



Cash rebate and tax relief for production of audiovisual works

A & K Metaxopoulos & Partners Law Firm | Tech, Data, Telecoms & Media - Greece

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Introduction

In recent years there has been a remarkable effort to make Greece an attractive destination for the production of audiovisual works (eg, films, TV series and video games). The most important initiatives in this respect are:

- the cash rebate state aid scheme, which covers 40% of eligible production costs; and
- the tax relief incentive, which covers 30% of eligible production costs.

An audiovisual work may qualify for both the cash rebate scheme and the tax relief,⁽¹⁾ provided that this complies with the EU Block Exemption Regulation (651/2014).

This article provides a brief outline of the above incentives.

Cash rebate scheme

The cash rebate scheme has attracted several investments since its creation. According to the National Centre of Audiovisual Media and Communications (EKOME):

Financing of the rebate is guaranteed through the Greek Public Investment Programme and amounts to €75 million available for the years 2018 to 2022. From April 2018 to September 2020, 86 applications have been included in the cash rebate programme (43 domestic and 43 international productions). The total of invested capital in the country amounts to €90 million while the total cash rebate subsidy amounts to € 30 million.⁽²⁾

In order to make the cash rebate scheme more attractive to both domestic and foreign investors and producers and resolve some of the issues that have occurred in practice (including reducing bureaucracy), Law 4487/2017, which regulates the cash rebate scheme, has been amended several times, most recently by way of Law 4704/2020 (*Government Gazette A'/133/14.07.2020*) and Law 4761/2020 (*Government Gazette A'/248/13.12.2020*).

Legal framework

Law 4487/2017, as amended, provides for (among other things) a financial state aid scheme that aims to encourage the production of audiovisual works in Greece by offering a cash rebate of 40% of the eligible costs incurred in Greece and abroad.⁽³⁾

The provisions of the law are specified by Joint Ministerial Decision 59/2019. Law 4487/2017 was issued under EU Regulation 651/2014, which has declared several types of state aid as compatible with the common market and EU law according to Articles 107 and 108 of the Treaty on the Functioning of the European Union (Article 54 of EU Regulation 651/2014 includes specific provisions for aid schemes for audiovisual works). Therefore, the regulation also applies.

Scope

The state aid scheme applies to audiovisual works, including:

- films and TV movies;
- short films and TV movies;
- episodes of TV series (each episode constitutes a separate audiovisual work);
- documentaries;
- animations; and
- video games.

The above audiovisual works can benefit from the cash rebate scheme regardless of the way in which they will be distributed (eg, in theatres, on TV or via online platforms, social networks or apps).⁽⁴⁾

The following audiovisual works are excluded:

- filmed performances, such as theatre, opera, dance and music performances;
- sports broadcasts;
- TV and phone games, betting works, contests and lotteries;
- news and information broadcasts;
- entertainment shows, talk shows and TV interviews;
- ads and teleshopping;
- programmes with pornographic content;
- presentations and promotions of corporate, entertainment or cultural activities;
- purely educational programmes and tele-education and tele-information broadcasts; and
- programmes that insult human dignity or promote discrimination.

Cash rebate

The cash rebate is a form of state aid that covers 40% of eligible costs, with no upper limit in value. The amount of the rebate does not increase business income and the rebate is non-taxable.

In principle, the rebate cannot be assigned to third parties, with the exception of Greek financial institutions for a short-term loan of the same amount for the implementation of a project (ie, the rebate may be used as collateral).

Subject to the conditions of Law 4487/2017, the cash rebate can also be combined with other forms of state aid, provided that the total amount of state aid does not exceed 50% of the total cost of the production (60% in case of an international production or 80% in case of a 'hard audiovisual work').⁽⁵⁾

The following entities can benefit from the rebate:

- enterprises which are established or have a branch in Greece whose purpose is the production or execution of audiovisual works or the production of audiovisual works within the framework of international productions; and
- foreign enterprises whose purpose is the production of audiovisual works if, for the purposes of Law 4487/2017, such enterprises contract with an enterprise which is established or has a branch in Greece whose purpose is the execution of production of audiovisual works or part thereof (however, foreign enterprises must not have a seat or permanent establishment in states which are considered 'uncooperative' within the meaning of Article 65(3) of the Code of Income Tax).⁽⁶⁾

Prerequisites

As a prerequisite, the law provides the minimum costs to be incurred in Greece for particular works – namely:

- for films and TV movies – at least €100,000;
- for episodes or a season of a TV series:
 - at least €25,000 per episode for fictional TV series;
 - at least €20,000 per episode for documentaries or animations;
 - at least €15,000 per episode for TV series comprising 70 episodes or more;
 - if it refers only to a part of episode costs incurred in Greece, at least €100,000 for the total parts for fictional works and €60,000 for the total parts for documentaries and animations;
- for video games – at least €30,000;
- for documentaries – at least €60,000; and
- for short films and TV movies – at least €60,000.

