

THE CONCEPT OF “RESEARCH AND DEVELOPMENT” IN DANISH TAX LAW

R&D tax expenditures and incentives in Danish tax law

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Methodological challenges

Legal Regulation

- Deduction for operating cost was introduced in 1903
- Deduction for research and development expenses was introduced in 1973
- Tax credit scheme was introduced in 2012
- Super deductions were introduced in 2018 but have been changed several times since due to various reasons, such as:
 - Covid
 - Green transition
 - International competitiveness

Case law and administrative practice

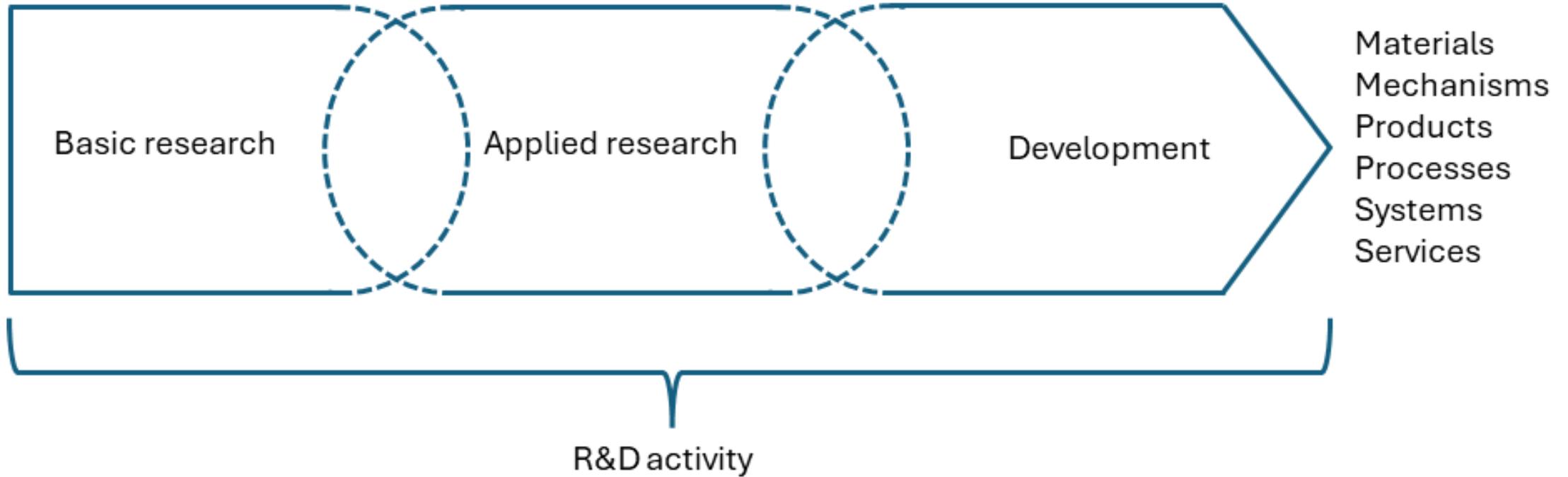
- Very limited amount of case law
- Significant amount of cases from the Danish Tax Tribunal and advanced tax rulings from the Danish Tax Council

Soft law

- OECD's Frascati Manual 2015

A few findings ...

R&D activity



A few findings ...

Software development

- Not part of the original preparatory work
- Mentioned in later preparatory work e.g., for the tax credit scheme
 - Routine software development is not R&D

Administrative practice

- Difficult for the taxpayer to prove that software development is novel
- New tool in these cases: expert opinion

How does the taxpayer know if their software development is subject to the R&D tax benefits?

- Former Minister of Taxation suggests a binding ruling ...
 - ... but is this the solution?

A few findings ...

Business-related R&D activity

Include

- “Business-company” (Erhvervsvirksomhed)

“A business of an economic nature that is carried out at the individual's own expense and risk with the aim of generating a profit.”

Exclude

- Non-commercial companies (“Hobbyvirksomhed”)
- R&D activity driven by private interests/non-commercial interests
- “Employees” (Lønmodtagere)

Case law

- Requirement to generate income/profit
 - If no income or low income:
 - Actual R&D activity
 - Patents
 - External funding
 - Preliminary market research
- ... are not sufficient to establish a “Business-company”

My opinion: This does not harmonize with “R&D activity”

Calling my Swedish colleagues...

... I am considering including a section on comparative tax law e.g., between Denmark and Sweden

Question:

Do you have the same issues?

If so, how are these issues solved in the Swedish tax law?

*Thank you for
listening*

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