

MINISTERIAL ORDER 89-A/2017, of 19 April

The Decree-Law 22/2017 of 22 February establishes a tax incentive for film production through the addition of Article 59-F to the Tax Benefits Statute (EBF).

The incentive aims to encourage film production as a cultural activity as well as to strengthen, in a sustained way and on a long-term perspective, the competitiveness of Portugal as a location for film production, both by stimulating the activity of domestic producers and co-producers, and by attracting quality foreign productions in order to exploit the potential of Portuguese resources.

The objectives associated with this measure are the local economic impact, the development of Portugal's regions and Portuguese culture in terms of tourism and the country's image, the provision of more opportunities for Portuguese film projects and more opportunities of work and international collaboration for production companies and companies providing film production and post-production services.

Having regard to the objectives of this incentive, it is necessary to create a set of rules for awarding it.

Wherefore:

Pursuant to Article 59-F (14) of the EBF, the Ministers of Finance and Culture, on behalf of the Government, order as follows:

Article 1

Object

The Regulation of the Tax Incentive for Film Production, annexed to this Order, of which it forms an integral part, is hereby approved.

Article 2

Powers of the ICA

The Film and Audiovisual Institute (ICA, I.P.) shall be responsible for the provisional and definitive technical recognition process, as well as for national and international promotion of the incentive and for taking the necessary actions for its effective implementation.

Article 3

Trade Mark

A trade mark or logo may be used for the purposes of national and international promotion of the incentive.

Article 4

Evaluation

By 31 July 2020, the Ministers of Finance and Culture shall undertake an evaluation of the operation and impact of the incentive in relation to its objectives, including reasoned suggestions for improvement, particularly from the point of view of renewal of the incentive after the end of the period during which it is in force.

Article 5

Amendments

1 - The Regulation set forth in the annex to this Ministerial Order may be amended by an identical instrument if the proposed modification does not call into question the compatibility of the incentive regime with Commission Regulation (EU) 651/2014 of 16 June 2014 declaring certain categories of aid compatible with the internal market, in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union.

2 - In the event that the proposed amendments are likely to exclude the incentive regime from compliance with the provisions of Commission Regulation (EU) 651/2014 of 16 June 2014, they must be approved by a decree-law and have the prior approval of the European Commission.

Article 6

Entry into force

This Order shall enter into force on the day following its publication.

ANNEX I

(Referred to in Article 1)

**Regulation on the Tax Incentive for Film Production provided for in Article 59-F of the
Tax Benefits Statute (EBF), approved by Decree-Law 215/89 of 1 July**

CHAPTER I

REQUIREMENTS

Article 1

Definitions

1 - For the purposes of paragraph 1 of Article 59-F of the EBF:

- a) “Executive producer” means the legal person who, on behalf of a foreign producer duly qualified to produce a film of his initiative, and under the terms of a contract for the supply of services signed with the foreign producer, is charged with assembling the artistic and technical resources to make the film and with managing the operations leading to the making of the film or parts thereof, in line with an previously agreed budget but without participating in the ownership of intellectual property rights in the work;
- b) “Initiative” means the decision to develop and produce the project and acquisition of the legal capacity to do so by possession of the copyright or permissions of the copyright holders required for such purposes.

2 - The remaining terms used in this Regulation which are defined in Law 55/2012 of 6 September, as amended by Law 28/2014 of 19 May, or in Decree-Law 124/2013 of 30 August, shall have the meanings stated in those legal acts, unless Decree-Law 22/2017 of 22 February or this Regulation dictate otherwise.

Article 2

Provisional recognition

1 - Those eligible to apply for the provisional recognition referred to in Article 59-F(8) of the Tax Benefits Statute are legal persons active in producing films intended for theatrical exhibition and who are entered in the Register of Film and Audiovisual Companies, without

prejudice to the provisions of the following paragraphs and provided that the specific requirements set forth in this Regulation are observed.

2 - In the case of projects of the type referred to in Article 4(4, e), legal persons may also apply for the provisional recognition referred to in the preceding paragraph who are active in the field of film post-production, including in particular the activities of editing, cutting, dubbing, subtitling, photo compositing, graphic animation, computer and sound effects, computer-generated images, film production laboratory activities and special laboratory activities for animated films and post-production sound activities.

3 - In the case of projects of the types mentioned in Article 4(4, a) to d)), the applicant must have a co-producer status, established by contract, even if the work may not qualify for official recognition under bilateral or multilateral film co-production treaties.

