

Spanish Film-tax credit

A tax-investment scheme aimed at boosting the Spanish film industry

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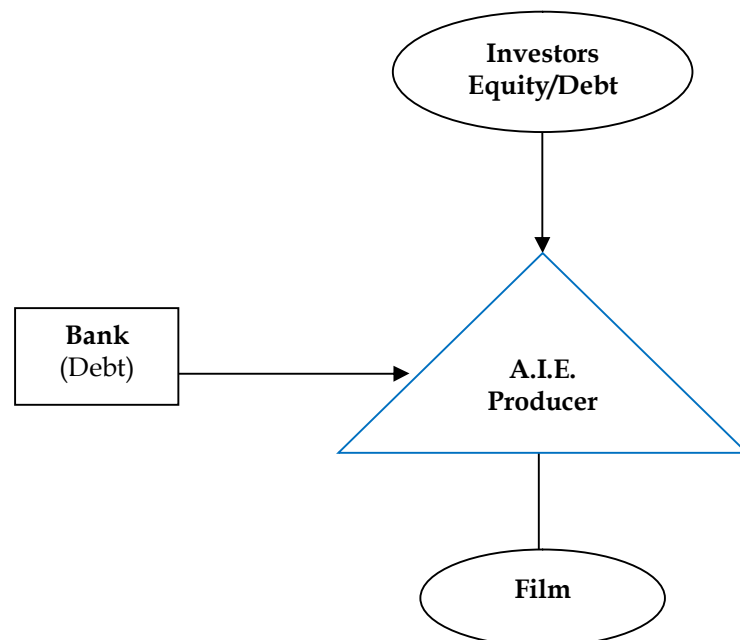
The Spanish Lawmaker clearly wants to boost the Spanish film industry. Even though the Spanish patent box regime is not applicable to these producing/investing schemes and some more light should be shed by the authorities particularly with regard to the Spanish-expenditure-test or the administrative certificate, the tax reform should be welcomed not only by the **industry**, but also by **high net-worth investors**, who can often invest in these schemes and obtain a good tax-yield in return.

To back the industry up the tax credit is not temporary anymore -unlike previous years when the tax credit was subject to a deadline and was necessary to approve extensions of it- and the activities and investments that can profit from the Spanish tax incentives have been widened, as follows:

- ✓ The first tax credit is applicable on the investment in cinematographic productions or audio-visual series, which is applicable not only on production costs but also on P&A costs, up to a limit of 40% of production costs. The tax-credit rate is of 20% on the first Euro Million 1 and 18% on the excess over that amount. The tax credit is subject to a cap of Euro 3 Million. Also, there is test of "Spanish expenditure" (i.e. the expenses to be borne in Spain). The amount of this deduction, together with the rest of aids received by the taxpayer, cannot exceed 50% of the production costs.
- ✓ The second tax credit is of 15% on expenditure on the execution in Spain of a foreign production of cinematographic feature films or audio-visual works, which allows for the physical production of physical copies prior to mass industrial production. The tax credit is subject to a cap of Euro 2,5 Million. This tax credit is also subject to a "Spanish expenditure test" (i.e. the expenses to be borne in Spain). The amount of this deduction, together with the rest of aids received by the taxpayer, cannot exceed 50% of the production costs. Taxpayers can claim a refund of this tax credit on foreign productions according to the procedure set out in the Spanish law.
- ✓ And the third tax credit is applicable on the expenditure on production and exhibition of live shows and musicals. The tax credit is subject to a cap of Euro 0,5 Million. The amount of this deduction, together with the rest of aids received by the taxpayer, cannot exceed 80% of said expenditure.
- ✓ The tax credits will be reduced in the amount of subsidies received, if any.
- ✓ The first tax credit can be applied upon completion of the production, except for animated films or cartoon-works (i.e. the tax credit is applicable in the tax year in which the certificate of Spanish nationality is obtained).
- ✓ Due to other technicalities of the Spanish Corporate Income Tax (CIT) Law, the applicable tax credit is subject to a global top-limit. The excess, if any, can be carried forward within the following fifteen tax years.
- ✓ In the Canary Islands, the rates mentioned above can be higher, and the annual top-limit might be higher, too. Thus, as long as certain conditions are met, in case of Spanish productions the tax credit is 40% for the first million € invested in the

production and 38% of the remaining amount invested, being the maximum credit € 5,400.000 per film. As per International films with production services made in the Canary Islands, the tax credit is 35% tax rebate of eligible costs spent in the Island, being the maximum amount of deduction € 4,500,000 per film.

- ✓ Under some circumstances, individual entrepreneurs can also enjoy said tax credits for Personal Income Tax (PIT) purposes.
- ✓ There is a transitional rule according to which the tax credits generated before January 2015 and still pending to be applied at that date might be applied from January 2015 onwards according to the rules that were in force before January 2015.
- ✓ When designing the structure, several accounting and tax factors have to be considered, such as the film amortisation rate (e.g. declining balance depreciation), the taxable base of investors, the applicable tax rate, the tax year when the tax incentives can be effectively applied, the limitation on the tax deduction of interest borne, or on the tax deduction of tax losses, if any, the holding period of the asset to consolidate the tax credits, or the withholding tax on income.
- ✓ The Spanish Cinema Law expressly authorises the use of certain schemes to structure the investment, such as the so-called and below indicated Agrupaciones de Interés Económico (“AIE”) and / or Entidades de Capital Riesgo (“ECR”).



- ✓ In a nutshell, as demanded by the film-industry, the Spanish tax credits could have been higher. Yet, the reform should be welcomed by both, the industry and investors, who can profit from this schemes under a tailored tax advice.

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