

New system of financing for the cinema

Royal Decree 1084/2015 of 4 December, setting out the enabling regulations for Cinema Law 55/2007 of 28 December, came into force on 6 December 2015.

The approval of this Royal Decree is consistent with the changes recently introduced in certain fundamental aspects of the Cinema Law. It also brings improvements in certain technical and procedural areas which required modernisation for the sake of greater efficiency and to simplify government intervention in this area.

Specifically, the most notable of the changes introduced are the following:

- Regulation of the procedure for obtaining recognition of Spanish nationality of television series and stricter nationality requirements for the purpose of obtaining subsidies.
- Simplification of the system of rating by ages, in favour of a single rating for the distribution of the film in any format.
- In relation to the regime for co-

productions with foreign companies, stricter requirements are imposed in relation to the application for approval of the project before filming commences.

- Regulation of the "difficult audio-visual work" concept, of relevance in relation to the maximum amount of funding which can be received.
- Elimination of the requirement making the granting of aid conditional on the film not being sold on video for a certain period of time following its commercial premiere in cinemas.

The change in financing model is to be completed through the approval of two Ministerial Orders: one relating to the recognition of investment costs and the other setting out the regulatory principles in relation to financial aid.

Similarly, Order ECD/2784/2015, regulating the recognition of the cost of a film and of the investment made by the producer, was approved on 18 December 2015.

This Order brings changes to certain aspects of the current regime, with specifications affecting the calculation of the producer's compensation and provisions relating to the recognition of the cost of the film, such as whether or not certain expenses can be classed as overheads, as well as imposing certain time limits and establishing how certain foreign investments are to be substantiated.

Approval has also been given to Order ECD/2836/2015 regulating the procedure for obtaining the certificate from the National Institute of Performance Arts and Music, envisaged in the Corporate Income Tax Law (27/2014 of November 27), which makes it obligatory for taxpayers benefiting from the tax credit to communicate with this body by electronic means and issue electronic notifications.

New Double Tax Treaties with Andorra and Finland

The Treaty between the Kingdom of Spain and the Principality of Andorra for the avoidance of international double taxation and prevention of tax evasion in respect of taxes on income, and its corresponding Protocol, were published in the Official State Gazette on 7 December 2015. The first ever double tax treaty to be signed between the two nations, it reduces withholding tax rates, reinforces the mechanisms for the avoidance of double taxation through mutual agreement procedures and includes a clause on the exchange of information between them. This double tax treaty and its protocol will come into force on 26 February 2016.

On the other hand, a new Treaty between Spain and Finland for the avoidance of double taxation and to combat tax fraud was signed on 15 December 2015. This replaces the treaty signed in 1967 and will help to improve commercial relations and favour investment between these two countries. It also updates the provisions on the exchange of information in order to bring them into line with OECD standards.

Supreme Court Judgement on Directors' compensation

The Supreme Court, in a Judgement dated 17 December 2015, has set out its position on compensation paid to Directors in entities whose bylaws do not envisage such payment.

The conclusion it reaches, in short, is that such compensation, when not envisaged in the bylaws, can only be considered justified under a senior management contract when it is possible in objective terms to identify those services provided as director, on the one hand, and those provided as senior manager, on the other. If this differentiation is not possible, the payment of compensation of this kind is not acceptable since it breaches the rules of corporate legislation with respect to transparency, clarity and control over compensation paid to the administrative body.

This judgement of the Supreme Court could provide arguments in defence of the deductibility of expenses corresponding to directors' compensation even when it is not envisaged in the bylaws, provided that it is possible to identify objectively the services provided.

Reform of data protection legislation in the European Union

After three years of negotiations, the new package of reforms in the area of data protection is expected to be approved during the first quarter of 2016. Once approved, a transitional period of two years will be allowed for its application. The reform is to be implemented through two instruments:

- The European Data Protection Regulation (General data protection Regulation), which is to be applied by the Member States directly, without needing to be transposed. Its objective is to unify and update the European rules in force in this area, affording citizens greater control over their personal data and making it easier for companies to

comply with the obligations incumbent on them, by eliminating certain formalities and requirements, particularly for small and medium-sized entities, thereby helping to reduce costs and bureaucracy.

- The European Data Protection Directive (Data Protection Directive for the police and criminal justice sector) which seeks to guarantee that there is proper protection for the personal data of victims, witnesses, and individuals investigated for committing any criminal offence. This unified legislation will also allow for greater cross-border cooperation between police and judicial

authorities, helping to prevent and combat criminal activity in Europe.

The main changes introduced include the following:

- The obligation to notify the supervisory authorities and the parties affected of any security breaches.

- Creation of the Data Protection Officer, which Public Administrations and certain private entities will be required to have obligatorily.

- Clarification of the scope of the right to be forgotten.

- A new penalties regime.

Publication by the IASB of IFRS 16 on leases

The IASB has published a new standard no. 16 on "Leases", by which IAS 17 ("Leases") is repealed. Under IFRS-IASB, the application of IFRS 16 will be mandatory as from 1 January 2019; companies can opt to apply IFRS 16 early, but only if they apply IFRS 15, on revenues, at the same time. IFRS 16 has still to be approved by the European Union.

One of the main changes it introduces is the general requirement that lessees, in their balance sheets, recognise both assets and liabilities in respect of leases. The new standard makes no substantial changes to the accounting treatment applicable by the lessor, the requirements being similar to those in force under the previous standards.

The EU Council publishes its proposal with respect to BEPS

The proposal of the European Union Council in relation to the Directive against Base Erosion and Profit Shifting (BEPS) was published on its official web site in December 2015.

The proposal describes the work carried out by the Council Presidency to date and invites the Commission to take these aspects into account in its proposal for a Directive against Base Erosion and Profit Shifting, which is expected to be made public on 27 January 2016.

Seven elements against Base Erosion and Profit Shifting have been identified under the Italian presidency including, in particular, the definition of the permanent establishment, tax transparency rules, general anti-abuse rules, the establishing of exit taxes, restrictions on interest, and the neutralisation of hybrid arrangements

Portability of on-line services

In accordance with its digital single market strategy, the European Commission presented in December 2015 a Regulation proposal intended as a move towards the portability of on-line contents services within the Member States. The objective is to eliminate the existing barriers and ensure that consumers also have legitimate access to digital contents such as films, games or music contracted in their country of origin when they travel throughout EU territory.

An Action Plan has also been presented for the modernisation of copyright rules, based on four main principles: the broadening of access to contents within the EU, establishing certain exceptions to copyright rules, a review of the system of compensation for private copying, and the implementation of mechanisms based on a "follow the money" approach to combat piracy.

Travel time to be counted as time worked according to the Supreme Court

A Supreme Court Judgment of 12 June 2015 has declared that workers who do not have an assigned work centre in the town in which they reside are entitled to consider the point at which they leave and return to their town of residence as the start and end, respectively, of their working day. This is in line with the approach adopted by the European Union Court of Justice, which established in its Judgment of 10 September 2015 that travel time incurred by workers who do not have a fixed or habitual work centre and engage in commercial activities, is to be counted as time worked.

Should you require more detailed information on any of the points referred to in this publication, please consult your usual contact person at PwC or send an e-mail to ticeposts@es.pwc.com.

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