4 - Any contract that establishes co-ownership of the negative or master of the work as rights of the parties and establishes the proportions of the shares of each party, the apportionment scheme for exploitation rights and revenues and the applicable law shall be considered valid for the purposes of the preceding paragraph.

5 - In the case of national or international co-productions, an application shall be submitted by each of the co-producers for the part of the eligible expenses that they actually bear.

6 - Companies with registered office or effective management in an EU Member State or an EEA State may apply for provisional recognition if, in the State where they are based, they are active in the fields set out in paragraphs 1 and 2.

7 - In the cases provided for in the preceding paragraph and on approval of the application for provisional recognition, the applicant company must establish a branch in Portugal before the date of commencement of eligible expenditure.

8 - ICA, I.P. shall create in the Register of Cinematographic and Audiovisual Companies a form of registration for a non-resident company without a branch in Portugal, in order to allow for the provisional application in accordance with paragraph 6.

Article 3

Requirements to be met by beneficiary companies

1 - Taxable persons who meet the following requirements may benefit from the incentive, subject to compliance with the conditions applicable to tax benefits:

- a) Have properly organised accounting in accordance with the accounting standards and other legal provisions in force for the relevant business sector;
- b) Are not subject to determination of their taxable profits by indirect methods;

- c) Are not declared insolvent by court decision, or in the process of liquidation, dissolution or winding-up, or subject to any measure preventing disposal of assets or in any analogous situation or have such process pending, except where they are covered by an insolvency plan under the legislation in force;
- d) Are not subject to a pending recovery order following a decision by the European Commission that has declared State aid received unlawful and incompatible with the internal market;
- e) Have produced or co-produced at least one feature film that has had theatrical release or has had public exhibition at an international film festival in the 48 months prior to submission of the application for recognition. The status of producer or co-producer must be confirmed by existing contracts and by mentions in the credits of the films considered for the purpose of verifying compliance with this paragraph.

2 - In the case of foreign works produced wholly or partly in Portugal by means of the contractual involvement of a local executive producer, the requirement in sub-paragraph e) of the preceding paragraph shall not apply, but the executive producer must have comparable experience of executive production on behalf of foreign customers in the 48 months preceding the date of submission of the application.

3 - Derogations from the requirement in paragraph 1 e) are permissible in the case of a company incorporated in the 48 months preceding the date of the application for provisional recognition and where its key staff, namely managers or producers, individually meet the said requirement.

Article 4

Requirements on projects

1 - Eligible expenses are solely those relating to the production of fiction (real image), animation or documentary feature films intended for theatrical exhibition.

2 - The production expenses of films produced simultaneously with a television version, namely in the form of a series, may be eligible only if it is possible to strictly separate and allocate the production expenses. Only the production expenses of the film version are eligible for the purposes of the benefit.

3 - The production expenses of films whose content or orientation are essentially advertising, news or political, religious or other propaganda are not eligible, as well as pornographic films or works that, in abuse of freedom of expression, convey messages or otherwise intentionally promote racism, xenophobia, violence or political and religious intolerance, or other values and attitudes manifestly contrary to the fundamental rights and freedoms enshrined in the Portuguese Constitution and in international law are not eligible.

4 - Are eligible the production expenses of films with the following types of initiative and ownership frameworks:

- a) Portuguese productions within the meaning of Decree-Law 124/2013 of 30 August;
- b) Portuguese international co-productions within the meaning of Decree-Law 124/2013 of 30 August. The Portuguese participation may be majority or minority;
- c) Works of Portuguese initiative executed by private contractual means under an arrangement similar to that of Portuguese international co-production, but not eligible for recognition as an official co-production under international co production treaties;
- d) Works of foreign initiative executed by private contractual means under an arrangement similar to that of Portuguese international co-productions, but not eligible for recognition as an official co-production under international treaties on co-production;
- e) Foreign works produced wholly or partly in Portugal using a local executive producer, or produced through a subsidiary in Portugal or a specific limited duration vehicle.

5 - For the purposes of this Regulation:

- a) Portuguese international co-productions mentioned in sub-paragraph b) of the preceding paragraph where the initiative is that of the Portuguese party and this is majority or delegated are treated as Portuguese productions;
- b) Works of Portuguese initiative mentioned in sub-paragraph c) of the preceding paragraph where the Portuguese part is majority or delegated are treated as Portuguese productions.