The audiovisual work must qualify as a cultural product.⁽⁷⁾ The evaluation of an audiovisual work as a 'cultural product' is based on a points system, similar to those implemented in most other EU states. For an audiovisual work to be eligible for the cash rebate, it must receive a minimum number of points (eg, a fictional film must receive at least 20 of an available 50 points). For example, for fictional films or TV series, the points system is based on:

- the content (eg, the story takes place in Greece or refers to Greek or European history, the screenplay is based on a Greek or European literary or other work, the story features places that highlight Greece's varied nature, architecture and history, there are Greek characters, the language is Greek or another European language or the screenplay promotes the arts, the use of new technologies, culture, human values or social and racial integration);

- the crew (eg, the directors, writers, producers, actors or composers are Greek or European); and
- production (eg, indoor and outdoor shoots take place in Greece (duration dependent), the final cut was made in Greece or image or sound procession or music recording took place in Greece).

Notably, the cultural criteria under the points system are quite broad, so a wide variety of audiovisual works will likely be considered eligible for the rebate.

Eligible costs

Eligible costs are those incurred during the production of an audiovisual work in Greece or abroad (see below). Such costs cannot exceed 80% of the total production costs. Eligible costs include those spent on:

- royalties;
- screenplays;
- music;
- services directly connected with the production (eg, accommodation, meals, transfers, the leasing of equipment, studios and post-production services);
- wages;
- the supply of materials; and
- the development, production and testing of video game software.

Further, following the issuance of Law 4761/2020 on 13 December 2020, which amended, among other provisions, Article 26 of Law 4487/2017 regarding audiovisual works where the eligible costs are more than €8 million, the costs regarding the IP rights of a screenplay and directing or, in case of a video game, the rights of use of images, voices, character designs and source codes and cast and crew wages, invoices from foreign natural persons or legal entities⁽⁸⁾ will also be taken into account. However, the value of these invoices (excluding value added tax) cannot exceed 50% of the total eligible costs and the total amount of the aid cannot exceed €12 million.

With regard to the calculation of the total eligible costs of a production, the law sets the following restrictions:

- Insurance premiums and guarantee costs are calculated in total and the maximum eligible cost is 5% of the total eligible cost of the production.
- The cost of royalties for screenplays and music and the fees for the director, the screenwriter, the two leading actors and the producer are calculated up to 35% of the total eligible cost of the production.
- The costs for financial assets, fixed assets and their depreciations (eg, technological equipment, buildings, borrowing costs and bank expenses) are not calculated for the total eligible cost of the production.
- The costs of marketing, promotion and communication are not calculated for the total eligible cost of the production.

Procedure

EKOME is the competent public organisation with regard to applications. Up to 10 days before the beginning of post-production, the beneficiary⁽⁹⁾ may file an online

application and the documentation required by the law. Within 10 business days of receipt of the application, EKOME will check the completeness and legality of the application and the documentation, after which an EKOME committee will check the content. The content evaluation must be completed within 10 business days of completion of the completeness and legality check. Subsequently, a ministerial decision will be issued, declaring that the project is covered by the aid scheme.

The terms of the above decision can be altered on submission of an application by the beneficiary up until the project's completion.

Further, the above decision can be revoked if the project does not meet the prerequisites of the law.

Projects which are covered by the aid scheme are audited by an EKOME auditing body. Within six months from the completion of the production, the beneficiary must submit an application along with the legally required documentation for the certification of the project's completion.

Completion of the project cannot exceed three years following the publication of the abovementioned ministerial decision.

At least 60% of the project must be implemented under the condition that the total amount of the eligible costs incurred in Greece exceeds the abovementioned minimum costs.

The auditing body will check, among other things, compliance with the law and the documentation and will submit a report to the president and the CEO of EKOME for the issuance of a decision on the project's completion. The total duration of the final check cannot exceed 20 business days from the submission of the application (in case of any shortcomings, this timeframe is extended by an additional 20 business days).

Within two months of publication of the decision certifying the project's completion, the aid will be paid by electronic bank transfer to a Greek bank or a bank of the state in which the beneficiary's seat or permanent establishment is located.⁽¹⁰⁾

Tax relief

According to Article 71E of the Code of Income Tax (as amended by Law 4704/2020, *Government Gazette A/133/14.07.2020*) and Ministerial Decision 31548/2020, up to 30% of eligible costs incurred during the production of an audiovisual work may be deducted from the taxable income of a natural or legal person which is taxed in Greece and invests in an audiovisual work within the meaning of Law 4487/2017 (see above). (In case of co-productions, the tax relief is calculated *pro rata* according to each co-producer's participation.)

