



PAPER ON APPLICATION OF TAX CREDIT POLICY

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1. INTRODUCTION

The overall objective of the project CIRCE is to improve conditions for the growth of the cultural and creative industries belonging to the audiovisual sector, which can foster the valorization of cultural heritage in the involved areas, by implementing cross border initiatives able to build a bridge among the involved regions and gather key actors in new creative productions. The final goal is to improve understanding among partners on the potential of the audiovisual industry in promoting cultural heritage, by sharing new policies to support the creative sector.

The following report explains the state of play and the legislation in force in Italy, Montenegro and Albania in this sector, proposing solutions to conform with the tax practice implemented in Italy, favorable to creative industry.

2. ITALIAN INCENTIVES FOR THE AUDIOVISUAL INDUSTRY

MIBACT (Ministry of Cultural Heritage and Activities and Tourism) issued a law in 2013 in support of the audiovisual industry with the approval of the European Union, providing for various tax incentives for entrepreneurs who invest in cinema, including the so-called "Tax Credit" which proved to be very useful and functional.

The legislation has implemented Italy's long-standing commitment to supporting the film and audiovisual industry, introducing various measures - mainly tax credits and direct state subsidies - aimed at supporting and developing the film industry.

The Italian government has considered the film industry to be relevant and has issued a series of incentives to promote Italian film production and their distribution both in Italy and abroad. Therefore, the film industry in Italy is expanding and some types of transactions are becoming more and more common.

MiBACT, together with the Ministry of Economic Development, aims to encourage investments made for the production of Italian audiovisual works and destined for independent producers. The tax credit incentives will be granted to productions according to three different categories:

- Cinematographic or cinematographic;

- audiovisual material broadcast by national television broadcasters to the general public;
- Audiovisual material published by an audiovisual media service provider on other media.

To receive these incentives, it is necessary to submit a request to the Directorate General for Cinema of the MiBACT within 60 days from the deadline for issuing the expenses.

Important news regarding tax credit cinema are contained in the Interministerial Decree no. 70 of 5 February 2021 issued by MiBACT in concert with the Ministry of Economy and Finance, which follows the 2021 Budget Law (Law No. 178 of 30 December 2020), which has extended the benefits provided for by Law 220 of 2016 in favor of the film and audiovisual sector, raising the rates of tax credits up to 40% and increasing the allocation of the Fund for the development of investments in the sector, which rises from 400 to 640 million euros per year.

The new Decree 70, in particular, rewrites the application rules on tax credit, provided for in favor of film and audiovisual production companies, hitherto governed by the decree of 15 March 2018 (the so-called "DM tax credit production"), which is repealed and remains in force only for requests submitted on 31 December 2020.

The tax credits recognized to film and audiovisual production companies are established at a rate ranging from 15% to 40% (instead of the 30% previously envisaged) of the total cost of producing audiovisual works (Articles 2 and 14 of the decree):

- independent producers are entitled to a tax credit of 40% of the eligible cost of producing cinematographic works of Italian nationality;
- non-independent producers and non-European film and audiovisual companies are entitled to a tax credit of 25% of the eligible cost of producing recognized cinematographic works of Italian nationality, up to a maximum of 5 million euros for each company or group of businesses;

- in the case of work carried out on the basis of a contract or similar between a non-independent producer or between a non-European contracting company and a purely executive independent producer, the rate of 25% is applied;
- in the case of an associated production work between an independent producer and a non-independent producer or a non-European company, in the event that the independent producer holds a share of rights to use the work greater than 50%, the rate of 40% is applied.

The same measure of 40% is established for the tax credit due to independent audiovisual producers originating in research and training works as well as music videos with Italian nationality (Article 15). The tax credit for the production of television and web works (Article 18) is due to independent original producers to the extent of 30% of the eligible cost of production of television and web works of nationality or web of Italian nationality, in a productive association, pre-purchase and product license. The rate is raised to 40% in some cases, including that in which the original independent producer retains 100% ownership of the rights of use on electronic communications networks in Italy (pay-TV, free-TV, VOD).

Finally, the tax credit in favor of independent producers for the development of films and television and web works, other than short films, which have passed the cultural eligibility test, is confirmed in the amount of 30% up to a maximum annual credit. 300 thousand euros per company or group of companies (Article 12).

But the news does not concern only the rates.

Maximum limits are established for the work of tax credits (Article 5), which are set at 9 million euros in the case of cinematographic, television and web works, and at 18 million euros for cinematographic, television or web works to which coverage of the total cost of production contributes, for at least 30 per cent, to resources from countries outside Italy.

There is an obligation to reinvest 80 percent of the amount of the tax credit within 5 years from the date of definitive recognition of the same tax credit, in different ways (Article 8).