6 - A condition of the right to the benefit is the incurring of eligible expenditure in Portugal, certified in the definitive recognition process, in an amount not less than €1.000.000,00 per film.

7 - The minimum expenditure per project under the preceding paragraph must correspond to a minimum percentage of the production cost of the film, as follows:

- a) In the case of Portuguese productions and equivalent works: 50%;
- b) In the case of other works of Portuguese international co-production: the same percentage as the minimum percentage participation in the co-production as established in the applicable bilateral or multilateral treaty;
- c) In the case of works of foreign initiative referred to in paragraph 4 d): 10%;
- d) In the case of foreign works: 20% for works with production costs up to €20.000.000,00 and 10% for works with production costs of more than €20.000.000,00.

8 - On the date of submission of the application for provisional recognition, or if this is not possible, no later than the date of commencement of production expenditure in Portugal

(excluding development or pre-production costs), the applicant must prove to have secured financing in at least the following terms:

- a) 70% of the project budget, or in the case of an international co-production, 70% of the Portuguese participation;
- b) €1.000.000,00 of eligible expenditure planned in Portugal.

9 - Principal photography or animation may only commence after submission of the application for provisional recognition.

Article 5

Requirements on cultural content and production

1 - In order to ensure the cultural objectives of the incentive, projects shall be subject to evaluation of their cultural characteristics and their contribution to the enhancement of Portuguese cinematography and resources by means of an analysis and classification table annexed to this Regulation, of which it forms an integral part.

2 - In order to be eligible, the project must achieve a minimum of 14 points in the subtotal of sections A1, B and C of the analysis and classification table, obtaining at least 3 points in section A1 and at least 9 points in the subtotal of sections B and C.

3 - Projects that cumulatively meet the following conditions may opt out of the evaluation under the analysis and classification table; in such case the increased base rate for Portuguese productions and official co-productions will apply to them:

- a) The project is a Portuguese production or Portuguese international co-production under bilateral or multilateral film co-production treaties;
- b) The project has obtained selective public funding involving criteria relating to the cultural value of the project in Portugal, or, in the case of a Portuguese international co-production, in at least one Member State of the EU or EEA.

Article 6

Incentive rates

The rate to be applied to eligible expenditure for the purpose of calculating the amount of the incentive is determined as follows:

- a) General base rate: 20%;
- b) Increased base rate for Portuguese productions and official co-productions: 24% or, where over 80% of the original version of the film is spoken in Portuguese or a Portuguese-based Creole language, 25%;

- c) For every 2 points obtained in section A2 and for every 2 points above the minimum required in the sum of sections A1, B and C of Table 1: 1 percentage point to be added to the applicable base rate, up to a maximum of 25%;
- d) Eligible expenditure incurred in areas of low population density, in accordance with the geographical areas considered for the purposes of the National Territorial Cohesion Programme, and eligible expenditure on remuneration and social charges such as travel and subsistence allowances, social security contributions and insurance for disabled members of the artistic or technical teams: 25%. The rate applying to the remaining eligible expenses of the same project is that determined under the terms of the preceding sub-paragraphs.

Article 7

Eligible expenses

1 - Eligible expenditure is expenditure incurred in the production of a film and which meets the requirements of Article 4, relating to personnel costs and the purchase of goods and services provided in Portugal, as follows:

- a) In the case of remuneration of personnel assigned to the production of the film, and fees paid to service providers:
 - i) These are eligible where they are taxable in Portugal;
 - ii) Persons participating in the production of the work must be included in the lists of artistic and technical staff usual in the profession and which contain their tax domicile.
- b) In the case of services supplied by companies:
 - i) The company must have its registered office, effective management or permanent establishment in Portugal and be duly registered at the Commercial Register;
 - ii) The company or establishment supplying the services must have at least one permanent employee working in Portugal at the time when the services are supplied;
 - iii) A detailed invoice for the services supplied must be issued by the company based in Portugal or by the permanent establishment in Portugal.
 - iv) All the invoiced services must be supplied in Portugal or the material used to provide the services must be purchased in Portugal and the technical equipment necessary for the provision of the services must be used in Portugal;

- v) In the case of movable cinematographic equipment (e.g. cameras, lighting, sound equipment), this must be obtained (i.e. purchased, acquired under lease or rented) in Portugal.

2 - The development expenses of a project incurred in Portugal, as provided in this Article, in the tax period in which production begins, are eligible, even when incurred prior to the submission of the application for provisional recognition, provided that they are included in the project budget and accounts in accordance with Article 54(8) of Commission Regulation (EU) 651/2014 of 16 June 2014, and certified as such.

