

Pursuant to Article 17 paragraph 4 and Article 24 paragraph 2 of the Law on Government ("Official Gazette of RS" no. 55/05, 71/05 – amended, 101/07, 65/08, 16/11, 68/12 – decision of CC, 72/12, 7/14 – decision of CC and 44/14), Article 16 and Article 17 paragraph 3 of the Regulation on Investor Incentive for the production of audiovisual works in the Republic of Serbia ("Official Gazette of RS" no. 72/15), the Minister of Economy adopts

RULEBOOK
ON THE TYPES AND CONTENT OF RATIONALE FOR ELIGIBLE AND NON-ELIGIBLE COSTS AND THE FORM OF APPLICATION FOR PAYMENT OF INCENTIVES TO THE INVESTOR WHO IS PRODUCING AN AUDIOVISUAL WORK IN THE REPUBLIC OF SERBIA

I. SUBJECT OF THE RULEBOOK

Article 1

This Rulebook specifies the types and content of rationale for eligible and non-eligible costs and the form of application for payment of incentives to the investor who is producing an audiovisual work in the Republic of Serbia.

II. PRODUCTION COSTS IN THE REPUBLIC OF SERBIA

Article 2

Production costs are costs which have been realized or which can be reasonably attributed to the recording of an audiovisual work from pre-production, i.e. until the time when the answer-print, i.e. digital copy is ready for distribution, broadcast or screening for the general public. Production costs do not include distribution and marketing costs.

Eligible or Acceptable Costs are costs incurred on the territory of the Republic of Serbia recognized as costs spent on the production of an audiovisual work on the territory of the Republic of Serbia, based on the report by a certified auditor.

The following are accepted as Eligible costs, in accordance with the Regulation on Investor Incentive for the production of audiovisual works in the Republic of Serbia (hereinafter: the Regulation):

- 1) costs regarding the production of an audiovisual work incurred and paid to legal or natural persons on the territory of the Republic of Serbia and which pertain to goods procured and services provided, the use of locations, payment of fees to members of the creative team, cast and technical crew (hereinafter: the Team) who are nationals of the Republic of Serbia or foreigners who reside for at least one year in the territory of the Republic of Serbia, in accordance with the regulations of the Republic of Serbia;
- 2) costs incurred in connection with the use of goods or renting of movable and immovable property may be recognized only in the event that the goods or movable and immovable property are owned by legal or natural persons from the territory of the Republic of Serbia.

Costs which, in accordance with the Regulation, are especially not recognized as eligible costs incurred in connection with the development of an audiovisual work (non-eligible costs) are: marketing costs, costs related to the purchase of real-estate, distribution costs and costs of value added tax.

Evidence of the total funds spent, including eligible production costs in the Republic of Serbia and non-eligible production costs in the Republic of Serbia shall be enclosed with the application for payment of incentives, including:

- 1) overall record of production costs or general ledger for eligible costs,
- 2) evidence confirming the above costs (invoices, contracts and statements from the commercial bank with the indication of payment made, etc.), provided that all payments according to the submitted invoices should be realized before submitting the application for payment of incentives.

III. ELIGIBLE COSTS FOR THE AWARDING OF INCENTIVES

Article 3

Eligible costs are costs for goods or services provided by the investor or a legal entity registered in the Republic of Serbia, a natural person having the nationality of the Republic of Serbia or a resident of the Republic of Serbia who is a taxpayer in the Republic of Serbia, in the context of the production of an audiovisual work under Article 2, paragraph 1 of this Rulebook.

Confirmation of the eligible costs is subject to an independent audit at the expense of the applicant for payment of incentives.

The report of an authorized auditor referred to in paragraph 2 of this Article shall determine all eligible costs, in accordance with the Regulation and this Rulebook.

Article 4

The following costs shall be accepted as eligible:

1. fees and earnings, and all applicable taxes and contributions paid to members of the Team who are taxpayers in the Republic of Serbia, wherever they provide their services;
2. costs associated with apartment rental or hotel accommodation for foreign members of the Team during their stay in the Republic of Serbia, provided that these services are paid to a legal or natural person who is a taxpayer in the Republic of Serbia and that all applicable taxes in the Republic of Serbia have been paid;
3. per diem or reimbursement for the costs of food, accommodation and work and stay in the field or unforeseen costs that are paid to local members of the Team as well as foreign Team members during their work in the Republic of Serbia, up to a maximum of 100 euros per day, provided that their per diem and reimbursements have been paid in the Republic of Serbia with all applicable taxes;
4. costs of purchasing copyrights from residents or legal persons in the Republic of Serbia, provided that the application must include an agreement confirming the purchase of rights;
5. costs of goods and if the goods were purchased for use in the production and then sold before submitting the application for payment of incentives, the eligible cost

- will be the net difference between the original purchase price and the selling price;
6. all insurance premiums if they are provided by a legal person registered in the Republic of Serbia for carrying out insurance business;
 7. general overhead expenses;
 8. operating costs of the legal person providing services to the production of an audiovisual work in the Republic of Serbia or co-producer, if they are invoiced to the production for specific purposes, provided that the same are used for the production of the audiovisual work, and at market prices.

