

V1746-15

General Service on Corporate Income Tax

02/06/2015

Corporate Income Tax Law (LIS)/ Law 27/2014, of 28 November, article 36.2

## DESCRIPTION-FACTS

The company making the inquiry is a Spanish production company registered in the Film Production Company Registry of the Ministry of Education, Culture and Sport. This company will be in charge of the executive production of a foreign film, specifically a substantial part of one season of a TV series to be shot in Spain leading to a master copy to be subsequently mass produced.

In order to carry out the executive production of the series, the inquirer will incur in the following expenditure, amongst others, related to the delivery of goods or providing services in Spain:

- Production crew: executive producer, producer and production assistant.
- Direction crew: director, assistant director, property master, script supervisor, casting staff and extras and cast controllers.
- Set decoration crew: set designer, decorators, florists, decorator assistant, set dresser, property assistants, carpenters, etc. And the material needed to build the set (construction material, carpentry, painting, fabrics, etc)
- Wardrobe and make-up crew: costume designer, seamstress, hairdressers, make-up artists. It would also include expenditure on wardrobe, make up, wigs, etc.
  - Special effects crew: special effects technician, scale model makers, etc., as well as pyrotechnic materials, smoke-producing materials, combustion accelerants, detonators, extinguishers, etc.
  - Camera crew (camera operators, assistants, etc.), lighting and sound.
  - Technical crew: including, on the one hand, the staff (telecommunication technical engineer, electronic maintenance technician, image control technician), and on the other hand, related expenditure (mobile telephones, internet, satellite lines, data lines for routers, etc.).
  - Secondary cast like general extras, special extras, stunt doubles, doubles and stand-ins.
- Additional staff: choreographers, armorers, army advisors, dialogue coaches, animal wranglers, drivers, cleaning staff, security staff, medics and ambulances, work risks supervisor at the set, labourers to help unload trucks and move technical equipment or props.
- Maintenance and accommodation for the crew, both during pre-production (for instance when scouting for exterior locations) or during production (the shooting itself)
- Maintenance and accommodation expenses for the crew working in places other than the set (such as crew in charge of property, locations, production, drivers on the road, etc.) who cannot enjoy the set catering or stay at accommodation near the shooting area.
- Equipment transportation expenses
- Travelling expenses, within Spain, due to the shooting taking place in different locations, including pre-production work for location scouting and / or journeys to choose the cast.
- Air, sea and / or road transportation expenses of shooting equipment, props and / or grip equipment to be used in the shooting coming to Spain from other countries.
- Public liability insurance specific for the film production
- Hiring and or / purchasing furniture and machinery (gazebos, umbrellas, portable toilets, fences, chairs, tables, make-up mirrors, generators, cranes, etc).
- Hiring shooting locations (castles, bullrings, factories, etc.), including fees and taxes paid to Town Councils for certain exterior locations. Hiring other premises directly involved in the production (premises or caravans for wardrobe or make-up, managerial meetings, security huts, storage huts etc.).
- Hiring animals, guns and ambulances for the shooting.
- Administration staff, including hiring the premises (administration office), staff expenses (head accountant, accountant, paymaster and assistant accountant), hiring office machine and furniture (photocopiers, printers, office furniture, etc.) purchasing stationery, and courier expenses.
- Other items like work and legal advisers.

Tax amortization on assets directly involved in the executive production of the series proportionate to their allocation in the series.

Some of the above expenses are incurred into at times other than the shooting period itself, like the pre-production stage (casting, exterior location scouting) or after shooting (technical production of special effects).

## QUERY

- 1) Which of the above expenses would be part of the deduction base as provided for in article 36.2 of Law 27/2014, of 27 November?
- 2) Is it understood that expenditure has been made in Spain if the services are provided or the goods are delivered in Spanish territory, regardless of the supplier being resident in Spain or not? In the case of the service being partially provided in Spain, does a proportional allotment apply to such expense?
- 3) Must the deduction be applied in the period when the executive production services provided by the inquirer conclude? Is it understood that these services conclude when the executive production in Spain is finished so that the subsequent administrative tasks do not delay applying the deduction?
- 4) In order to determine the deduction base and its limit, is the production understood to be a whole season?

## FULL ANSWER

Section 2 in article 36 of Law 27/2014, of 27 November (BOE of 28 November, on Corporate Income Tax (henceforth LIS), establishes the following deduction:

"2. Producers registered in the Film Production Registry of the Ministry of Education, Culture and Sport who are in charge of executing the production of a foreign feature film or audiovisual work leading to a master copy to be subsequently mass produced. have the right to a 15 per cent deduction on the expenses incurred into in Spain provided that these amount to a minimum of 1 million Euros. The deduction base is made up of the following expenses met in Spain which are directly related to the production:

1<sup>st</sup> Expenditure on creative crew, provided they have their tax residence in Spain or in any other European Economic Area Member State. This is capped at 50,000 Euros per person.

2<sup>nd</sup> Expenditure on technical industries and other suppliers.

This deduction is capped at 2.5 million Euros per production.

The deduction in this section is excluded from the limit referred to in the last paragraph of section 1 in article 39 of this Law. This deduction will not be computed in the calculation of the said limit.

The amount of this deduction together with any other aids received by the taxpayer cannot exceed 50% of the production cost.

Regarding creative staff and technical industries referred to in section 2 of article 36 of LIS, article 4 of Law 55/2007, of 28 December (BOE 29 December), establishes that:

"Regarding that provided for by this law, it is understood that:  
(...)

