

Informative Note

Support measures for the cultural sector to address the situation arising from COVID-19

6th May 2020

Analysis and thoughts on support measures for the cultural sector to address the situation arising from COVID-19

Since the government's declaration of the state of alarm, many measures have been taken to try to alleviate the devastating effects of the health crisis caused by COVID-19. However, none of the general measures implemented to date gave sufficient coverage to one of the sectors most affected by this pandemic, the cultural sector.

However, none of the general measures implemented to date provided sufficient coverage to one of the sectors most affected by this pandemic, the cultural sector. After weeks of demands from industry, the Government has approved a series of fiscal and regulatory measures that try to minimize, as far as possible, the terrible economic consequences that the paralysis of the sector is causing. All of them are included in the [5th May Royal Decree-Law 17/2020](#), which approves support measures for the cultural sector and tax measures to deal with the economic and social impact of the COVID-2019, which is detailed and analysed below.

Measures in support of cinematography and the audio-visual arts:

I) Fiscal measures:

Amendments are introduced, with effect for tax periods beginning on or after 1st January 2020, to Article 36(1) and (2) of 27th November Law 27/2014 on Corporate Income Tax, concerning the deduction for investments in national and foreign productions.



The most significant measures in **national productions** are the following:

Spanish productions common territory	
Before	After COVID Measures
<p>Tax deduction:</p> <ul style="list-style-type: none"> • 25% of the first million of the deduction base, and • 20% on the excess <p>Deduction limit per project</p> <ul style="list-style-type: none"> • €3M. <p>State aid limit (deduction + aid):</p> <ul style="list-style-type: none"> • 50% production cost • 60% production cost (EU cross-border productions) • 70% production cost (new director and production budget < €1M) 	<p>Tax deduction:</p> <ul style="list-style-type: none"> • 30% of the first million of the deduction base, and • 25% on the excess. <p>Deduction limit per project</p> <ul style="list-style-type: none"> • €10M. <p>State aid limit (deduction + aid):</p> <ul style="list-style-type: none"> • 50% production cost • 60% production cost: <ul style="list-style-type: none"> a) Cross-border EU production b) International co-productions with Latin American countries • 75% production cost <ul style="list-style-type: none"> a) Productions made exclusively by female directors b) Productions of special cultural and artistic value c) Documentaries. d) Animation works with budget < 2,5 M. • 80% production cost: <ul style="list-style-type: none"> a) Productions made by new director and production budget < 1.5 M b) Productions filmed entirely in one of the co-official languages c) Productions directed exclusively by persons with a disability equal to or greater than 33%. • 85% production cost: <ul style="list-style-type: none"> a) Short films.

By application of the REF, the impact of the Royal Decree in the Canary Islands is as follows:

Spanish Canarian productions	
Before	After COVID Measures
<p>Tax deduction:</p> <ul style="list-style-type: none"> • 45% of the first million of the deduction base, and • 40% on the excess <p>Deduction limit per project</p> <ul style="list-style-type: none"> • €5,4M. <p>State aid limit (deduction + aid):</p> <ul style="list-style-type: none"> • 50% production cost • 60% production cost (EU cross-border productions) • 70% production cost (new director and production budget < €1M) 	<p>Tax deduction:</p> <ul style="list-style-type: none"> • 50% of the first million of the deduction base, and • 45% on the excess. <p>Deduction limit per project</p> <ul style="list-style-type: none"> • €18M. (*) <p>(*) Pending confirmation through subsequent legislative amendments.</p> <p>State aid limit (deduction + aid):</p> <ul style="list-style-type: none"> • 50% production cost • 60% production cost: <ul style="list-style-type: none"> a) Producciones transfronterizas UE. b) International co-productions with Latin American countries • 75% production cost: <ul style="list-style-type: none"> a) Productions made exclusively by female directors b) Productions of special cultural and artistic value c) Documentaries. d) Animation works with budget < 2,5 M. • 80% production cost: <ul style="list-style-type: none"> b) Productions made by new director and production budget < 1.5 M c) Productions filmed entirely in one of the co-official languages d) Productions directed exclusively by persons with a disability equal to or greater than 33%. • 85% production cost: <ul style="list-style-type: none"> a) Short films.

Thoughts:

- The 5% increase in the deduction rates for domestic production is to be welcomed, as is the increase in the maximum deduction applicable. This development will allow a greater participation of the private capital that wishes it in audio-visual investments.
- It is also to be welcomed that our legislator has encouraged international co-productions with Latin America, extending the intensity limit of state aid for these projects.
- For the first time in common territory, a reference to works in co-official languages was introduced which, until now, had only been included in the Regional Law. From now on, this type of project will enjoy a state aid intensity of 80%.
- For the first time in our tax regulations, the intensity of aid for works directed by people with a degree of disability of at least 33% is also favoured, as well as those directed by women.
- For the first time, although in a wording subject to interpretation, reference is made in our tax legislation to short films.
- In general, the intensity limits for state aid have been increased in certain situations that will undoubtedly facilitate the development of such projects.

