

The Congress of Deputies (Spain's lower house) has given its approval to the reform of the tax incentive system for the audio-visual industry



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Let's talk

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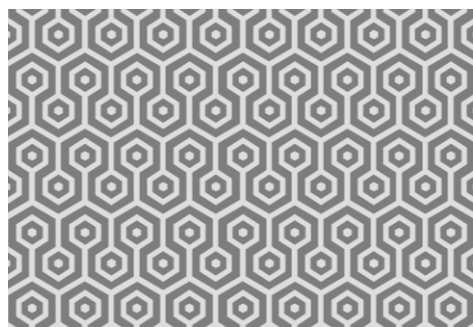
On 24 November Spain's lower house approved the Bill on the temporary taxation of energy companies, credit institutions and banks, as well as creating a temporary solidarity tax on high-net worth individuals and amending certain tax rules. This Bill has been sent to the Senate for approval.

As we reported in our newsletter of 16 November 2022 (<https:// analisis-de-la-propuesta-de-reforma-de-los-incentivos-fiscales-a-la-inversion-en-producciones-cinematograficas-series-audiovisuales-y-espectaculos-en-vivo-de-artes-escenicas-y-musicales/>), the Socialist and Confederal de Unidas Podemos-En Comú Podem-Galicia Parliamentary Groups submitted a proposal to amend this Bill on the modification of the regulation of the financing agreements governed by article 39.7 of the Corporate Income Tax Act (hereinafter the CIT Act).

The text of the Bill approved by the lower house brings in changes to the amendment of article 39.7 of the CIT Act which was initially proposed and thereby largely solves the problems which we identified in our newsletter of 16 November 2022.

With effect for the years beginning on or after 1 January 2021 (under the previous wording , for the years beginning on or after 1 January 2022), amendments are proposed to article 39.7 of the CIT Act in the terms specified below (the main changes to the above-mentioned proposed amendment are highlighted in boldface):

- **Taxpayers** who participate in the financing of production of Spanish feature-length films, short-films, audio-visual fiction, animation or documentary series, or live performing arts and shows **may apply the incentives generated by the producer envisaged in article 36.1 and 36.3 of the CIT Act** when the amounts contributed not only finance production costs but also **expenses for the obtaining of copies, advertising or promotion payable by the producer up to the limit of 30% of production costs.** (The amendment initially submitted to Parliament has been modified to include these expenses in the tax credit base transferred to the investor).



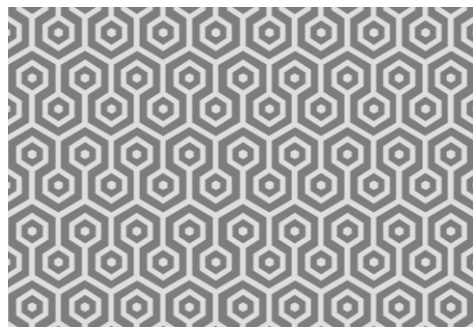
- Investments to finance production may be made at any time during production, prior to or after the production costs are incurred by the producer, until the certificates governed under articles 36.1 and 36.3 of the CIT Act are obtained.
- Amounts **to fund expenses for obtaining copies, advertising and promotion payable by the producer may be contributed before or after the time the producer incurs them but never after the tax period in which the producer incurs them.**
- **The amount of the tax credits to be applied by the investor should be determined on the same terms as would have been applied by the producer.**

The new proposal for the wording of article 39.7 of the CIT Act states, like the wording of article 39.7 of the CIT Act in effect, that the tax credit to be applied by the investor will be determined on the same terms as would have been applied by the producer (the wording of the proposed amendment eliminated this from the article), which, in our opinion, reinforces the interpretation that if the producer can apply the tax incentive rates governed by articles 36.1 or 36.3 of the CIT Act, increased as provided in the Canary Islands economic and tax scheme, the investor could also apply the incremental rates to calculate its tax credit, irrespective of its being resident or not in the Canary Islands.

- The maximum amount of the tax credit to be applied by the investor is changed so as to adjust it to the possibility of transferring it to the investor for the investments made to finance production costs and obtain copies as referred to above. **The maximum tax credit which may be applied by the investor is thus the result of applying the amount contributed by the investor to**

finance production costs or expenses for obtaining copies, advertising and promotion payable by the producer by 1.20. The excess amount may be applied by the producer who generated the entitlement to it.

- Several changes are introduced to the current wording of Article 39.7 of the CIT Act. In this regard, if the proposed amendment is carried out, the investor could apply the relevant tax credit to the contributions made during the years that the production stage of the work lasts (i.e. including those made in a year prior to the end of the production) in the year in which the tax credit may be applied pursuant to the provisions of Articles 36.1 and 36.3 of the CIT Act, which is the year in which the financing agreement and relevant certificates have to be presented to the tax authorities.
- It is clarified that **the financing agreement may be signed at any time during the production stage.** In addition, the minimum requirements of the financing agreement regulated by Article 39.7 of the CIT Act are changed and the **possibility is included of one or more financing agreements being signed between the producer and the investor.**
- With regard to the agreements, the minimum information is extended in order to adapt them to the possibility of financing expenses for obtaining copies, advertising and promotion payable by the producer. The possibility of regulating the financing agreement through enabling regulations is eliminated, thereby enhancing legal certainty in the incentive.
- The tax credit is not applicable when the investor and the producer are related parties.



- **The investor may apply the increased tax incentive limit of 50% to gross tax payable** provided that the tax credit amount envisaged in articles 36.1 and 36.3 of the CIT Act pertaining to the finance provider is equal to 25% or more of its gross tax payable less international double tax deductions and tax relief (the previous wording of the amendment made the increased limit impossible to apply and the current CIT Act makes no reference to it).

On the other hand, the Bill approved by the Plenary does not bring in amendments to the proposed reform of articles 36.1 and 36.2 of the CIT Act included in the amendment presented by the Socialist and Confederal de Unidas Podemas - En Comú Podem-Galicia Parliamentary Groups which we referred to in our newsletter of 16 November 2022.

The proposed amendments are largely aligned with the interpretation afforded to date to article 39.7 of the CIT Act by a majority of the audio-visual industry. If they do come into effect, they would largely overrule a significant portion of the interpretive approaches upheld by the Directorate General of taxes (DGT) in its binding ruling V1811-22, of 29 July 2022 (this matter is analysed in greater detail in our previous newsletter) as they would take effect from the date on which the provision comes into force, i.e., for all financing agreements entered into from 1 January 2021.

In any event, we will have to wait and see the text which is finally approved following the end of parliamentary procedure.