Per diem and other costs of the Team members referred to in paragraph 1, item 3) of this Article shall be accepted to the extent and regardless of whether the Team member is on location in the Republic of Serbia or elsewhere.

Per diem of members of the foreign film or cast Team are qualified for days spent in the Republic of Serbia and only on condition that their per diem are paid in the Republic of Serbia with all applicable taxes.

For the production of audiovisual works which relate to post-production, i.e. the visual processing of material not recorded in the Republic of Serbia, only considered as eligible costs shall be the amounts of fees for Team members and all applicable taxes and contributions, together with the submitting of work orders as evidence of their work, the amount of the production fee unless it exceeds 15% of the total production budget and the amounts of payment for services and goods of other legal persons if they do not exceed 30% of the total production budget.

IV. LIMITED ELIGIBLE COSTS

Article 5

Limited costs that can be included in eligible costs are:

- 1) reimbursement paid for production services, fees for producers and co-producers who are nationals of the Republic of Serbia;
- 2) fees of other related parties;
- 3) costs of the promotion.

A related party referred to in paragraph 1 item 2) of this Article shall be an individual or legal person who is a director or shareholder of the legal entity submitting the application for the granting of incentives, and thereby includes the parent company and/or its affiliates.

Reimbursement paid for production services, fees for producers and co-producers

Article 6

Fees for producers who are nationals of the Republic of Serbia, including travel and accommodation costs, as well as costs of work and stay in the field, are excluded from eligible costs, to the extent that they exceed 10% of the production budget in the Republic of Serbia.

Other costs, such as office leasing and rental of equipment are not included in the

amount referred to in paragraph 1 of this Article, provided that it is necessary to establish that all payments to related parties have been invoiced at market prices.

Fees of other related parties

Article 7

Fees of all other related parties whose sum, together with travel and accommodation costs, as well as costs of work and stay in the field, exceeds a specified limit are excluded from eligible costs to the extent that the amount exceeds 10% of the production budget in the Republic of Serbia.

Costs of promotion

Article 8

Costs incurred as part of promotional activities or when searching for partners for distribution may be recognized as eligible when these costs are incurred during the production of an audiovisual work, i.e. before submitting the application for payment of incentives and if they do not exceed 10% of the total eligible costs.

V. NON-ELIGIBLE COSTS FOR PAYMENT OF INCENTIVES

Article 9

Non-eligible are:

1. costs of financing interests and commissions;
2. fees of foreign producers;
3. deferred payments, participation in profits, remaining payments;
4. advances payable;
5. costs related to the purchase of land and buildings;
6. costs of services included in the costs of goods;
7. costs incurred after submitting the application for payment of incentives;
8. costs of gifts and entertainment.

Costs of financing interests and commissions

Article 10

Non-eligible costs of financing interests and commissions include interest on loans, financing of reimbursements and commissions, including costs associated with the collection and servicing of funds for production.

Fees of foreign producers

Article 11

Fees of foreign producers during their stay in the Republic of Serbia are excluded from eligible costs.

Deferred payments, participation in profits, remaining payments

Article 12

Non-eligible costs are in particular costs:

1. which depend on the commercial impact of the production of an audiovisual work and its earnings, because they cannot be quantified until the audiovisual work is broadcasted;
2. payments which are deferred until the production of the audiovisual work provides financial revenue through the sale of cinema tickets, earnings or profit (e.g. bonuses paid to directors);
3. payments which depend on the final profit incurred from the production of the audiovisual work;
4. amounts payable in relation to the remaining rights of Team members in terms of commercial exploitation of the audiovisual work through future broadcasting and distribution;
5. recoverable advance payments, or any advance payment, which is refundable if certain conditions are not met. Evaluation of these costs may require the audit of major contracts concluded with the Team members according to which part of their fee is considered eligible;
6. services included in the cost of goods, if the cost of certain services is already covered by costs related to specific goods which was delivered to the investor who submits the application, and these services were largely provided outside the borders of the Republic of Serbia, and as such are not considered to be provided for in the Republic of Serbia. This does not apply to imported goods whose supplier owns a registered company that previously procured certain goods (for example, Kodak products);
7. incurred after submission of the application for payment of incentives, because the same cannot be included in the application, given that all payments according to issued invoices should be realized before submitting the application for payment of incentives;
8. gifts, entertainment and gratuities (cost of buying alcoholic beverages, production events and gifts or any other costs that may be considered unreasonable).

VI. RATIONALE FOR COSTS

Content of rationale for costs

Article 13

The rationale for costs should include the total production budget, as well as costs classified according to the criteria of eligibility, likewise those which are the subject of payment and those which cannot be the subject of payment in accordance with the Regulation and this Rulebook.

The rationale for should include all costs incurred during the production of an audiovisual work, from preparations for filming until the time when the answer-print, i.e. digital copy is ready for distribution, broadcast or screening for the general public.