Notably, an investor need not be an enterprise whose commercial purpose is the production of audiovisual works; rather, it can be any party which wishes to invest in an audiovisual work.

As with the cash rebate scheme, the tax relief is also issued, in principle, under EU Regulation 651/2014.⁽¹¹⁾

According to Interpretative Circular E.2189/26.11.2020 of the Independent Authority of Public Revenue, the percentage of the tax relief:

is calculated on the total annual eligible costs of the investment plan and not on the 30% of the amount that the investor pays for the audiovisual work.

Furthermore, in case that the amount of the financing is less than the 30% of the total annual eligible costs of the investment plan, the tax relief is limited to the amount of the financing.

However, investments are not eligible for the tax relief to the extent that part of the amount comes from grants for the financing of the production of audiovisual works.

Ministerial Decision 31548/2020 outlines the procedure for applying for the tax relief from EKOME. It also sets out the required supporting documentation and specifies the relevant eligible costs (similar to those of the cash rebate scheme).

Comment

Law 4487/2017 (which has been amended multiple times in order to fix problems and delays which have occurred in practice and reduce bureaucracy) provides for an ambitious and attractive state aid scheme, which should act as a significant incentive for domestic and foreign investors to use Greece's unique natural and historical sites and expert personnel to produce audiovisual works. Cash rebate schemes are widely used internationally and seem fruitful, having had a positive impact on the production of audiovisual works in the states in which they are implemented.⁽¹²⁾ The cash rebate scheme of Law 4487/2017 seems to have had a positive impact so far in the production of audiovisual works in Greece (with respect to both domestic and foreign investors).

In addition, the procedure for applying to the state aid scheme does not appear to be time consuming given the short deadlines that the law sets for each step thereof.

Further, the tax relief may constitute an additional incentive for investing in the production of audiovisual works in Greece.

Overall, this legal framework seems to align with similar effective foreign state aid schemes and has the potential to make Greece a competitive and appealing destination for the production of audiovisual works.

For further information on this topic please contact Achilleas Christodoulou at A & K Metaxopoulos & Partners Law Firm by telephone (+30 210 725 7614) or email (a.christodoulou@metaxopouloslaw.gr). The A & K Metaxopoulos & Partners Law Firm website can be accessed at www.metaxopouloslaw.gr.

Endnotes

(1) See Article 71E(4)(b) of the Code of Income Tax. See also the explanatory statement of Law 4704/2020 (Article 12), according to which "both these measures refer to the same investment plans and the same eligible costs of these".

(2) Further information is available here.

(3) As regards foreign invoices, the conditions set out in Article 26 of Law 4487/2017, as amended by Article 66(3) of Law 4761/2020, must be met.

(4) See the explanatory statement of Law 4704/2020, p 3.

(5) According to Article 20(3) of Law 4487/2017, a 'hard audiovisual work' is a standalone audiovisual work:

- of which the only prototype is in the Greek language;

- which is the first or second work of a director or producer;
- which had a budget of up to €500,000; and
- of which there are limited possibilities for commercial exploitation in the international markets.

(6) According to Article 65(3) of the Code of Income Tax:

Uncooperative states are those which are not member-states of the European Union, their status, regarding transparency and information exchange on tax issues has been examined by the Organisation for Economic Co-operation and Development (OECD) and it has not been characterized as "Largely Compliant" and a) have not concluded and implemented with Greece a treaty for the administrative assistance in the tax sector or they have not signed the Common Treaty of the Council of Europe- OECD for mutual administrative assistance in tax issues and b) they have not been bound for automatic exchange of financial information starting from the year 2018, the latest.

(7) See also Article 54(2) of EU Regulation 651/2014, which states as follows:

Aid shall support a cultural product. To avoid manifest errors in the qualification of a product as cultural, each Member State shall establish effective processes, such as selection of proposals by one or more persons entrusted with the selection or verification against a predetermined list of cultural criteria.

(8) Excluding those which have a seat or permanent establishment in states that are considered 'uncooperative' in tax issues (see Endnote 6).

(9) Where the producing company has a contract with an enterprise with a seat or branch in Greece whose purpose is the execution of production of audiovisual works, the application must be filed by the latter and the state aid will be paid to the company which is appointed by the contracting parties as the beneficiary.

(10) See also the analysis in the explanatory statement of Law 4704/2020 (Article 12), which states that if the tax relief is granted to a production or execution-of-production company, it will constitute state aid in accordance with EU Regulation 651/2014. However, if the tax relief is granted to an investor, it does not constitute state aid as it is provided to every undertaking under the same conditions and has a general character regarding these undertakings.

(11) According to the explanatory statement of Law 4487/2017, these schemes are the most common both among EU states and internationally and have proven to be the most effective in encouraging the production of international audiovisual productions.