Another important novelty concerns the inclusion, among the expenses that can be calculated for the purposes of calculating the tax credit, of the expenses incurred to

comply with the provisions of the Audiovisual Workers' Safety Protocol relating to the Covid-19 emergency, which to a tax credit equal to 100 percent of their amount, up to 400 thousand euros per work (art. 3).

Also noteworthy is the new definition of "original audiovisual producer", which must carry out the following activities on its own:

- the choice of a subject and the acquisition of the related exclusive processing and use rights necessary for the creation and exploitation of the audiovisual work;
- the assignment of the processing, processing, script and other similar artistic materials;
- the identification of the actors, the director and the main components of the artistic and technical cast, as well as the acquisition of their artistic performances and related rights (Article 1, paragraph 3, letter f).

The credit application procedure remains articulated in the preventive and definitive phases, but is simplified by passing the windows for the presentation of applications (Article 16). The prior request must be submitted no earlier than 60 days prior to the start date of four consecutive weeks of filming or, alternatively, 50% of the filming.

The rules on the revocation and forfeiture of benefits are confirmed, as well as the possibility of transferring the credits themselves to bank intermediaries, including the Institute for Sports, Financial and Insurance Credit.

It should be noted that, for television and web production works, the reduction, from 100 to 85%, of the eligible portion on which to measure the tax credit will be applied starting from 1 January 2022.

The credit application forms will be published by the DG Cinema of the Ministry of Culture.

3. FOREIGN PRODUCTION COMPANIES

These are companies that have no registered office, tax domicile or permanent establishment in Italy and have no taxable income in Italy.

The following are the main steps of the Italian procedure:

3.1 RECAP Overview of the main steps of the procedure - Italy

- a) **Tax credit for producers of cinematographic and audiovisual works:** within 90 days from the first day of the main shoot.
- b) **Preliminary request to the General Directorate (GD) for Cinema:** within 60 days of receipt of the preliminary request and of the provisional recognition of Italian citizenship. For audiovisual works, the producer must send a sample of the work and a copy of the relative contracts to the Ministry, within 60 days of the distribution of the last episode and in any case within 18 months of sending the preliminary application.
- c) **Recognition of the theoretical tax credit by GD cinema:** after the confirmation of the nationality requirement and within 180 days from the release of the authorization to distribute the project (or from the deposit of the sample copy of the audiovisual work) and - for films only - in any case no later than 24 months after the presentation of the preliminary question.
- d) **Final request to GD Cinema:** within 60 days of the final request.
- e) **Option: Tax credit for investing companies:** Additional documentation must be delivered to supplement the preliminary application (e.g. Joint Venture agreement) and the final application (e.g. financial plan, contribution actually paid, etc).
- f) **Communication of the recognition of tax credits by GD Cinema**
- g) **Tax Credit for distributors:**
 - Within 180 days from the premiere of the film for national distribution (or from the deposit of the sample copy of the audiovisual work);
 - Within 18 months from the distribution authorization for international distribution (or from the deposit of the sample copy of the audiovisual work).

h) **Request to GD Cinema:** within 60 days of receipt of the request.

4. TAX CREDIT IN ALBANIA

Founded in 1997, the Albanian National Center of Cinematography (ANCC) is the only Film Institution that funds, encourages and promotes Albanian Film production. The goal of the ANCC is to promote and support Albanian cinema, encouraging new visions and emerging voices. From 1997 to today (24 years) the ANCC has financed 338 films. The ANCC actively encourages Albanian filmmakers to develop international co-productions in order to improve cooperation and distribution.

4.1 *Procedures undertaken and in progress*

Regarding the possibilities of facilitating foreign companies wishing to make their film works in Albania, at present there is no financial structure that can encourage foreign audiovisual and film production companies in the country.

In addition, detailed research was conducted to understand the financial possibilities of the countries, including tax credit procedures or VAT exemption, in order to respond to the international needs wishing to produce and work in Albania. From the analysis of the data, the country has very complicated procedures in terms of exemption or refund of VAT.

Being under the guidance of the IMF "International Monetary Fund", one of the main donors to recover the public debt, the country encounters difficulties in changing the tax system. On the other hand, the VAT recovery system for private individuals, which is provided for by the current Code of Tax Procedure in the Republic of Albania, provides a list of actions that the tax administration in Albania must undertake, to the company which requires VAT recovery, which could take months, as the system provides for a total control of the expenses made by a private company in terms of sales and purchases, before deciding the amount of VAT recovery.

It is evident that a foreign company cannot undergo to a total financial control that lasts months, since it reports also financially to its country of origin and because the production process might be very short, while the recovery process of VAT might take at least one year.

Due to this situation, in collaboration with the Department of fiscal system of the Albanian Ministry of Finance and in consultation with the Albanian National Film Center, the team of experts concluded that the only way to encourage foreign international companies to film their cinematographic works in Albania, is to return to foreign production companies a lump sum of 31% of the total investment made in the territory of Albania, with the condition that the amount spent in the territory of Albania is greater than 150,000 Euros.