- j) The Creative staff is made up of the creative crew in a film or audiovisual work including:
- Authors - according to article 5 of this Law are the director, the scriptwriter, the director of photography and the score composer.
  - Actors and other artistes who take part in the production.
  - Technical creative crew: editor, production designer, editor, sound director, costume designer and the head of prosthetics.

(...)

p) Technical industries: the necessary industries to make the film, from the shooting to the first copy or digital master, in addition to those needed for the distribution and circulation of the films using whichever means”.

In accordance with the above, the following expenses will be included in the deduction base:

1<sup>o</sup>) Expenses related to the creative staff exclusively applicable to the director, the scriptwriter, the director of photography, the music composer, actors and other artistes taking part in the production, editor, production designer, sound director, costume designer and head of prosthetics, provided they have their tax domicile in Spain or in a European Economic Area Member country. These expenses are capped at 50,000 Euros per person.

2<sup>o</sup>) Expenses related to technical industries and other suppliers. The following expenses are included:

- Those related to the executive producer, producer and production assistant.
- Those related to the director crew: director, assistant director, property master, script supervisor, casting staff and extras or cast controllers.
- Expenses incurred into related to the set design crew that have not been included in the expenses of the creative staff. These expenses involve the set designer, set decorators, florists, decorator assistant, set dresser, property assistant, carpenters, etc. and the material needed to build the set (construction material, carpentry, paint, fabrics, etc.)
- Expenses of the wardrobe and make-up crews which cannot be included in those of the creative staff. These include expenditure on dressmakers, hairdressers, make-up artists, etc. It would also include expenses on wardrobe, make-up, wigs, etc.
- Expenditure related to special effects, including special effects technician, scale model makers, etc., as well as pyrotechnic material, smoke-producing materials, combustion accelerants, detonators, extinguishers, etc.
- Camera crew expenses (camera operators, assistants, etc.), lighting and sound.
- Expenditure on the technical crew, including, on the one hand, the crew (telecommunication technical engineer, electronic maintenance technician, image control technician), and on the other hand, related expenditure (mobile telephones, internet, satellite lines, data lines for routers, etc.).
- Expenses related to secondary cast which cannot be included in the creative staff, such as extras in general, special extras, stunt doubles, doubles and stand-ins.
- Expenses on additional staff: choreographers, armorers, army advisors, dialogue coaches, animal wranglers, drivers, cleaning staff, security staff, medical staff and ambulances, work risks supervisor at the set, labourers to help unload trucks and move technical equipment or props.
- Maintenance and accommodation expenses for the crew, both during pre-production (for example, while scouting for exterior locations) or during production (while shooting).
- Maintenance and accommodation expenses for the crew working in places other than the set (such as the crew in charge of property, locations, production, drivers on the road, etc.) who cannot enjoy the catering at the set or stay at accommodation near the shooting area.
- Travelling expenses, within Spain, due to the shooting taking place in different locations, including pre-production work for location scouting and / or journeys to select the cast.
- Expenses incurred in the hiring and / or purchasing of furniture and machinery directly related to the production of the series, such as pop-up gazebos, umbrellas, portable toilets, fences, chairs, tables, make-up mirrors, generators, cranes, etc.
- Hiring shooting premises and locations (castles, bullrings, factories, etc.), including fees and taxes paid to Town Councils for certain exterior locations. Hiring other premises directly involved in the production (premises or caravans for wardrobe or make-up, managerial meetings, security huts, storage huts etc.).
- Expenses for hiring animals, weapons and ambulances for the shoot.
- Public liability insurance covering the film production specifically.

The following expenses related to administration tasks cannot be included in the deduction base:

- Expenses incurred into for the air, sea and / or road transportation of shooting equipment, property and / or machinery to be used in the shoot from other countries into Spain as these expenses are not made in Spanish territory.
- Expenses on labour and legal advice.
- Expenses related to the administration staff, including hiring the premises (administration office), staff expenses (head accountant, accountant, paymaster and assistant accountant), hiring office machinery and furniture (photocopiers, printers, office furniture, etc.) purchasing stationery, and courier expenses.

The costs of the tax depreciation of those assets directly involved in the executive production of the series, proportionate to their allocation in the series, will not be part of the deduction base when these are in no case expenses incurred into in Spanish territory, but investments abroad which are later allocated to make the series.

2) It is understood that the expenses to be included in the deduction base have been made in Spain when the service is actually provided in Spain or in the case of delivery of goods, when it is made in this country, regardless of the nationality of the goods supplier or service provider.

If a service is partially offered in Spain, the deduction base will include the part of the service carried out in Spain.

3) The deduction specified in article 36.2 of LIS will be applied in the tax period in which the foreign production is completed. In the present case, this moment will be set when the inquirer finishes their executive production in Spain. Therefore, later administration tasks will not be part of the deduction base and will not imply delaying the time when the deduction can be applied.

4) As established in article 36.2 of LIS, the deduction is applicable in the case of foreign feature film productions or audiovisual works.

For the present purpose, taking into account that the company making the inquiry will be hired to offer executive production services for part of one whole season of a series, regarding the application of the deduction established and the limits set in article 36.2 of the LIS, production is understood to be the whole season.

The above communication is binding, in accordance with section 1 of article 89 of Law 58/2003, of 17 December, General Tax.