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# **INCOME TAX CREDIT FOR R&D SALARY (biopharmaceutical activities)**

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**INVESTISSEMENT QUÉBEC**

Tax Measures Department



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# **Tax Credit for R&D Salary for Biopharmaceutical Activities**

A corporation that carries on a business in Canada and that conducts scientific research or experimental development (R&D) in Québec, or which has such work carried out on its behalf in Québec, may be eligible for a refundable tax credit commonly referred to as the Tax Credit for R&D Salary.

The biopharmaceutical industry is highly dependent on the results of its R&D activities and for many years has accounted for a substantial share of the R&D conducted in Québec. However, the industry is facing a number of challenges, including rising R&D costs, the difficulty of launching new products, competition from emerging countries and the expiry of a number of patents.

To further encourage biopharmaceutical industry R&D in Québec, the Tax Credit for R&D Salary was increased for a five-year period in the budget tabled on November 20, 2012. The amendments announced in the budget apply from November 21, 2012 for a corporation that qualifies as an eligible biopharmaceutical corporation.

The tax credit is refundable, meaning that the amount of the credit, less any income tax payable, will be paid to an eligible corporation.

## **ELIGIBLE BIOPHARMACEUTICAL CORPORATION**

To qualify as an eligible biopharmaceutical corporation, a corporation must obtain from Investissement Québec the following documents:

- an initial qualification certificate;
- an eligibility certificate in respect of its activities.

The eligibility certificate must be obtained for every taxation year for which the corporation wishes to claim the Tax Credit for R&D Salary at the higher rate.

## **INITIAL QUALIFICATION CERTIFICATE**

To obtain an initial qualification certificate, a corporation must show that the activities that it carries on or will carry on in the course of its business fall into one or more of the following categories of activities related to human health:

- integrated innovative pharmaceuticals (patented products), which consists in making and commercializing drugs as well as carrying out drug-related activities involving basic research, product development, clinical research or chemical synthesis;
- pharmaceutical manufacturing of generics, which consists in making and commercializing generic versions of prescription or over-the-counter drugs whose patents have expired;
- pharmaceutical manufacturing under contract, which consists in making drugs for innovative pharmaceutical companies, generic product companies or large buyers;
- biotechnology, which consists of the following four categories:
  - therapeutic products that stem from research and development of drugs essentially targeting the small molecule market rather than the biological product market. This

category also includes the development of drug delivery methods in the body and cellular therapies;

- diagnostic products that stem from the development, manufacturing and commercialization of such products;
  - biological processes that involve the production of drugs or vaccines. This category also includes the production of pharmaceutical proteins using a genetically modified cell culture or the development of genetically modified organisms for the production of drugs. Lastly, it includes the extraction of active drug ingredients from natural sources;
  - pharmaceutical research that involves using genetic data to define targets for drug action. This category also includes the supply of genomic research products and services;
- contract research, which consists in providing services aimed at developing new drugs, such as bioequivalence studies, preclinical and clinical tests and study management.

## **ELIGIBILITY CERTIFICATE**

A corporation that holds an initial qualification certificate must also obtain an eligibility certificate for every taxation year for which it wishes to claim the Tax Credit for R&D Salary at the higher rate.

To obtain an eligibility certificate, a corporation must show that the activities indicated on its initial qualification certificate represented at least 75% of the activities that it carried out throughout the year covered by the certificate. For this purpose, Investissement Québec considers the duties carried out by all employees of the corporation and the activities performed on its behalf during the relevant fiscal year.

## **NATURE OF THE TAX ASSISTANCE**

The Refundable Tax Credit for R&D Salary applies to the salaries that a taxpayer pays his employees for R&D conducted in Québec on his behalf. It also applies to salaries paid to the employees of a subcontractor who carries out, in Québec, R&D work for a taxpayer when the latter has a non-arm's-length relationship with the subcontractor. Moreover, when the subcontractor does not have a non-arm's-length relationship with the subcontractor, this tax credit applies to half of the portion of the amount of the research contract that can be reasonably attributed to the R&D work performed on behalf of the taxpayer in Québec.

## **CREDIT RATE**

An eligible biopharmaceutical corporation can qualify for a Tax Credit for R&D Salary equal to 27.5%<sup>1</sup> of its eligible R&D expenditures for the relevant taxation year.

Moreover, when an eligible biopharmaceutical corporation qualifies as an SMB<sup>2</sup>, the rate applicable to the first \$3 million of eligible expenditures is 37.5% when the corporation's assets, calculated according to the applicable rules, are less than \$50 million. However, the credit declines progressively to 27.5% for corporations with assets from \$50 million to \$75 million.

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<sup>1</sup> Prior to November 21, 2012, the rate was 17.5%.

<sup>2</sup> For the purpose of this credit, an "SMB" refers to a corporation under Canadian control whose assets, including the assets of associated corporations calculated on a global basis, are less than \$75 million for the preceding fiscal year.

## Illustration of the Increase in the Refundable Tax Credit for R&D Salary Granted to an Eligible Biopharmaceutical Corporation

Businesses	Rate at November 20, 2012	Rate after November 20, 2012
<b>SMBs:</b>		
- Companies with assets of \$50 million or less		
• First \$3 million of eligible expenditures	37.5%	37.5%
• Eligible expenditures exceeding \$3 million	17.5%	27.5%
- Companies with assets of over \$50 million but less than \$75 million		
• First \$3 million of eligible expenditures	Between 17.5% and 37.5%	Between 27.5% and 37.5%
• Eligible expenditures exceeding \$3 million	17.5%	27.5%
<b>Large companies:</b>		
- Companies with assets of \$75 million or more		
• All eligible expenditures	17.5%	27.5%

\* Linear rate reduction based on company assets

### APPLICATION DATE

An eligible biopharmaceutical corporation that obtains an eligibility certificate after November 20, 2012 can qualify for a Tax Credit for R&D Salary equal to 27.5% of its eligible R&D expenditures incurred after November 20, 2012 and prior to January 1, 2018. In addition, expenditures incurred after November 20, 2012 in relation to a research contract signed prior to that date also entitle a corporation to the higher rate.