No limits set for the moment in this flat rate. Consequently, it is proposed to amend the current legislation on cinematography in Albania, as follows:

“FOR SOME ADDITIONS AND AMENDMENTS TO LAW NO. 8096, DATE: 21.3.1996 "ON CINEMATOGRAPHY", AMENDED BY LAW No. 9353, DATE. 3.3.2005”

Pursuant to Articles 59, point 1, letter b "g", 78 and 83, point 1, of the Constitution,
upon the proposal of the Council of Ministers

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

Decided

In the law no. 8096, dated 21.03.1996 "On Cinematography" amended by law no. 9353, dated -3.03.2005, these additions and changes are made.

Article 19

Financing of foreign audio-visual projects which shoot in the territory of the Republic of Albania

1. Foreign audiovisual projects that perform filming and shooting in the territory of the Republic of Albania, of artistic and fiction cinema work, will benefit from the financing

scheme in the amount of 31% of the expenses that they execute in the territory of the Republic of Albania.

2. To qualify in this financing scheme, foreign productions must spend in the territory of the Republic of Albania an amount not less than 150,000 Euros.

3. The right to apply for financing in the Albanian National Center of Cinematography belongs to the Albanian cinema independent production house which must be contracted by foreign production for this purpose

4. Criteria and procedure for financing audiovisual projects that benefit from this scheme, is determined by laws.

5. TAX CREDIT IN MONTENEGRO

Since becoming independent in 2006, the government of Montenegro has recognized the need to eliminate obstacles and reform the business environment to open the economy to foreign investors and bring it closer to the European Union.

An important step was taken with the LAW ON CINEMATOGRAPHY, adopted in 2015 and whose main objective is to promote Montenegro and create a new type of industry - film tourism.

The Article 14 "Film Centre of Montenegro" of the II ACHIEVEMENT OF THE PUBLIC INTEREST of the law, states that the state shall contribute to the improvement and development of cinematography through public institution Film Center of Montenegro, as follows:

- 1) by providing conditions for film production and co-production collaboration;
- 2) by creating the conditions for promotion, presentation and integration of contemporary filmmaking in regional and international developments;
- 3) by creating favourable conditions for increasing the number and scope of international shooting in Montenegro;
- 4) by initiating legislation and the creation of conditions for stimulating business environment and development of cinematography;
- 5) by participation in EU and CE programmes in the field of cinematography, as well as the implementation of activities arising from membership in the European and international associations;

- 6) by ensuring collection of earmarked funds to finance cinematography by film fund;
- 7) by combating illegal trade and use of cinematographic works;
- 8) by improvement of measures and actions to protect children and young people, gender equality and respect for diversity of minority nations and other minority national communities;
- 9) by implementing of activities for the promotion of complementary activities;
- 10) by establishing and managing statistical data bases in the field of cinematography
- 11) by performing other tasks arising from the determination of the public interest in cinematography, in accordance with this law.

The government of Montenegro, the state government in charge of cultural affairs, approves the National Film Development Program for a period of five years. The national program determines the priorities, measures, activities, dynamics and resources necessary for the improvement and development of cinematography. The public interest is ensured in accordance with the law governing the field of culture, the national film development program and this law.

Film Centre of Montenegro offers, also, incentives for foreign producers that intend to film in Montenegro. Productions have the possibility to get a cash rebate of the invested funds for the film/television project. The refund can cover up to 25% of eligible expenditures spent in Montenegro for the making of the film and is granted after meeting certain conditions. The right to a cash rebate may be granted to the producer of a cinematographic work, a co-producer or production company that performs a service, provided that:

1. the funds spent for the realization of a cinematographic work in Montenegro are not provided from the budget of Montenegro or the Film Centre and are not less than EUR 100,000;
2. all taxes, contributions and other fiscal obligations prescribed by law have been previously settled in Montenegro;
3. there are no bankruptcy or liquidation proceedings against the producer; and
4. a producer or co-producer has at least one feature film that was shown to the public.

Body responsible for the procedure: **Film Center of Montenegro**

Admitted formats: **feature films, documentaries, films and TV series**

Minimum spend: **100,000 euros**

Qualification test - minimum 15 points: **cultural content, use of the film crew and talent, use of production capacities**

6. CONCLUSION

MIBACT is a well-experienced partner in promoting favorable policies and initiatives to improve the conditions for the growth and development of cultural and creative industries in support of the film and audiovisual industry. Albania and Montenegro have different legislative and operational frameworks. It would very important to open a dialogue between the institutions. The measures introduced by the Italian government can support partners in the acquisition of skills and build action plans to transfer the application of this measure, a key competitive factor for the development of the industry. This would lay the foundations for improving the conditions for a cross-border creative cluster, bringing together the audiovisual industries of the regions involved and developing new policies to enhance this sector as an engine of innovation.



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