of a development project may not exceed 35 per cent or, in the case of a collaboration project, 50 per cent.
3. In the case of large enterprises, the total eligible cost may not exceed 50 per cent for a research project or, in the case of a collaboration project, 65 per cent, provided that the collaboration project is between countries in the European Economic Area or with at least one small or medium-sized enterprise. The total eligible cost of a development project may not exceed 25 per cent of the total grant cost or, in the case of a collaboration project, 40 per cent, provided that the collaboration project is between countries in the European Economic Area or with at least one small or medium-sized enterprise.

The condition for an increase in aid intensity due to collaboration projects is that they in fact constitute collaboration between at least two independent enterprises and that the following conditions are met:

1. no one enterprise bears more than 70 per cent of the eligible cost of the collaboration project;
2. the project must involve collaboration with at least one small or medium-sized enterprise or be cross-border, that is to say, the research and development activities are carried out in at least two different EEA States.

An increase in aid intensity is also permitted if the project involves effective collaboration between an enterprise and a research organisation, particularly in the context of co-ordination of national R&D policies, and the following conditions are fulfilled:

1. the research organisation bears at least 10% of the eligible project costs;
2. the research organisation has the right to publish the results of the research projects insofar as they stem from research implemented by that organisation.

An increase in aid intensity is also permitted, only in case of research, if the results of the project are widely disseminated through technical and scientific conferences or published in scientific or technical journals or in open access repositories (databases where raw research data can be accessed by anyone), or through free or open source software.

For the purposes of Paragraphs 3 and 4, subcontracting is not considered to be effective collaboration under this Act.

Chapter IV. Sundry provisions

Article 16

Authority to set rules by Regulation

The Minister may by Regulation² set further rules regarding the implementation of this Act.

Article 17

Entry into force

This Act enters into force on 1 January 2010 and shall be implemented with the assessment of public dues in 2011 for the 2010 income year. The Act shall come up for review within two years after its entry into force.

The Act will expire 31st Desember 2014. A support that has been approved before that date will remain in effect.

² Regulation 593/2010