3 - For the purposes of this Regulation, “development” means the stages preceding principal photography of a work, including the activities of writing and development, as defined in Article 2 c) and f) of Decree-Law 124/2013 of 30 August.

4 - The expenses referred to in the preceding paragraph include those relating to copyright transactions, where necessary for the production of the work.

5 - Expenses relating to the remuneration of producers and production companies, including executive producers, and remuneration of directors and authors and leading actors are eligible up to a cumulative limit of 35% of total expenditure in Portugal.

Article 8

Calculation basis

Without prejudice to Article 4(6) of this Regulation, the maximum amount of expenditure eligible for the purposes of calculation of the amount of the incentive is 80% of the production cost of the film.

Article 9

Cumulation and limits of State aid

1 - The sum of the incentive obtained for the production of a film and other State aid granted for the same production may not exceed 50% of the film’s production costs, or 60% in the case of international co-productions.

2 - The provisions of the preceding paragraph shall not preclude the application of a maximum aid intensity of 80% of the total cost of the film, or in the case of an international co-production, of the part of that cost borne by the Portuguese co-producer or co-producers, in the case of a difficult or low-budget work.

3 - Difficult or low-budget works are defined as works of the following types:

- a) A director’s first feature film;

- b) Documentary films;
- c) Works co-produced with countries that are the subject of development aid by the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD) and classified in the categories of “Least Developed Countries”, “Other Low Income Countries” and “Lower Middle Income Countries and Territories”;
- d) Any Portuguese-produced film costing less than €2 000 000.00.

4 - In the case of Portuguese productions not mentioned in the preceding paragraph, the aid intensity limit of 50% may be exceeded, provided that the following conditions are met:

- a) It is not expected that the film will generate commercial revenue that is likely to cover the production costs necessary for the fulfilment of its artistic and cultural aims;
- b) The project, by its nature, presents difficulties in securing commercial funding, requiring State aid above 50% of its budget.

5 - Verification of the conditions referred to in paragraphs 3 and 4 is the responsibility of ICA, I.P..

6 - Where an international co-production project benefits from State aid for the production in different States, determination of the applicable limits is the responsibility of ICA, I.P. in conjunction with the relevant foreign bodies.

Article 10

Beneficiaries' obligations

1 - Beneficiaries are required to submit the necessary documents, facilitate audits and provide all such information concerning the implementation of the project as ICA, I.P., the Tax and Customs Authority or a third party nominated by any of those bodies may request.

2 - Copies of and materials relating to works completed with the benefit of this incentive must be provided to ICA, I.P. and to the Cinemateca Portuguesa - Museu do Cinema, E.P.E. (CP-MC, E.P.E.), in accordance with Article 18(1) of Decree-Law 124/2013 of 30 August, with the necessary adaptations.

Article 11

Mention of the incentive

1 - It is mandatory to mention the incentive in the credits of films that benefit from it and in printed and online promotion materials relating to those films whenever other public funding sources are mentioned in the credits.

2 - The provisional recognition stipulates the precise terms in which the obligation established in the preceding paragraph shall be fulfilled by the beneficiary.

Article 12

False statements and liability

1 - Beneficiaries who have made false statements will be subject to civil and criminal liability, without prejudice to any others that may arise.

2 - Members of supervising boards and chartered auditors shall be liable, namely in accordance with General Tax Law.

CHAPTER II

PROCEDURE

Article 13

Communications and notifications

1 - All communications between ICA, I.P. and applicants, in particular concerning notifications, shall be sent to the email addresses indicated by them and listed in the Register of Cinematographic and Audiovisual Companies and Other Bodies maintained by ICA, I.P.

2 - Notifications and communications when made by email or other means of written and electronic data transmission shall be deemed to be effected on the date when they were sent.

Article 14

Application for provisional recognition

1 - Applications shall be made electronically prior to incurring film production expenditure, including post-production, by submission of the relevant form provided on the website of ICA, I.P., duly completed and accompanied by the documents listed in paragraph 4.

2 - In event of the technical unavailability of the electronic means attributable to ICA, the Institute will indicate alternative means of submitting the application.

3 - The form includes: identification of the applicant and the other co-producers, if any, or of the foreign producer in the case of a foreign production; identification and technical description of the work; production (including post-production) dates and locations.

