

Tax credit for investments in film productions, Spanish audiovisual series and live shows

Analysis of the novelties introduced by Law 11/2020, of 30 December, on the General State Budget for the year 2021 (“LPGE”) addresses to the audiovisual sector.

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In the context of the health crisis caused by COVID-19, the audiovisual sector has been one of the most affected. The need to promote the audiovisual industry, has led to the publication of the Royal Decree-Law 17/2020 which raised the percentages and maximum limits of the tax credit for investments in Spanish productions of feature films and audiovisual series of fiction, animation or documentary films regulated in article 36.1 of the Corporate Income Tax Law 27/2014 -LIS-, as we covered in our [previous tax alert](#) from May, 7th 2020.

Following the aforementioned regulatory amendments, and with effect for years beginning on or after 1 January 2021, the LPGE introduces significant changes to the CIT tax credits for investments in Spanish productions or audiovisual series (Article 36.1 of the LIS) and in live performing arts and music shows (Article 36.3 of the LIS).

The most significant changes that have been included under this LPGE are as follows:

- **Taxpayers financing the production are now also entitled to the tax credits of Articles 36.1 and 36.3 of the LIS** provided that they do not acquire intellectual property or other

rights in respect of the results of the production, which must in any case be owned by the production company and that the contributions are made before the corresponding certificate of nationality of the production is obtained.

- Until the entry into force of the LGPE for 2021, these tax credits could only be applied by taxpayers who were considered producers, which made it impossible for a private investor to benefit from the tax credit, except in those cases in which the investment was structured through Economic Interest Groupings (AIEs).
- The structure of the productions through the AIEs allowed and still allows, the producer to raise financing, and the investor to be remunerated through the tax transparency mechanism that allowed him to use the tax credits generated by the AIEs, in proportion to the participation in their own funds (tax credits regulated in articles 36.1 and 36.3 of the LIS and tax net operating losses -NOLs-).
- According to this modification, the aforementioned incentives are positioning financing contracts as an alternative mechanism for raising



This amendment modifies these incentives, positioning finance contracts as an alternative mechanism for raising finance to AIEs”

- finance to AIEs, as it was already allowed by tax regulations in Navarra (an Autonomous Region in Spain).
- The refund of the investments shall be made through tax credits that the producer transfers to the funder, which amount must not exceed the 120% of the financed amount. The tax credit excess may be applied by the producer.
- It will be required to sign a financing contract with the producer, including the following requirements:
 - a) Identity of the producer and the funder.
 - b) Description of the production.
 - c) Budget for the production with a detailed breakdown of the costs, in particular those to be incurred in Spanish territory.
 - d) Method for financing the production, specifying the amounts contributed by the producer, those contributed by the funder and those corresponding to subsidies.
 - e) Other matters established by regulations.

The modification gives the tax incentive regulated in Article 36.1 of the LIS with greater legal certainty insofar as it is established that the **certificates** issued by the Institute of Cinematography and Audiovisual Arts (ICAA) **are binding for the Spanish Tax Authorities for the accreditation, application of the tax credit and the identification of the producer** (beneficiary of the tax incentive) regardless of their date of issuance. This point would be interesting in the case of productions carried out through AIEs (whose consideration as a producer has historically been subject to discussion with the Spanish Tax Authorities).

It is established that **the increased limit of 50% (90% in the Canary Islands) of the gross tax liability** (less tax credits for the avoidance of double international taxation and allowances), now also applies if the tax credits for Spanish productions, audiovisual series and live shows exceed 10% of the

gross tax liability for the tax period. Previously, the increased limit could only be applied if the tax credits for research and development and technological innovation activities exceeded the aforementioned amount, and tax credits for Spanish productions, audiovisual series and live shows did not give rise to this additional reduction in the final CIT liability.

It is explicitly included in the regulation that the ownership of the film productions and audiovisual series must remain at the producer company for a period of 3 years. In addition, it establishes the right to market all or part of the exploitation rights derived from the work to one or more third parties.

The approved measures, although it may seem that will simplify the legal structure through which the production financing can be instrumented, limit the maximum tax pay back that an investor can obtain if the investment is formalized through a financing contract (20% of the amounts provided), whereas, until now, investments structured through AIEs allowed the investor to obtain a higher tax profitability in many cases.

In this sense, it cannot be overlooked that even if the regulation only limits the tax pay back received by the investor for the amounts provided through a financing contract, it opens the discussion about if such a limitation could be applied to the profitability on investments made through AIEs.

In any event, the modifications to the incentives regulated in articles 36.1 and 36.3 of the LIS offer an alternative to the fundraising schemes for the financing of works produced in Spanish territory articulated through the AIEs.

In any case, we recommend carrying out an exhaustive analysis of the structure of Spanish productions of feature films and fiction, animation or documentary audiovisual series, live performing arts and music shows, and how to raise the necessary funds to carry out these productions.

