



## TAX INCENTIVES FOR FILM PRODUCTION

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Decree-Law no. 22/2017 of 22 February has created a tax incentive for film production, by amending article 59-E of the Tax Benefits Statute and making the corresponding change to the Corporate Income Tax (CIT) Code.

In general terms, the new tax incentive gives corporate income tax payers resident in Portugal, and non-residents with a permanent establishment here, the right to deduct to the tax due (“*coleta*”) 20% (or 25%) of eligible expenses incurred in Portugal in the production of feature-length films.

However, the new legislation does not clarify what is meant by “expenses incurred in Portugal”, so a doubt remains as to how expenses of foreign actors, technicians and means of production will be classified. Ultimately, the restrictive application of the concept only to amounts paid to entities resident in Portugal may raise questions of violation of the European principles of free movement of persons and goods, when the expenses are paid to entities within the European Union.

One distinctive feature of the new incentive is that the tax credit is reimbursable to the extent it exceeds the tax due (“*coleta*”) by the taxable person. This approach ensures effectiveness and fairness in granting the incentive, which can benefit all film companies, regardless of whether or not they have assessed any tax due (“*coleta*”) in the year in which they incur the expenses.

The new incentive is limited by an annual ceiling and also by project (EUR 4,000,000) - please refer to our comments below.

The Portuguese Cinema and Audiovisual Institute (*Instituto do Cinema e do Audiovisual - ICA*) is responsible for recognising the right to the incentive and, prior to the expense is being incurred, it will issue a decision on provisional recognition of eligibility.

The new legislation also sets a period of 60 days for payment of the reimbursement by the Portuguese tax authorities, and this gives investors the foreseeability and security they need.

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### DESCRIPTION OF THE NEW TAX INCENTIVE

The incentive is a tax credit to be used through a deduction from the tax due (“coleta”). It corresponds to 20% of the film production expenses incurred in Portugal and considered eligible under the new legislation and the respective regulations.

The percentage referred to above will be 25% in the case of expenses (i) incurred in areas of low population density, in accordance with the geographical area considered for the purposes of the National Programme of Territorial Cohesion, and/or (ii) of the pay for actors and technicians with a disability.

An increase up to a maximum of 25% may be applied in the case of films whose original version is in Portuguese and in the case of films with special cultural relevance, or whose production has had a significant impact on the Portuguese film industry.

The new incentive can be cumulated with other state support, up to the limits of the rate of aid intensity established in Regulation (EU) no. 651/2014 of the Commission of 16 June 2014 but, in no circumstances may there be any double financing of the same item.

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### OBJECTIVE REQUIREMENTS

The incentive applies to expenses of projects that meet all of the following requirements:

- The project must be for a film destined to be distributed initially in commercial cinemas;
- It must involve eligible production expenses, incurred in Portugal, of a minimum of EUR 1,000,000;
- The project must not fall under 12(3)(d) of Decree-Law no. 124/2013 of 30 August (in other words, it must not be a film whose object, content or orientation has the essential nature of advertising, news or political propaganda; in must not be classified as pornography or as offending human dignity; it must not convey messages or intentionally promote, in abuse of freedom of expression, racism, xenophobia, violence or political or religious intolerance, or other values and attitudes that clearly go against the fundamental rights and liberties enshrined in the Constitution of the Portuguese Republic and in international law).

### ELIGIBLE EXPENSES

Film production expenses of the following types are eligible:

- Portuguese production works within the meaning of Decree-Law no. 124/2013 of 30 August;
- Portuguese/international coproduction works within the meaning of Decree-Law no. 124/2013 of 30 August, and Portuguese participation may be majority or minority;
- Works of Portuguese initiative, carried out under private contract, in an analogous way to Portuguese/international coproduction, but which may not be recognised as an official coproduction under international coproduction treaties;

- Works of foreign initiative, carried out under private contract, in an analogous way to Portuguese/international coproduction, but which may not be recognised as an official coproduction under international coproduction treaties;
- Foreign works produced in whole or in part in Portugal, by use of a local executive producer, or through a branch in Portugal or a specific vehicle of limited duration.

### VALIDATION OF ELIGIBLE EXPENSES AND APPLICABLE PROCEDURES

As a condition for the tax deductibility of film production expenses, before the production begins, interested bodies must obtain provisional recognition from the ICA, which declares the eligibility of the promoter, the project and expenses in question.

The provisional recognition must be reviewed whenever changes are made to the execution of the project compared with what was originally planned. It must also be reviewed at the end of every tax year in cases in which the production gives rise to expenses in more than one tax year.

After conclusion of the works and certification of the final accounts by a statutory auditor, the taxable person must ask the ICA for definitive recognition of general compliance and of the eligibility of the expenses, as well as the final calculation of the applicable rates of deduction and the amount of the deduction. This is done by means of an application to be sent by the end of the month of January of the following year, or up to the end of the month following the end of the taxation period (if the taxable person has adopted a taxation period different to the calendar year).

The procedures for application for and recognition of the right to the incentive, for payment of the remaining credit, and the criteria to admit projects and to increase the deduction rate will be regulated by order of members of the Government.

#### ANNUAL LIMITS ON THE NEW TAX CREDIT

Without prejudice to the limit applicable to each project (see next point), the maximum amount of the tax credit to be given annually is as follows:

- In 2017 - EUR 7,000,000;
- In 2018 - EUR 10,000,000;
- From 2019 to 2021 - EUR 12,000,000 in each tax year.

The limits set out above may be increased by order of the members of the Government responsible for the areas of finance and culture, up to the limit set out in article 4(1)(aa) of Regulation (EU) no. 651/2014 of the Commission of 16 June 2014.

#### UPPER LIMIT PER PROJECT

The incentive may not exceed EUR 4,000,000 per film.

#### CARRY-FORWARD OF EXPENSES TO SUBSEQUENT YEARS

Any expenses that cannot be deducted in the taxation period in which they were paid because of an insufficiency of tax due ("coleta") may be deducted up to the end of the taxation period that coincides with the conclusion of filming.

#### REIMBURSEMENT OF THE PROPORTIONAL PART OF THE INCENTIVE THAT CANNOT BE DEDUCTED

Any part of the amount to be deducted that cannot actually be deducted is subject to reimbursement within 60 days of communication to the Portuguese tax authorities of the decision of ICA as to definitive recognition.

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PLMJ Tax Team

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