
Tax Remark

Deduction for investments in film productions

25 May 2017

Publication in the Senate of the Draft Bill on the National Budget for 2017

We would like to inform you that on 6 June 2017, the Senate published the text submitted by the Congress of Deputies on the Draft Bill on the National Budget for 2017, whose 125th and 126th Additional Provisions include significant amendments relating to the deduction for investments in film productions, audiovisual series and live shows of performing and musical arts.

The main amendments introduced are as follows:

- Extension of the scope of the deduction to Economic Interest Groups (hereinafter, EIGs), providing they have the status of film producer.

In this regard, EIGs will be deemed to have the status of producer provided they are established as an independent producer by meeting the requirements established in the Cinema Act 55/2007, they join the production prior to the filming completion date and they designate the Executive Producer responsible for undertaking the project.

This amendment will be in line with the criterion issued by the Directorate-General for Taxation in its Binding Consultation V5479/2016, dated 29 December 2016.

Article 4.n) of Law 55/2007 defines what is meant by "independent producer":

"1. Any natural or legal person that is not subject to the dominant influence of an audiovisual communication/broadcasting service provider or of the owner of a private television channel or, which exercises a dominant influence, in any of the circumstances, for reasons of ownership, financial stake or as a result of having the power to condition in any way the decision-making of the respective governing management bodies.

Without prejudice to other situations, dominant influence will be considered to exist, at any event, and any of the following circumstances:

1. A production company and an audiovisual communication/broadcasting service provider and/or television channel owner belonging to a group of companies in accordance with the provisions of Article 42 of the Code of Commerce.

2. The ownership, whether directly or indirectly, by a audiovisual communication/broadcasting service provider or a television channel owner of at least 20% of the share capital, or 20% of the voting rights of a production company.

3. The ownership, whether directly or indirectly, of a production company of at least 20% of the voting rights of an audiovisual communication/broadcasting service provider or a television channel owner.

4. The production company obtaining, over the last three financial years, over 80% of its accumulated turnover from one single audiovisual communication/broadcasting service provider or television channel owner. This situation shall not apply to production companies whose turnover was lower than four million euros over the three preceding financial years or during the first three years that the company operates.

5. The ownership, whether directly or indirectly, by any natural or legal person of at least 20% of the subscribed capital or voting rights of a production company and, simultaneously, of at least 20% of the share capital or voting rights of a audiovisual communication/broadcasting service provider or a television channel owner."

- Base of the deduction:
 - a) This will consist of the total production costs, as well as the expenses for obtaining copies and the advertising and promotion costs paid by the producer up to the limit for both of 40% of the production cost.
 - b) At least 50% of the base of the deduction must correspond to expenses incurred in Spanish territory.
- Percentage of the deduction:
 - a) 25% for the first million euros (currently, 20%).
 - b) 20% for the rest (currently, 18%).
- Amount of the deduction:
 - a) The amount of the deduction, together with the other support received, may not exceed 50% of the production cost. This limit shall be raised to:
 - ✓ 60% in the case of cross-border productions financed by more than one Member State of the European Union and involving producers from more than one Member State.
 - ✓ 70% in the case of productions directed by a new director whose production budget does not exceed one million euros.
 - b) The amount of the deduction may not exceed three million euros.