Moreover, for an eligible biopharmaceutical corporation that qualifies as an SMB for a taxation year including November 20, 2012, the \$3 million limit on eligible R&D expenditures that applies to it as an SMB must be prorated. More specifically, that \$3 million limit must be prorated based on the amount of the eligible R&D expenditures that the corporation incurred after November 20, 2012 in relation to the total amount of eligible R&D expenditures that it incurred for the taxation year<sup>3</sup>.

### APPLICATION FOR REVIEW

A corporation that disagrees with a decision made by Investissement Québec may file an application for review within 60 days of the notification of the contested decision. To do so, it must send Investissement Québec the “Application for Review” form, which is available at [www.investquebec.com](http://www.investquebec.com). To be admissible, the application for review must be accompanied by the applicable fees.

### AMENDMENT AND REVOCATION OF A CERTIFICATE

Investissement Québec may amend or revoke a certificate if information or documents justifying such an action are brought to its attention.

<sup>3</sup> The same calculation must be performed when a corporation’s taxation year includes December 31, 2017.

In that case, Investissement Québec will inform the corporation in writing of its intention to amend or revoke the certificate and set forth the reasons on which its decision is based. The corporation has 30 days from the date of the notification to present its arguments and file any relevant documents.

Note that it is important to inform Investissement Québec of any change likely to result in an amendment or revocation.

Moreover, in the event that a corporation receives a tax credit all or part of which it should not have received, Revenu Québec will recover the amount of the overpayment by means of a special tax.

## **PENALTIES**

Any person who provides false or incorrect information or who obstructs the work of an Investissement Québec representative is guilty of an offence. In such cases, the person shall be subject to a fine of a minimum of \$2,000 and a maximum of \$25,000.

## **ELIGIBILITY APPLICATION AND CLAIMING OF TAX CREDIT**

The application for the credit and the calculation thereof are done at the end of the taxation year, when the corporation files its income tax return with Revenu Québec. The tax credit is taxable.

To receive the tax credit for a particular calendar year, an eligible corporation must enclose with its tax return:

- the form prescribed by Revenu Québec regarding the Tax Credit for R&D Salary;
- the initial qualification certificate and the eligibility certificate issued by Investissement Québec for the eligible biopharmaceutical corporation.

To apply for an initial qualification certificate and an eligibility certificate, the corporation must complete the appropriate form, which is available on Investissement Québec's website. The form may also be obtained from an Investissement Québec advisor.

Issuance of a certificate does not guarantee that the tax credit will be obtained. The corporation must also satisfy the eligibility criteria, which are verified by Revenu Québec, and in particular the rules regarding the deadline for filing applications for certificates. These documents must be filed within 18 months following the end of the corporation's fiscal year. If Revenu Québec does not receive the applications within the 18-month period, the credit will be refused. However, certain exceptions apply:

- If the corporation obtained its certificates after the 15th day preceding the expiration of the 18-month period and filed its application for a certificate with Investissement Québec before the expiration of the 15th month following the end of its fiscal year, the credit will be granted.
- If the application for a certificate is filed with Investissement Québec **after the end of the 15th month following the end of the corporation's fiscal year and the certificates are issued after the 15th day preceding the expiration of the 18-month period**, there is no guarantee that the corporation will obtain the tax credit. This decision lies solely with Revenu Québec.

Investissement Québec does not grant priority in processing files. In addition, if the application for a certificate is filed with Investissement Québec after the expiration of the 18th month following the end of the corporation's fiscal year, the corporation may not be entitled to the tax credit.

To be considered admissible by Investissement Québec, the corporation's application for an eligibility certificate must be signed and completed. It must contain all required information and be accompanied

by all required documents, including the information and documents requested in the appendices. The application form can also be obtained from an Investissement Québec advisor.

## **ON-SITE VISIT**

Investissement Québec reserves the right to visit an eligible corporation's facilities at any time during the eligibility period. The corporation must therefore agree to give Investissement Québec's representatives access to its facilities and provide any information that they may require during the visit.

## **INTERIM TAX CREDIT FINANCING**

In certain cases, Investissement Québec may provide a loan guarantee or a loan to ensure interim financing of the tax credit.

## **INTERACTION WITH OTHER TAX CREDITS, ASSISTANCE AND BENEFITS**

Tax legislation includes rules aimed at limiting the number of forms of tax assistance that a single taxpayer or a group of taxpayers can receive for expenses that may qualify for more than one tax credit. These rules also apply to corporations eligible for the Tax Credit for R&D Salary.

Furthermore, the amount of any government assistance, non-government assistance, benefit or advantage attributable to the labour expenses incurred by an eligible corporation during a particular taxation year must be subtracted from such expenses, in accordance with the usual rules.

## **RATE SCHEDULE**

Investissement Québec charges fees for processing eligibility applications or applications for review related to the tax measures it administers. For more information, contact an Investissement Québec advisor or consult the [rate schedule](#) on Investissement Québec's website.

*This detailed fact sheet is a summary of the main rules set out in the November 20, 2012 Budget Speech. Other conditions may apply in certain cases. This fact sheet is not an interpretation by Investissement Québec of the legislative provisions relating to the tax measure. For further information, please refer to the relevant legislation.*

*December 2012*