

Decree-law nr. 22/2017, of February 22

The film production sector is characterised by high investment costs, financing difficulties and a considerable degree of risk. There are structural gaps in the market which, combined with the undisputed cultural value of cinematic expression, make government support for film and audiovisual production legitimate in European and international law. In addition, and apart from the cultural aspect, the economic merits of the film and audiovisual production industry have been amply demonstrated, including positive effects in areas such as tax revenue, employment, skills, business opportunities for small and medium-sized enterprises, tourism and regional and local development. Furthermore, as an arm of the creative industries, the sector falls within the scope of a number of strategic guidelines, including the National Strategy for Research and Innovation for Smart Specialisation 2014-2020, as well as regional smart specialisation strategies.

In most European Union Member States and in many other countries, regardless of the size of their film and audiovisual industry, in parallel with grant programmes based predominantly on artistic and cultural criteria, there are as a rule tax incentives available for film production. It is with the objective of putting Portugal on a level playing field in terms of the attraction of film production activities and related expenditure, that this tax incentive for film production in the form of a Corporate Income Tax (IRC) credit, refundable and calculated on the basis of actual expenditure incurred in Portugal, is now introduced.

The purpose of this incentive is to strengthen, in a sustained form and on a long-term perspective, Portugal's competitiveness as a location for film production, both by stimulating the activity of domestic producers and co-producers, and by attracting quality foreign productions that make the best use of the potential of Portuguese resources.

The specific objectives of the measure are the local economic impact, the development of Portugal's regions and Portuguese culture in terms of tourism and the country's image, the provision of more opportunities for Portuguese filmmaking projects and more opportunities for work and international collaboration for production companies and companies providing film production and post-production services. The ultimate goal is, of course, the promotion of film production as a cultural activity.

The tax incentive to be granted takes the form of a deduction from taxable income for IRC purposes of a percentage of the production costs of feature films. The unique feature of the scheme created by this law lies in the reimbursable nature of the part of the tax credit that exceeds the taxable income of the taxpayer. Effectiveness and equity are thereby ensured in the allocation of incentives, which could benefit all film companies, whether or not they have taxable income in the year in which the costs were incurred.

A limit is also established on the tax credit to be granted, which is set at €4 000 000.00 (four million euros) per project. Recognition of the right to the incentive will be the responsibility of the Cinema and Audiovisual Institute (ICA, I.P.) which, prior to the incurring of eligible expenditure by taxpayers, will issue a decision on provisional recognition of eligibility, enabling the amount of tax credit due when the project is concluded on the agreed terms to be estimated. This mechanism offers greater certainty to promoters and investors and a greater guarantee of consistency in the allocation of the benefit.

A period of 60 days is established for payment of the refund by the Tax and Customs Authority, thereby providing the necessary predictability and security to investors.

In creating this tax incentive, its compatibility with European competition law in terms of state aid has been ensured, in particular with Commission Regulation (EU) 651/2014 of 16 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

Wherefore:

In the exercise of the legislative authority granted by Article 183 of Law 7-A/2016 of 30 March approving the State Budget for 2016, and pursuant to Article 198(1,b) of the Constitution, the Government decrees the following:

Article 1

Object

This decree-law creates a tax incentive for film production by the addition of an Article 59-E to the Tax Benefits Statute (EBF), approved by Decree-Law 215/89 of 1 July, and the corresponding amendment to the Corporate Income Tax Code (IRC Code), approved by Decree-Law 442-B / 88 of 30 November.

Article 2

Nature of the incentive

This incentive, awarded in the form of a tax credit, constitutes a scheme of State aid for audiovisual production compatible with the internal market, in accordance with Article 107(3) of the Treaty on the Functioning of the European Union, and is adopted under Commission Regulation (EU) 651/2014 of 16 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

Article 3

Annual tax credit limits

1 – The total amount of tax credit to be awarded annually is as follows:

- In 2017, €7 000 000.00 per fiscal year;
- In 2018, €10 000 000.00 per fiscal year;
- From 2019 to 2021, €12 000 000.00 per fiscal year.

2 – These limits may be increased by order of the Ministers responsible for finance and culture, up to the limit provided for in Article 4(1, *aa*) of Commission Regulation (EU) 651/2014 of 16 June 2014.

Article 4

Addition to the Tax Benefits Statute

Article 59-E is added to the Tax Benefits Statute approved by Decree-Law 215/89 of 1 July, with the following wording:

“Article 59-E

Tax incentive for film production

1 – IRC taxpayers resident in Portugal, and non-residents with permanent establishment in that territory, registered in accordance with Articles 58 and 59 of Decree-Law 124/2013 of 30 August, may deduct from their IRC tax liability, calculated in accordance with Article 90 of the IRC Code, the amount corresponding to 20% of the film production expenditure incurred in Portugal and eligible for the purposes of this incentive, as provided in this Article and in the corresponding regulations.

