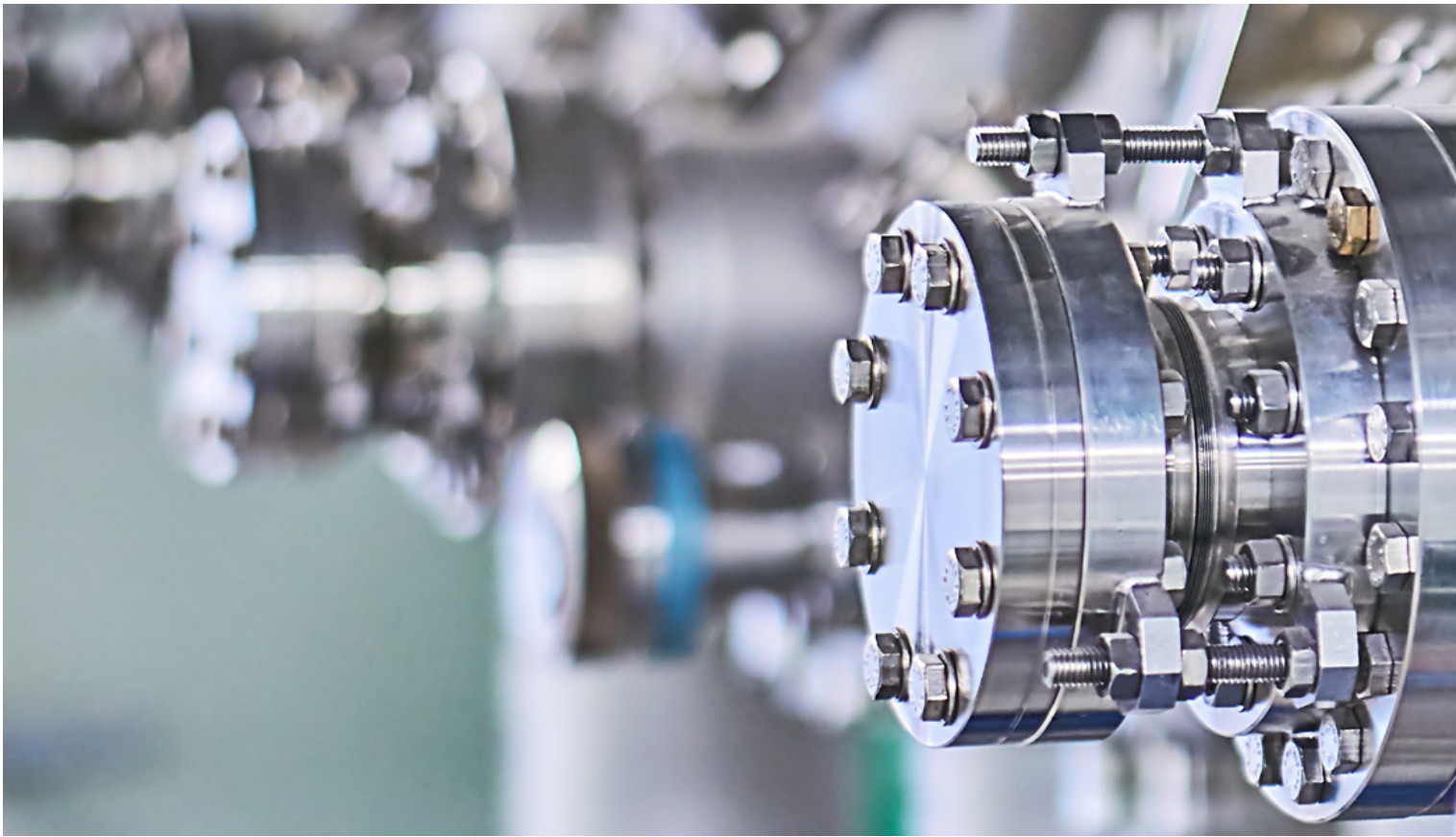




**R&D ALLOWANCE -
RECOGNIZING AND SEIZING OPPORTUNITIES**



More and more companies are benefiting from the tax incentives for research and development introduced with the Research Allowance Act in 2020. The recently enacted Growth Opportunities Act has significantly expanded the funding to provide financial incentives, especially for medium-sized enterprises, to invest more in research and development. The goal is to strengthen Germany as an investment location and to stimulate research activities.

Since 2020, companies – regardless of industry, legal form, and size – can apply for an allowance for R&D projects. The research allowance has recently been increased by the Growth Opportunities Act to a maximum amount of 2.5 million euros per year, or even up to 3.5 million euros per year for SMEs and corporate groups. Consequently, companies can benefit from a tax credit of up to 3.5 million euros per year.