4 - The application must be accompanied by the following documents:

a) Administrative documents:

- i) Solemn declaration in which the applicant declares it is not covered by the disqualification conditions stated in Article 3(1) a) to d);
- ii) Copyright assignment agreements or permissions by copyright holders;
- iii) Contract with the director or directors;
- iv) Co-production contract or contracts, where applicable;
- v) Contract between the foreign producer and the local executive producer, in the case of a foreign production;
- vi) Budget and forecast expenditure breakdown by producer, territory and budget line;
- vii) Identification, including indication of nationality, of the tax domicile and the estimated amount of fees or payments to be received by authors, producers, actors and technicians and all professionals and companies to be hired in Portugal and whose participation has an impact on the project score under the terms of Article 5;
- viii) Project financing plan;
- ix) Contracts or decisions certifying the financing obtained and forecast.

b) Documents relating to the project content:

- i) Script;
- ii) Treatment, in the case of documentaries;
- iii) Notes of intention or explanations by the director and or producer;
- iv) Additional technical or artistic explanations relevant to the evaluation of the project, where necessary.

5 - In the event of missing documents or a need for further information, ICA, I.P. will notify the applicant to respond within 10 business days.

Article 15

Decision on the application for provisional recognition

1 - ICA, I.P. will analyse and decide on the application for provisional recognition within 20 business days of receipt of the request. This period will be interrupted whenever necessary documents or further information are requested.

2 - In the event of rejection, the applicant may lodge a substantiated appeal within 10 business days.

3 - ICA, I.P. will decide the appeal within 10 business days and its decision shall be final.

4 - The provisional recognition will include the dates when the eligible expenses are forecast to be incurred, together with the forecast amount, the expected date of completion of the work and an estimate of the tax credit to be generated.

5 - The decision on provisional recognition will be communicated to the applicant by the end of the next business day following the decision.

6 - ICA, I.P. will communicate the decision on provisional recognition to the Tax Authority during February of the year following that of the decision or during the second month following the end of the tax period in which it was made, in the case of taxable persons whose tax year is different from the calendar year.

Article 16

Revision of provisional recognition

1 - Applicants whose projects have been granted provisional recognition under Article 15 must apply to ICA, I.P. for revision of the provisional recognition in the following cases:

- a) When there are significant changes to the project or significant deviations in its implementation compared with what was entered in the initial application form and communicated in the documents sent and accepted in accordance with Article 14;
- b) When a production involves expenditure over more than one tax year.

2 - The changes or deviations in implementation are deemed significant when said changes and deviations relate to critical elements that were essential to determine the eligibility of the project or the tax rebate amounts, namely as follows:

- a) Changes in the co-production structure or contractual relationship with the local executive producer;
- b) Changes in the identity, nationality or residence or tax domicile and in the nature or amount of participation in the project of all authors, actors and technicians or any personnel counted for the purposes of evaluation and classification of the project in accordance with the table annexed to this Regulation;
- c) Changes to the script or production options or eventualities, particularly as regards filming and post-production locations and corresponding durations and dates, or any other factors affecting the evaluation and scoring of the project characteristics in accordance with the table annexed to this Regulation;

d) Budget deviations equal to or greater than 10% of the total project budget and any budgetary decrease that may jeopardise the minimum threshold of eligible costs.

3 - The issuance of revised provisional recognitions by ICA, I.P. shall comply with the applicable procedures and timescales stipulated in Article 15, paragraphs 1 to 3 of this Regulation and shall imply no cost to the applicant.

4 - In those cases where the revision of provisional recognition involves partial certification of the accounts, such as where the reason for the revision is that stated in paragraph 1 b) of this Article, the costs of the interim audit report and certification of accounts shall be borne by the applicant, and shall be considered as eligible expenditure.

Article 17

Definitive recognition

1 - Applications for definitive recognition shall be submitted following completion of the work and completion of the audit report and certification of the accounts by an auditor, as stipulated in paragraph 3, by the end of January of the following year, or by the end of the month following the end of the tax period in the case of taxable persons to whom Article 8, paragraphs 2 and 3, of the Income Tax Code apply.

