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**BODY** General Service on Corporate Tax

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**REGULATIONS** Law 20/1991, of 7 June, art. 94

(Corporate Tax Law) LIS/ Law 27/2014, of 27 November, art. 36.2

**DESCRIPTION-FACTS** In order to establish the deduction base, the inquirer asks whether the following expenses qualify whenever they cannot be included in the creative staff:

- Script and music, expenses related to additional dialogues, translations, background music composition, orchestra conductor, arranger, recording teachers, singers, music copies, among others.
- Cast, supporting actors, doubles, stunt doubles, extras, choreographers, dancers, orchestra, among others.
- Direction technical crew (first assistant director, script continuity, second assistant director and cast director), production (executive producer, production director, production manager, first production assistant, property master, second production assistant, payroll accountant and production secretary), Photography (assistant cameraman, clapper-loader, focus puller and still photographer), set decoration (art director, decorator, dresser, upholsterer, head of construction, painter and carpenter), costumes (costume designer, head seamstress and seamstress), make up and hairdressing (make-up artist and assistants), special effects and sound effects (head of special effects, assistant, armorers, sound designer, ambient sound, foley artist), sound assistant, editing (assistant editor), related to electricians and grips, and other complementary staff like set medic, security, labourers and assistants of any kind.
- Set design, decoration and sets (set construction in soundstages, set striking, construction on location, construction in natural interiors, scale models, backdrops, hiring of sets, hiring natural interiors), set dressing (hiring and purchasing furniture, props, garden items, guns, scene vehicles or scene food), hiring and purchasing costumes, cost of animals and carriages.
- Soundstages (set hire, on location filming, power supply in the soundstage and complementary facilities), editing and adding soundtrack (editing suites, screening rooms, dubbing stages, sound recording, mix recording, as well as the cost of recording the soundtrack, magnetic transcriptions, etc.), and other production items like script copies, photocopies, telephone while shooting, hiring dressing rooms, caravans and office, different storage rooms, garages while shooting, cleaning of sets and communications while shooting.
- Filming equipment (main camera, secondary cameras, special lenses and complements, accessories, lighting equipment, cranes, fuel, helicopters / planes, sound equipment, among others).
- Transport like production cars, self-drive hire, camera vans, trucks, buses, taxis on shoot dates, plane tickets, customs and freights.
- Hotels and food on shoot dates.
- Laboratory: film developing, positive print, magnetic, among others.
- Postproduction: visual, sound effects, animation work, subtitling, dubbing and similar.
- Specific insurance for the production such as insurance of the negative, shooting equipment, public liability, accident, shoot interruption, completion bond, among others.
- Overheads: office rental, administrative staff, courier, post/telegraph, telephones, taxis and locomotion expenses while shooting, electricity, water, cleaning, office stationery, pre and post shooting meals, administrative agency, tax, social security and accounts consultancy.
- Operating, commercial and financing expenditure, such as internegative and copies, publicity (trailer and making of), interest and negotiation expenses for official loans.

- Non-deductible taxes and fees related to the production.
- Pre-production expenses such as location, casting and similar.
- Expenses for distribution and circulation such as making copies and publicity.

## QUERY

1. Whether the deduction rate in article 36.2 of LIS reaches 35% for companies with tax residence in the Canary Islands.
2. If the costs of work and commercial relations with authors -director, scriptwriter, director of photography, music composer, actors and other performers, editor, art director, head of sound, costume designer and head of prosthetics- can be included in the deduction base provided they have their tax residence in Spain or in any European Economic Area Member State with a limit of 50,000 Euros per person.
3. If the cost of actors residing outside Spain or any other EU member state can be included in the deduction base as they are subject to the rules of Spanish Social Security. If not, can at least the social security costs of the said actors be part of the deduction.
4. Whether the expenses mentioned above can be part of the deduction base established in article 36.2 of LIS, when they are related to the production of a foreign feature film or other films that lead to a master copy to be subsequently mass produced, because they are included in technical industries or as other suppliers.

## FULL ANSWER

1. Section 2 in article 36 of Law 27/2014, of 27 November (BOE of 28 November, on Corporate 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 amount of the deduction is capped at 2.5 million Euros per production.

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

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

Article 94.1.a) of Law 20/1991, of 7 June (BOE 8 June), on the modification of the tax aspects of the Canary Islands Economic Regime, establishes that:

“Article 94. Investment allowance in the Canary Islands.

1. Regarding investments that remain in the archipelago, companies and other legal entities subject to Corporate Tax and whose tax domicile is in the Canary Islands, can benefit from - starting in the first financial year after 31 December 1991- the deduction scheme provided for in article 26 of Law 61/1978, of 27 December, according to the following specifications:

a) The applicable rate on the investments made will be 80 per 100 higher than that of the general regime, with a minimum differential of 20 percentage points.”

On the other hand, the fourth temporary provision of Law 19/1994, of 6 July (BOE of 8 July), on the modification of the Canary Islands Economic and Tax Regime, after being modified by section twenty of the single article in the Royal Decree-law of 19 December (BOE of 20 December), establishes that:

In the event of the suppression of the General Regime of Deduction for Investment regulated by Law 61/1978, of 27 December, in the Corporate Tax, the regulations in force at the time of the suppression will continue to apply in the Canary Islands until an equivalent system to replace it.

Nevertheless, non-deducted amounts can be applied to –observing the appropriate limits - the settlement of the tax periods ending in the immediate and successive following 15 years.

The period mentioned above is also applicable to –observing the said limits – deductions pending application when the Royal Decree Law 15/2014, of 19 December, on the modification of the Canary Islands Economic and Tax Regime came into force.”