PROJECTS FUNDED BY THE RESEARCH ALLOWANCE

Projects in basic research, industrial research and experimental development are eligible for funding. In particular, the development of new or significant improvements to existing products, processes, and services, including the development of marketable prototypes and pilot projects, is favoured. A prerequisite is that the project meets the relevant R&D criteria. The following checklist can help identify potentially eligible R&D projects.



CHECKLIST FOR AN ELIGIBLE R&D PROJECT:

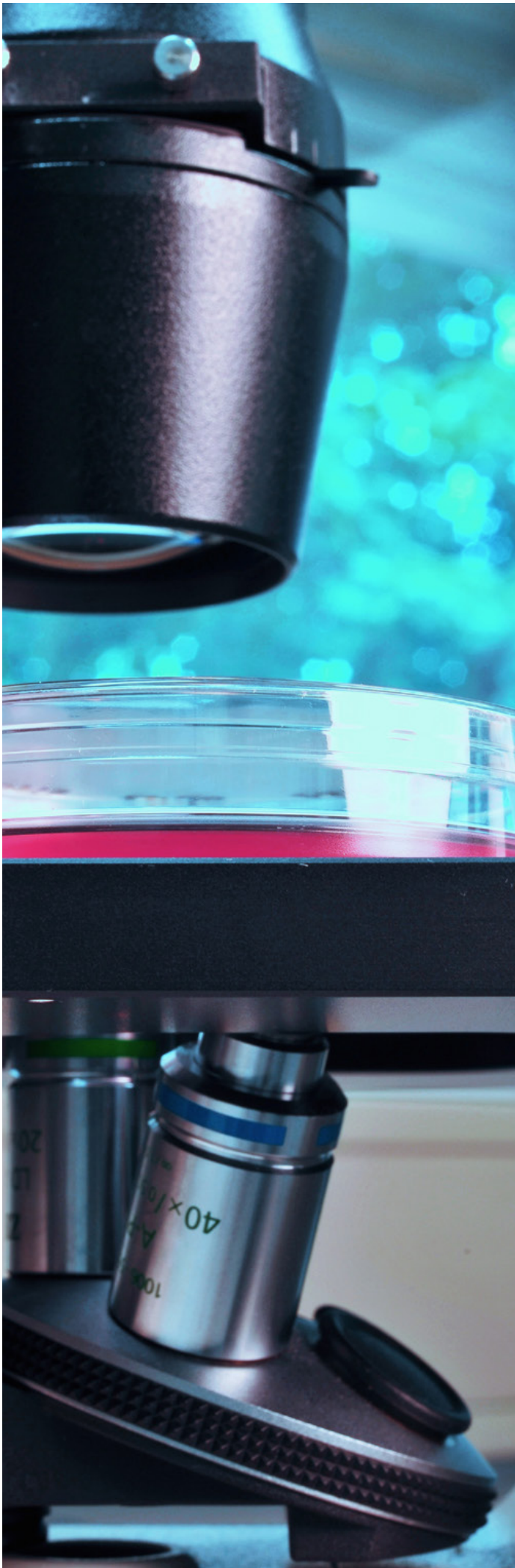
The R&D project must meet the following aspects:

- > It must aim at gaining new knowledge,
- > it must be original,
- > it must follow a plan and be budgetable,
- > there must be uncertainties regarding the outcome, and
- > there must be possibilities for the reproducibility of the result.

Activities can typically be considered R&D if the completion of the R&D project is associated with technical or scientific progress and/or existing uncertainties are eliminated.

Therefore, potentially eligible projects may include, e. g.:

- > new developments of products or services that significantly surpass existing products or services in functionality or features,
- > improvements of industrial and manufacturing processes through intelligent, resource-saving, and/or self-learning design,
- > research and development services to test the functionality of novel materials in a prototype or a pilot plant.



However, forms of knowledge acquisition, such as

- > reverse engineering,
- > the mere use of already known procedures or approaches for a new application, recurring and routine changes to existing products,
- > or the development of management systems based on business concepts,

are excluded from funding.

In principle, all companies that are subject to income or corporate tax in Germany and are not tax-exempt are eligible to apply. In addition, the company must not be a company in difficulty according to the General Block Exemption Regulation (GBER).

Note: Whether a company is considered a company in difficulty is, among other requirements, crucial for the granting of the research allowance. Therefore, it should be checked in advance whether this can be avoided by possible structuring options, for example, by contributing to the capital reserve.