For their part, the most significant measures in foreign productions are the following:

Foreign productions common territory	
Before	After COVID Measures
Tax deduction: <ul style="list-style-type: none">• 20% of eligible costs. Requirements: <ul style="list-style-type: none">• Minimum cost in Spain: €1M Limits: <ul style="list-style-type: none">• Limit per project: €3M	Tax deduction: <ul style="list-style-type: none">• 30% with respect to the first million of the deduction base, and• 25% about excess Requirements: <ul style="list-style-type: none">• Minimum cost in Spain: €1M / €200K for pre-production and post-production expenses for animation, and visual effects. Limits: <ul style="list-style-type: none">• Limit per project: €10M

By application of the REF, the impact of the Royal Decree in the Canary Islands is as follows:

Foreign Canarian productions	
Before	After COVID Measures
<p>Tax deduction:</p> <ul style="list-style-type: none"> • 40% of eligible costs. <p>Requirements:</p> <ul style="list-style-type: none"> • Minimum cost in Spain: €1M / €200K for animation and postproduction expenses. <p>Limits:</p> <ul style="list-style-type: none"> • Limit per Project: € 5,4M. 	<p>Tax deduction:</p> <ul style="list-style-type: none"> • 50% with respect to the first million of the deduction base, and • 45% about excess. <p>Requirements:</p> <ul style="list-style-type: none"> • Minimum cost in Spain: €1M / €200K for pre-production and post-production expenses for animation, and visual effects. <p>Limits:</p> <ul style="list-style-type: none"> • Limit per Project: €18M.

Thoughts:

- The great novelty is introduced by the equalization of foreign projects to national ones at the level of tax benefits, by introducing an increase in the applicable deduction rates, differentiating, as in the case of national productions, the deduction applicable to the first million, which is raised from 20% to 30%, from the rest of the cost that goes from benefiting from a 20% to 25% deduction for Spanish territory (50% -45% in the Canary Islands).
- Likewise, the increase in the applicable deduction limit from 3 million euros to 10 million euros for the Spanish territory (18 million euros for the Canary Islands) is to be welcomed.
- However, the great forgotten in the tax measures has been article 36.3 of the Law on Corporation Tax relating to the performing and musical arts, since neither the tax rate applicable to the deduction nor the maximum limit of the same has been increased.

II) Regulatory measures:

Among the measures established by the Royal Decree are those relating to the regulatory obligations provided for in the Cinema Law for cinematographic works receiving aid between 2016 and 2019, expressly determining that producers are not in situations of reimbursement of the aforementioned aid and allowing those cinematographic works that have completed their production process to continue their commercial exploitation:

i. Obligation to release films in cinemas:

- Cinematographic works can be **released through audio-visual communication service providers or platforms**, equating to theatrical release, **until August 31st 2020**.
- Those **films released in 2020 will see a reduction in the number of theatres required**, depending on the nature of the project, the cost of production, as well as the original language and the documentary nature.

ii. Obligation to incur a percentage of P&A (prints and advertising) in accordance with the budget:

- For projects to be **released in 2020** the P&A will be reduced as follows:
 - ✓ General aid: at least **el 7%**
 - ✓ Selective aid: at least **el 3%**
- Where the aid received was less than 75% of that requested, the costs must be at least 5% in the case of general aid and 2% in the case of selective aid.

iii. Extension of deadlines and other modifications for the fulfilment of the following obligations:

- For films scheduled for **release in 2020**, the deadline for submitting the **income statement** to the ICAA and **for commercial release in cinemas is increased**.
- For feature films and short films, whose **deadlines expire in 2020**, the deadlines are raised to communicate the **end of filming, request the qualification and nationality, prove the costs of it** and to **deliver a copy** to the Film Library.
- Cinematographic works receiving general aid in 2019 will receive, on request, **50 % of the aid granted without having to notify the start of filming**.
- **Eligible expenditure incurred by producers which**, because of the health situation, could not be applied, in whole or in part, to the project for which the grant was awarded, will be recognised as a cost.

Although these measures improve the prospects of the producers benefiting from the aid, it would be necessary to enable the possibility of transferring these obligations to 2021, as those projects that decide not to open in this year due to the restrictions on cinema capacity and those projects that start production in 2020 and that face the health measures that will have to be implemented during filming, will suffer great economic losses that will be difficult to recover.

We hope the information is useful and of your interest. At Andersen Tax & Legal we have created a multidisciplinary team to attend to all the questions that may arise on this aspect or in relation to the COVID-19.

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