

The Evolution of Research and Experimental Expenditure Deductions and their Impact on Businesses

November 27, 2023



The passing of the Tax Cuts and Jobs Act of 2017 eliminated the option for taxpayers to deduct certain **Research or Experimental (R&E) expenditures under Internal Revenue Code Section 174**, effective for tax years beginning after December 31, 2021. Instead, the law now requires taxpayers to **capitalize and amortize these expenditures** over five tax years for U.S. spend and fifteen years for foreign expenses.

On September 8, 2023, the IRS issued **Notice 2023-63 (the “Notice”)**, which **provides interim guidance on updated Section 174 rules**. The Notice mentions that the IRS and the Treasury intend to issue proposed regulations with rules that will be consistent with the Notice and will apply for tax years ending after September 8, 2023. Taxpayers may also apply the Notice to tax years beginning after December 31, 2021, provided they follow the Notice in its entirety.

The Notice provides taxpayers with guidance on a number of provisions including:

- The definition of specified research or experimental (SRE) expenditures;
- Descriptions of which costs fall under SRE guidelines and allocations required;
- The treatment of software development costs;
- Which taxpayer is responsible for reporting the costs when research is performed under contract;
- The amortization requirements in the case of an acquisition or disposition of property with SRE expenditures;
- The treatment of long-term contracts using the percentage of completion method of accounting; and
- How to handle cost sharing updates.

Following the release of the Notice, the Treasury Department and the IRS have issued statements that they intend to provide additional guidance based on comments and feedback received from taxpayers and practitioners.

Currently, there are numerous efforts by industry groups and companies to revert Section 174 rules to the prior version, which allowed for immediate deductibility for R&E expenditures. However, passing legislation will require bipartisan cooperation in the House of Representatives, the Senate, and the White House. **While we can remain hopeful, at the present time, taxpayers should prepare to comply with rules set forth by the IRS in the Notice and in the anticipated future guidance.**

If you have questions about Section 174 or Notice 2023-63 and how your business may be affected, please contact [Yair Holtzman](#), Partner and Leader of Anchin's Research & Development Tax Credits and Incentives group, or your Anchin Relationship Partner.