In general, 25 % of personnel costs (gross wages and employer's social security contributions) for employees involved in the R&D project are funded. Small and medium-sized enterprises can even receive funding of 35 % of personnel costs for a research project from 1 January 2024, upon application.

For fiscal years beginning after 31 December 2023, a part of the acquisition and production costs of exclusively business-used depreciable movable fixed assets, which are acquired after 28 March 2024 and are necessary for the research project, will also be considered eligible expenses.

As a maximum assessment basis, expenses of up to 10 million euros (previously: 4 million euros) per corporate group per year can be considered eligible expenses for expenses incurred after 27 March 2024.

Companies that commission R&D projects (so-called contract research) can include 60 % of the expenses and for projects commissioned after 28 March 2024, 70 % of the expenses as eligible expenses up to the maximum assessment basis. The costs for contract research will thus be funded at 17.5 % or 24.5 % for SMEs in the future.

Note: The research allowance can generally be claimed in addition to other funding, provided that the assessment basis is not set multiple times. The state aid granted for an R&D project must not exceed a total of 15 million euros per company.

THE TWO-STAGE APPLICATION PROCESS

The research allowance cannot be obtained without bureaucracy. Those who want to take advantage of it must go through a two-stage application process. Nevertheless, based on our experience, the review of applications is carried out with a sense of proportion.

Stage 1: Certification of the Eligibility of the Research Project

First, an application must be submitted to the Research Allowance Certification Office (BSFZ). There, the eligibility of the R&D project is reviewed and certified based on the five R&D criteria mentioned earlier. The application for certification can be submitted before, during, or after the implementation of the research project, even after the

end of the fiscal year for which the research allowance is applied for. The application for the research allowance is often much more flexible than traditional funding programs, which regularly require approvals to be in place before the project starts. As part of the application, the R&D project, i. e., the temporal, personnel, and financial scope of the project, must be presented in a comprehensible manner, and the required information must be provided as accurately as possible. Furthermore, when applying, care should be taken to include only work packages that contain research and development services in the application process to avoid queries and partial approval notices.

Note: Companies need their own Elster certificate to register with the BSFZ.

The BSFZ usually decides on the application within three months. The result of the review is communicated via an electronic notice and is also forwarded to the responsible tax office. If the R&D projects are classified as eligible by the BSFZ, the tax administration is bound by the approval notice. Therefore, a new review of eligibility is not carried out as part of the application to the tax administration.

Stage 2: Application for the Research Allowance

In the next step, the research allowance must be applied for at the responsible tax office, and the amount of eligible costs must be determined. A separate application must be submitted for each fiscal year for all R&D projects. This application can generally be submitted retroactively up to four years later.

The tax office reviews the application based on the statutory entitlement requirements and determines the amount of the research allowance in a separate assessment notice. In this context, it is also checked whether the claimed expenses have actually been incurred. It is therefore advisable to create and maintain meaningful documentation, especially in the form of time records for determining the amount of eligible expenses, at an early stage. To avoid queries, all necessary information should always be checked for plausibility when applying.

Note: The application process, including the precise description of the project and the detailed, timely documentation of the eligible costs, typically takes some time and should therefore be approached with sufficient lead time. Since the application deadline for R&D projects from the year 2020 ends at the end of 2024, the application process for projects from the year 2020 should be started as early as possible.

Payout of the Funding

The research allowance is paid out as part of the next initial assessment of income or corporate tax. The research allowance is credited against the tax payment.

Note: To take into account the research allowance set for the assessment period on time, from 1 January 2025 an application for adjustment of advance payments on income and corporate tax for the last unassessed period can be made by deducting the set research allowance, if procedurally possible.

The funding is also paid out in loss years – if no tax is set against which the tax credit can be credited, companies will be refunded the research allowance.

HOW WE SUPPORT YOU

We advise you on how to obtain the maximum funding for your R&D project. Our experts support you in identifying suitable funding projects, throughout the entire application process, including stage 1 for certification of eligibility, and in creating the necessary documentation. As tax advisors, we are also authorized to take over the application for the research allowance at the responsible tax office for you. We work closely with your company's accounting and HR departments and are available to answer any questions related to documentation obligations and the determination of eligible costs. Furthermore, we naturally take over further communication with the tax administration, the representation of the research allowance in the annual financial statements and tax returns, and support you in the control of the received allowances by subsequent audit authorities, such as the tax audit.

Benefit from the long established experience of our experts and contact us.

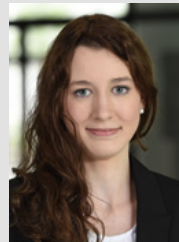
CONTACT PERSONS

For further information, your known contacts at RSM Ebner Stolz and the experts in the research allowance area are at your disposal.



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