Law 61/1978, of 27 December (BOE of 30 December), was repealed by Law 43/1995, of 27 December (BOE of 28 December), on Corporate Tax, which in turn was repealed and replaced by the consolidation of the Law on Corporate Tax, passed by Legislative Royal Decree 4/2004, of 5 March (BOE of 11 March). The latter has also been repealed by the LIS which in chapter IV of heading VI includes a series of investment allowances which are applicable in the Canaries too, with the specifications established in article 94 of Law 20/1991, of 7 June, transcribed.

Therefore, the deduction percentage applicable to a company residing in the Canary Islands must be 80% higher than the deduction percentage applicable in the general system (15%), with a minimum differential of 20 percentage points. Consequently, the deduction percentage in force for tax periods starting on 1 January 2015 will be 35%.

It must also be taken into account the limit established in the additional fourteenth provision of Law 19/1994, of 6 July, introduced by section nineteen in the single article of Royal Decree -law 15/2014, of 19 December, which stipulates:

“(…)

The amount of the deduction for expenditure in Spain of foreign feature film productions or audiovisual works referred to in section 2 of article 36 of Law 27/2014 cannot exceed 4.5 million Euros when spent in the Canary Islands.

(…)”.

2. Regarding the deduction base, article 36.2 of LIS stipulates that:

“(…)

The deduction base is composed of the following expenditure met in Spain and 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.

(…)”.

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

“For the purpose of 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 performers who take part in the production.
- Technical creative crew: editor, production designer, editor, head of sound, costume designer and the head of prosthetics.

(…)”.

Therefore, expenditure on creative crew as defined above can be part of the deduction base, provided they have their tax residence in Spain or in any European Economic Area Member State with a limit of 50,000 Euros per person.

The said expenditure can be on either employment or commercial contracts as the rule does not specify the contractual relationship.

3. The cost of actors who do not reside in Spain or in any European Economic Area Member State cannot be included in the deduction base established in article 36.2 of LIS, insofar as only the expenditure on actors residing in Spain or in the said area can be included.

The cost of social security for the said actors cannot be included in the deduction base either because they are expenses directly related to creative staff who do not reside in Spain or in any European Economic Area Member State.

4. The deduction base established in article 36.2 of LIS includes –in addition to expenditure on creative personnel as stated above – “expenditure on technical industries and other suppliers.”

Regarding the concept of technical industries referred to in section 2 of article 36 of LIS, article 4 of Law 55/2007, of 28 December, on Film, establishes that:

“For the purpose of that established in this Law, it is understood by:

(...)

p) Technical industries: the industries necessary 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, provided that they are incurred into in Spain:

- Script and music, like expenditure in additional dialogues, translations, background music composition, orchestra conductor, arranger, recording teachers, singers, music copies, among others.
- Cast, supporting actors, doubles, stunt doubles, extras, choreographers, dancers, orchestra, among others.
- Direction technical crew (first assistant director, script continuity, second assistant director and cast director), production (executive producer, production director, production manager, first production assistant, property master, second production assistant, payroll accountant and production secretary), Photography (assistant cameraman, clapper-loader, focus puller and still photographer), set decoration (art director, decorator, dresser, upholsterer, head of construction, painter and carpenter), costumes (costume designer, head seamstress and seamstress), make up and hairdressing (make-up artist and assistants), special effects and sound effects (head of special effects, assistant, armorers, sound designer, ambient sound, foley artist), sound assistant, editing (assistant editor), related to electricians and grips.
- Set design, like decoration and sets (set construction in soundstages, set striking, construction in exterior locations, construction in natural interiors, scale models, backdrops, hiring of sets, hiring natural interiors), set dressing (hiring and purchasing furniture, props, garden items, guns, scene vehicles or scene food), hiring and purchasing costumes, expenses on animals and carriages.
- Sound stages (set hire, on location filming, power supply in the soundstage and complementary facilities), editing and adding soundtrack (editing suites, projection rooms, dubbing, sound recording, mix recording, as well as the cost of recording the soundtrack, magnetic transcriptions, etc.), and other production items like script copies, photocopies while shooting, telephone on shoot dates, hiring dressing rooms, caravans and office, different storage rooms, garages on shoot dates, cleaning of sets and communications while shooting.
- Filming equipment (main camera, secondary cameras, special and complementary lenses, accessories, lighting equipment, cranes, fuel, helicopter/planes, sound equipment, among others).
- Transport such as production cars, self-drive car hire, camera vans, trucks, buses, taxis on shoot dates, plane tickets, provided the journey is within Spain.
- Hotels and food on shoot dates.
- Laboratory: film developing, positive print, magnetic, among others.
- Postproduction: visual effects, sound effects, animation work, subtitling, dubbing and similar.
- Specific insurance for the production such as insurance of the negative, shooting equipment, public liability, accident, shoot interruption, completion bond, among others.
- Non deductible taxes and fees related to executing the production.
- Pre-production expenses such as location scouting, casting and similar.

On the other hand, **the following expenses cannot be included** in the deduction base:

- Overheads related to administrative tasks such as office hiring, administrative staff, courier, post/telegraph, electricity, water, cleaning, stationery, administrative agency, tax, social security and accounts consultancy.
- Expenses for distribution and circulation like making copies and publicity.
- Operating and commercial costs, such as internegative and copies, publicity (trailer and making of).
- Expenditure on customs and freight in that they are related to international transport.
- Financial expenses on interests and the costs of negotiating official loans if they are capitalized.

Finally, expenditure on other complementary staff like set medic, security, labourers and assistants of any kind, can be included in the deduction base if they are directly related to the production and are met in Spain.

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

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