2 - It shall be deemed that the work is completed for the purposes of the preceding paragraph when the following items are delivered to ICA, I.P.:

- a) Two copies of the final version of the film as provided for theatrical exhibition, at the highest resolution used in the project production chain, subtitled in Portuguese if necessary, provided that they are suitable for the purposes of preservation and projection of the works, one of which shall be for CP-MC, E.P.E., and complying with the technical specifications contained in the Ministerial Order approved by the Minister responsible for the area of culture in this matter;
- b) Accompanying materials intended for publicity and promotion activities, contained in the Ministerial Order approved by the Minister responsible for the area of culture in this matter, intended for CP-MC, E.P.E.;
- c) Trailer for use in promotion and publicity of the work by ICA, I.P.;
- d) Synopsis for promotional purposes (maximum 500 characters);
- e) Distribution agreements, if any, indicating the date scheduled for the film's premiere;
- f) Broadcast and editing agreements, if any;
- g) Dialogue list for the film;
- h) Contract with the composer, in the case of original music;

- i) Declaration by the producer on how the rights required for exhibition and publicity of the film were acquired, particularly as to the use of music and images;
- j) Music cue sheet;
- k) Registration of the work at ICA, I.P.;
- l) A copy of each photo distributed to the press;
- m) Poster of the film.

3 - The audit report referred to in paragraph 1 shall include, in addition to certification of the project accounts, certification of compliance by the applicant with other requirements established in this Regulation and, in particular, verification of the conditions determining the project score in accordance with Article 5(2) and of the calculation of the rebate percentages in accordance with Article 6.

4 - ICA, I.P. will decide on the application for definitive recognition within 20 business days of receipt of the request. This period will be suspended when necessary documents or further information are requested.

5 - In the event of rejection, the applicant may lodge a substantiated appeal within 10 business days.

6 - ICA, I.P. will decide the appeal within 10 business days and its decision shall be final.

7 - Definitive recognition attests to the overall compliance and eligibility of the expenses and includes the final calculation of the applicable tax incentive rates and the amount of the incentive.

8 - ICA, I.P. shall notify the decision on definitive recognition to the applicant and to the Tax and Customs Authority between 20 and 30 April, except as provided in paragraph 1 of this Article in respect of taxable persons to whom Article 8, paragraphs 2 and 3, of the Income Tax Code apply and in those cases where there are interruptions of the allowable period in accordance with paragraph 4 of this Article which make this impossible, in which case ICA, I.P., shall make such notification by the end of the next business day following the decision, if this is later than 30 April.

Article 18

Interim rebate

1 - In cases where the production entails expenditure over more than one tax year, taxable persons must apply, for the purposes of rebates from corporate tax liability in the years of production of the film, for revised provisional recognition for each year, accompanied by certification of accounts and partial audit of the expenditure for the year in question.

2 - Expenditure that cannot be rebated in the tax year in which they were incurred for reasons of insufficient tax liability may be rebated up to the tax year that coincides with the completion of the film.

Article 19

Refund

1 - The part of the amount of the incentive, calculated in accordance with Article 17(7), which cannot be rebated from tax liability shall be refunded within 60 days of notification to the Tax and Customs Authority of the decision on definitive recognition by ICA, I.P., without prejudice to the terms of the following paragraphs.

2 - The counting of the period referred to in the preceding paragraph shall begin at the time when the periodic declarations of income relevant to calculation of the amount to be refunded are presented and centrally found correct on the Tax Authority database, where this occurs on a date subsequent to notification to the Tax and Customs Authority of the decision of ICA, I.P. on definitive recognition.

3 - Where it is found, following notification of definitive recognition by ICA, I.P., that amounts were rebated from tax liabilities that are lower than those which could have been rebated compared with the amount of the incentive calculated in accordance with Article 17(7), the taxable person shall rebate the difference on the declaration for the year in which the project is completed.

4 - In the event that it is found that the amount rebated from tax liability is greater than that which results from the eligible expenditure according to the definitive recognition by ICA, I.P., the income tax which was not paid as a result of that rebate, plus the corresponding compensatory interest, shall be added to the amount of income tax assessed in respect of the tax year in which the work was completed.

Article 20

Audit and duty of cooperation

1 - Legal persons benefiting from the tax incentive for film production shall be subject to auditing by the Tax and Customs Authority in order to verify the basis of the tax benefit and compliance with the obligations imposed on those entitled to it.

2 - Beneficiaries, ICA, I.P. and the Tax and Customs Authority are under a reciprocal duty of cooperation in the implementation and control of the incentive.

