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Tax Update

Tax Incentives for Creative Industries under the Incentives Code

This Legal Update focuses on incentives available to creative industries under the Puerto Rico Incentives Code, Act 60-2019 (“Incentives Code”).

Tax exemption grants previously issued under Act 27-2011, known as the Puerto Rico Film Industry Economic Incentives Act (“Act 27”), will now be issued under Chapter 9 of Subtitle B of the Incentives Code. Below are some highlights of the provisions of the Incentives Code which will apply to applications filed after December 31, 2019.

I. Eligible Activities

Any new or existing business can request a grant under the Incentives Code (“Grant”) if engaged in one or more of the following:

1. Film projects, as further defined under the Incentives Code, having: i) production or post-production in Puerto Rico, ii) showing, distribution, or commercial exhibition to the general public outside of Puerto Rico (feature films, short films and documentaries are exempted from this requirement), and iii) minimum production costs of at least \$50,000 or \$25,000 in the case of short films or documentaries.
2. Studio or post-production studio operators.
3. Strategic suppliers or endorsed grantees.
4. Infrastructure projects including the development of substantial expansion of studios, laboratories, transmission facilities, or other permanent facilities for the undertaking of film projects in Puerto Rico, provided that direct hard costs exceed \$500,000.

II. Tax Exemption for Eligible Businesses

The income derived by studio operators holding a Grant shall be subject to a 4% fixed income tax rate and the shareholders, partners, or members of the exempt business shall enjoy a 100% income tax exemption on distributions from earnings and profits of said business. In addition, income received by foreign persons not engaged in trade or business in Puerto Rico from payments related to the lease of certain personal property located in Puerto Rico or to any interest in said property, including payments received for the right to use such personal property, directly or indirectly, in eligible activities of the creative industries in Puerto Rico, is eligible for 100% income and sales and use tax exemption.



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Payments received by a foreign person or by an entity hiring foreign persons for services rendered in Puerto Rico are subject to a special 20% income tax withholding rate.

Under the Incentives Code, eligible creative industries activities shall enjoy:

- 100% exemption on municipal license taxes
 - 75% exemption on property taxes
 - 75% exemption on municipal construction excise taxes
 - 100% exemption on excise and sales and use taxes on articles of use and consumption introduced or acquired directly by a grantee for its exclusive use in activities within the film industry, provided that their stay in Puerto Rico is only temporary
- III. Total exemption on internal revenue stamps, legal aid stamps, notary aid stamps, and registration fees on public deeds, private documents, and on the registration of transactions before the Puerto Rico Property Registry in connection with property located within Creative Industries Development Districts designated by the Secretary of the Department of Economic Development and Commerce (“DEDC”)**Tax Credits**

Exempted creative industries may claim tax credits for film projects as follows:

- Up to a 40% tax credit for amounts certified by an auditor as disbursed in relation to costs of production in Puerto Rico, excluding payments made to foreign persons; and
 - Up to a 15% tax credit for amounts certified by an auditor as disbursed in relation to costs of production in Puerto Rico, excluding payments made to foreign persons, for feature films, episodes series, or documentaries, in which a domestic producer is in charge of the film project and the director, cinematographer, editor, production designer, post-production supervisor, or line producer are domestic persons, up to a maximum of \$4,000,000.
- Up to a 20% tax credit for amounts certified by an auditor as disbursed in relation to costs of production in Puerto Rico consisting of payments made to foreign persons;

Once the auditor of the film project has furnished the corresponding certification of the amounts disbursed, the Secretary of the DEDC shall provide a Tax Credit Certification within a period of 30 days. The film project tax credits may be claimed in 2 installments; the first installment in the year of commencement of the activities covered by the creatives industries grant subject to the posting of an acceptable bond or an auditor’s certification and the remaining balance in subsequent years. A 50% advance of the tax credits may be obtained by furnishing either an auditor’s certification to the effect that at least 50% of the Puerto Rico production expenses has been disbursed or a bond acceptable to the Secretary of the DEDC.

Sections 5010.02 and 5010.03 of Subtitle E of the Incentives Code further establish incentives programs for the Puerto Rico film industry and creative industries. As to the film industry, these additional incentives are structured as capital investments in eligible film projects of up to 25% of the total cost of the film project or \$125,000, whichever is less. Said capital shall not limit the film projects ability to obtain the tax credits or any other benefits available under the Incentives Code for the investment from private capital or public funds from other jurisdictions to be invested in the production of the film project in Puerto Rico. Regarding

creative industries, no details are provided as to the structuring of the incentives for which any person engaged in the presentation and/or production of musical events, as well as those operating within Creative Industries Development Districts will be eligible.

Pursuant to Section 2094.01, the Secretary of the DEDC shall designate parcels of land as Creative Industries Development Districts which shall be devoted to the development, construction, and operation of studios and related projects. The zoning classification of said districts shall be established by regulations jointly adopted by the Secretary of the DEDC and the President of the Puerto Rico Planning Board.

IV. Grant Applications

Eligible business may still apply for tax exemption grants under Act 27 until December 31, 2019. However, beginning on January 1, 2020, tax exemption applications for businesses engaged in eligible creative industries can only be made under Incentives Code. Grant applications will be handled by the new Office of Incentives for Businesses in Puerto Rico ascribed to the DEDC.

Further amendments to the Incentives Code are expected in the coming months.

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