2 – The percentage of deduction referred to in the previous paragraph may be increased up to a maximum of 25% in the case of works whose original version is in Portuguese and works of special cultural importance or whose production has a very significant impact on Portuguese cinema.

3 – The percentage applied for the purposes of paragraph 1 shall be 25% of the following expenses in all cases:

- a)* Costs incurred in areas of low population density, in accordance with the geographical area included for the purposes of the National Territorial Cohesion Programme;
- b)* Remuneration of actors and technicians with disabilities.

4 – Expenditure that cannot be deducted in the tax period in which it was incurred by reason of insufficient tax liability may be deducted up to the tax period which coincides with the completion of the film.

5 – The incentive applies to expenditure on projects that meet all of the following requirements:

- a)* Being a film project designed for exhibition initially in commercial cinemas;
- b)* Involving eligible production expenses incurred in Portugal amounting to at least €1 000 000.00;
- c)* Not being included in Article 12(3, d) of Decree-Law 124/2013 of 30 August.

6 – Production expenditure on films of the following types is eligible:

- a)* Portuguese productions within the meaning of Decree-Law 124/2013 of 30 August;
- b)* Portuguese international co-productions within the meaning of Decree-Law 124/2013 of 30 August. The Portuguese participation may be majority or minority;
- c)* Works of Portuguese initiative executed by private contractual instruments under an arrangement similar to that of Portuguese international co-productions, but not eligible for recognition as an official co-production under international treaties on co-production;
- d)* Works of foreign initiative executed by private contractual instruments under an arrangement similar to that of Portuguese international co-productions, but not

eligible for recognition as an official co-production under international treaties on co-production;

- e) Foreign works produced wholly or partly in Portugal using a local executive producer, or through a subsidiary in Portugal or a special, limited duration vehicle.

7 – The incentive may not exceed €4 000 000.00 per film.

8 – As a condition for the tax deduction provided in paragraph 1, the entities referred to therein shall, prior to incurring the film production expenditure, obtain provisional recognition from the Cinema and Audiovisual Institute (ICA, I.P.), declaring the eligibility of the promoter, the project and the respective expenditure.

9 – The provisional recognition referred to in the preceding paragraph must be revised if there are changes to the implementation of the compared with the plan, as well as at the end of each tax year where the production involves expenditure over more than one year.

10 – After completion of the work and certification of the related final accounts by an auditor, the taxpayer shall apply to ICA, I.P. for definitive recognition of general compliance and eligibility of the expenditure, together with final calculation of the applicable deduction rates and the amount of the deduction, by application to be sent by the end of January of the following year, or by the end of the month following the end of the tax period, in the case of taxpayers to whom Article 8, paragraphs 2 and 3 of the IRC Code apply.

11 – In the event that the amount deducted from tax liability is greater than that resulting from the eligible expenditure following definitive recognition by ICA, I.P., the amount of IRC which was not paid as a result of that deduction, plus the corresponding compensatory interest, shall be added to the amount of IRC assessed in respect of the tax period in which the work was completed.

12 – The part of the amount to be deducted, calculated in accordance with paragraph 10, which cannot be deducted, shall be reimbursed within 60 days of notification to the Tax and Customs Authority of the decision on definitive recognition by ICA, I.P.

13 – This incentive may be accumulated with other state aid up to the limits of the aid intensity rate laid down in Commission Regulation (EU) 651/2014 of 16 June 2014. In no case may there be double financing of the same budget line.

14 – The procedures for application for and recognition of the right to the incentive, for the refund of the surplus credit and the admission criteria for projects and the increase in the deduction rate shall be regulated by order of the Ministers responsible for finance and culture.”

Article 5

Amendment to the Corporate Income Tax Code

Article 92 of the IRC Code, approved by Decree-Law 442-B/88 of 30 November, shall read as follows:

“Article 92

[...]

1 - [...].

2 - [...]:

a) [...];

b) [...];

c) [...];

d) [...];

e) [...];

f) [...];

g) [...];

h) The incentive for film production provided in Article 59-E of the Tax Benefits Statute.”

Article 6

Entry into force

This decree-law shall enter into force on the day following its publication.

Seen and approved by the Council of Ministers on December 15, 2016.

Augusto Ernesto Santos Silva — Mário José Gomes de Freitas Centeno — Luís Filipe Carrilho de Castro Mendes

Promulgated on February 2, 2017.

The President of the Republic, MARCELO REBELO DE SOUSA.

Referendado em 14 de fevereiro de 2017.

O Primeiro -Ministro, António Luís Santos da Costa.