ANNEX II

(Referred to in Article 5)

Evaluation grid of the cultural and cinematographic value of projects
SECTION 1A

Content and cultural nature (minimum necessary: 3 points)

		Maximum
A1.1	According to the screenplay, the action takes place mainly ¹ in Portugal, or in a European or Portuguese-speaking country, or in the co-producing countries in the case of official co-productions under co-production treaties to which Portugal is a party, or in an unidentified or imaginary location	1 point
A1.2	More than half of the original dialogues are in Portuguese or in Portuguese-based Creole languages ²	1 point
A1.3	At least one of the leading characters ³ is a national or resident of a Portuguese-speaking territory, or has a strong connection with Portuguese culture or language, or with Portuguese-speaking or European cultures or with the cultures of the co-producing countries under co-production treaties to which Portugal is a party	1 point
A1.4	The original screenplay is in Portuguese	1 point
A1.5	The screenplay is an adaptation of a Portuguese original literary work	1 point
A1.6	The work's main theme is the arts or one or more artists in any artistic discipline and any era	1 point

¹ Determined, at the provisional recognition stage, by the number of scenes/pages of the script in which the action takes place recognisably in Portugal; at the definitive recognition stage, by the greater of the following two numbers: a) number of scenes/pages in which the action recognisably takes place in Portugal in the final version of the script; b) number of minutes during which the action takes place recognisably in Portugal.

² In the case of animated films, this requirement is met if the film has a final version dubbed in Portuguese.

³ The status of the “leading” character is determined, at the provisional recognition stage, by the number of scenes in which he/she appears, lines of speech and action in the most recent version of the script; at the definitive recognition stage, by the greater of the following two numbers, where consistent with the status of leading role mentioned in the credits: a) number of scenes in which he/she appears, lines of speech and action in the final version of the script; b) number of minutes during which he/she appears in the film. In both case a) and case b), the number determined must correspond to at least 40% of the total. In the case of documentaries, the “character” may be a real person portrayed or taking part in the film.

A1.7	The work is primarily concerned with historical characters or events or of historical importance in any era, or important mythical or fictional characters in universal history and culture	1 point
A1.8	The work mainly concerns significant issues in cultural or societal terms, including current or cultural, social or political issues	1 point
A1.9	The work contributes to enhancing Portuguese or European or Portuguese-speaking audiovisual heritage through the use of hitherto unseen or rare archive images occupying over 10% of the work	1 point
A.10	Animated film aimed at child or young audiences	1 point
SUBTOTAL SECTION A1 (minimum necessary: 3 points)		max. 10 points

SECTION A2

Enhancement factors: Cultural promotion, diversity, heritage

		Maximum
A2.1	<p>Prominence of emblematic⁴ places, aspects and characters of Portugal and Portuguese culture:</p> <ul style="list-style-type: none"> • in a number of scenes corresponding to at least 10% of the script (in number of pages) 2 points • in a number of scenes corresponding to at least 5% of the script (in number of pages) 1 point 	2 points

⁴ Places, aspects and characters deemed emblematic are those that are identifiable by the audience as symbols of Portugal and that contribute to its fame in the international collective imagination. The places may be natural or urban landscapes; Portuguese cities or regions or other locations; buildings of any era and type (e.g. Belém Tower or Lisbon or Porto bridges), natural features (e.g. waves at Nazaré). “Aspects” include lifestyles and other characteristic scenes (e.g. yellow Lisbon trams; traditional boats or fishing habits in certain regions; fado; multiculturalism and other characteristics of society); figures of the past or present with major worldwide fame in any area or discipline.

A2.2	<p>International success of the director or scriptwriter:</p> <ul style="list-style-type: none"> won, more than once, awards for best film, best director or best screenplay, for feature films at the following competitions, or won one of them once and was nominated/selected one or more times in competitions for those awards: Awards of the Academy of Motion Picture Arts and Sciences (including Best Foreign Language Film), European Film Academy Awards; competitions of the Film Festivals of: Cannes (Palme d’Or, Grand Prix and Jury Prize), Berlin (Golden Bear and Silver Bears), Venice (Golden Lion, Silver Lion, Jury Grand-Prix), Locarno(Golden Leopard, Leopard for Best Direction, Special Jury Prize), San Sebastian (Golden Shell and Silver Shell), Rotterdam (Hivos Tiger Competition), Sundance (Jury Grand-Prize for Documentary); for documentaries: IDFA Amsterdam (Best Documentary Feature Film and Special Jury Prize for Documentary Feature Film), FID Marseille (Grand Prix of the International Competition), CPH:DOX (Dox:Award); Visions du Réel (International Feature Film Competition); for animated films: Annecy (Crystal and Audience Award for Best Feature Film) 4 points won once any of the awards mentioned in the previous item or was nominated/selected more than once in the competitions for those awards 3 points won, at least once, for a feature film, the award for Best Picture or Best Director or Best Screenplay in an official competitive section of any festival mentioned in the lists of the FIAPF or at an international film festival held in Portugal, in either case in the five years prior to the application for mandatory recognition 1 point 	4 points
A2.3	<p>Presence of music (original, recorded or reinterpreted) sung in Portuguese, or by Portuguese-speaking composers, in relation to the total duration of the film’s soundtrack:</p> <ul style="list-style-type: none"> more than 40% 2 points between 20% and 40% 1 point 	2 points
A2.4	<p>Production of foreign initiative not eligible for official recognition under international co-production treaties, but with a co-production contract with a Portuguese co-producer, provided that the co-production contract with the Portuguese producer designates Portuguese law as the applicable law</p>	1 point
A2.5	<p>The film is directed by a woman</p>	1 point
SUBTOTAL SECTION A2		max. 10 points

SECTION B: CREATIVE COOPERATION

		Maximum
B.1.	Participation of Portuguese creative collaborators and key technicians or who are resident in Portugal or nationals or residents of a Member State of the EU or the EEA:	
B1.1	Director	2 points
B1.2	Producer (or executive producer, solely in the case of foreign productions)	1 point
B1.3	Scriptwriter, adaptation writer, dialogue writer, composer, director of photography, animation director (Head Animator)	1-2 points
B1.4	Art Director, Costume Designer, Film Editor, Chief Makeup Artist, First Cameraman, Sound Director, Head of Wardrobe, First Assistant Director, Production Director, Head of Unit, Special Effects Supervisor, Character Artist (in Animation), Background Artist (Animation), Lead Modeller (Animation), research director or principal expert/consultant (for documentaries)	1-3 points
B1.5	At least one actor/actress in a leading role ⁵	1 point
B1.6	At least 2 actors/actresses in supporting roles ⁶	1 point
SUBTOTAL B1		max. 10 points

		Maximum
B.2.	Participation of other members of the Portuguese artistic and technical teams or who are resident in Portugal or nationals or residents of a Member State of the EU or EEA In relation to the total artistic and technical personnel participating in production activities in Portugal, with the exception of those who generated points in section B1 and the extras, who are Portuguese or resident in Portugal, or are nationals or residents of a Member State of the EU or EEA:	
B2.1	At least 50%	5 points
B2.2	At least 40%	4 points

⁵ Determined, at the provisional recognition stage, by the number of scenes in which he/she appears, lines of speech and action in the most recent version of the script; at the definitive recognition stage, by the greater of the following two numbers, where consistent with the status of leading role mentioned in the credits: a) number of scenes in which he/she appears, lines of speech and action in the final version of the script; b) number of minutes during which he/she appears in the film. In both case a) and case b), the number determined must correspond to at least 40% of the total.

In the case of documentaries, the “character” may be a real person taking part in the film.

⁶ Supporting roles are defined as those that involve at least 4 filming sessions verifiable in the documents and accounts and mentioned in the film credits.

B2.3	At least 30%	3 points
B2.4	Between 20% and 30%	1 point
SUBTOTAL B2		max. 5 points
SUBTOTAL SECTION B		max. 15 points

SECTION C: PROMOTION OF LOCAL RESOURCES

		Maximum
C.1.	Location filming in places or studios in Portugal Percentage of days' filming in Portugal out of the total number of days' filming:	
C1.1	At least 50%	5 points
C1.2	At least 40%	4 points
C1.3	At least 30%	3 points
C1.4	Between 20% and 30%	1 point
SUBTOTAL C1		5

		Maximum
C.2.	Special effects, visual effects, soundtrack recording, audio post-production and post-production in Portugal Percentage of the total	
C2.1	At least 50%	max. 5 points
C2.2	At least 40%	4 points
C2.3	At least 30%	3 points
C2.4	Between 20% and 30%	2 points
SUBTOTAL C2		max. 5 points
SUBTOTAL SECTION C		max. 10 points
SUBTOTAL SECTIONS B + C (minimum necessary: 9 points)		max. 25 points

TOTAL A1 + B + C (minimum necessary: 14 points)	max. 35 points	≥ 14
Score for increment (A1 + number of points above the minimum of 14 points in the subtotal of sections A1, B and C)	<i>max. 31 points</i> <i>n = points obtained</i>	<i>n/2</i>