Certain terms used in the rationale of costs shall have the following meanings:

- 1) **Cast and Crew Credits** is a list of the team of authors, cast, the heads of sectors and other staff required to produce an audiovisual work;

- 2) **Funding Schedule** contains an overview of sources of funding for the audiovisual work, by means of which the producer intends to procure funds for financial closure with a precisely indicated funding status (in application, under negotiations, confirmed);
- 3) **Cash Flow** is a weekly plan for spending funds in the period from the preparations to the completion of the audiovisual work;
- 4) **Schedule** gives an overview of the production of a film by phases, in a specific time period;
- 5) **Call Sheet** is a daily shooting schedule issued by an assistant director and delivered at the end of each day's shooting for the next day's shooting to the full cast and crew. This document contains all needs, itemized and in unit measure, for the next day's shooting, as well as the exact schedule for the full cast and crew;
- 6) **Daily Production Report** is prepared by a production coordinator. This document contains all the information from the previous day's shooting (itemized and in unit measure: consumption of all types of materials, services, work hours, etc.);
- 7) **Cost Report** monitors the expenditure of funds within the week in relation to the budget;

Value Added Tax (VAT)

Article 14

All amounts contained in the application for payment of incentives should include the amount of value added tax, except that the amount of value added tax shall not be included in the basis for calculation of the amount which is the subject of payment.

Currency conversion

Article 15

All other production costs incurred in a foreign currency must be indicated in RSD amounts according to the middle exchange rate of the National Bank of Serbia on the day of payment.

Market-based costs

Article 16

The arm's length principle is taken into consideration when evaluating the eligibility of certain costs, with the aim to ensure that the amount of costs collected between the investor submitting the application and all other related parties for the purchase of goods or provision of services is acceptable in market (commercial) terms.

When costs incurred by the applicant are not part of an acceptable deal in market terms, which significantly increases or decreases the price of certain goods or services in respect of the production of an audiovisual work, then only the amount not higher than the commercially accepted amount for said goods or services may be recognized as acceptable.

The commercial rate is the amount that would have been incurred had the parties agreed according to the arm's length principle, whereby charging the price they would normally charge to an unrelated party.

The arm's length principle shall be applicable to any activity or transaction in direct or indirect relation to the costs incurred by the applicant, meaning that this principle also applies in situations where, due to lack of a market-based deal between the remaining parties, the amount of costs incurred for certain goods or services ordered by the applicant increases.

Cost basis

Article 17

In order to include a certain cost into Eligible Costs, it must be a cost incurred during the production of an audiovisual work for which the application is submitted.

The cost from paragraph 1 of this Article must be invoiced to the applicant and realized prior to submission of the application for payment of incentive.

If the applicant is purchasing goods for use in the production of the audiovisual work, or sells or disposes with it in any other way before the end of production, it is only possible to report the difference in the purchase and selling price of the goods as an eligible cost.

VII DETERMINING THE FULFILLMENT OF CONDITIONS FOR AWARDING INCENTIVES

Article 18

The incentives are awarded, in accordance with the Regulation, on the basis of a permanently open public call for awarding incentives announced by the ministry responsible for economic affairs (hereinafter: the Ministry).

The investor submits the application for awarding incentives to the Committee for awarding incentives through Film Centre Serbia, with accompanying documentation prescribed by Article 9 of the Regulation, on the form printed with this rulebook and is an integral part of the same as Schedule 1.

The Committee, in accordance with the Regulation, evaluates each received application and within seven days from the date of submitting the application, determines whether the investor and audiovisual work are eligible for awarding incentives, and renders a decision determining whether all the conditions for awarding incentives have been met.

After the Committee determines that the applicant has met the conditions, it proposes to the Ministry to render the decision on the fulfillment of the qualified conditions for awarding incentives.

The Ministry signs the agreement on awarding incentives with the applicant, under the condition that funds have been provided in the budget of the Republic of Serbia for these purposes.

The agreement further regulates the deadlines, rights and obligations of the parties.

The documentation attached to the application for awarding incentives, in accordance with Article 9 of the Regulation, shall be deemed an integral part of the agreement.

VIII. SUBMITTING THE APPLICATION FOR AWARDING INCENTIVES

Article 19

In accordance with the Regulation, the investor submits to the Committee the request for payment of incentives within 45 days after the end of producing the audiovisual work on the territory of the Republic of Serbia.

The request for payment of incentives is submitted on the prescribed form, accompanied by the following documentation:

- 1) excerpt from the Serbian Business Registers Agency or other competent register;
- 2) report of an independent auditor on the costs of producing the audiovisual work in the Republic of Serbia and the business activity of the investor relating to a specific audiovisual work that is the subject of the application;
- 3) overall record of production costs or general ledger for eligible costs;
- 4) evidence confirming the stated costs (invoices, agreements and bank statements from commercial banks indicating payment made, etc.);
- 5) list of the film and cast members;
- 6) evidence of the total funds spent on the territory of the Republic of Serbia, in accordance with the applicable laws of the Republic of Serbia;
- 7) certified statement of the investor that the information in the documents are true and accurate;
- 8) bank account number of the investor opened in the Republic of Serbia to which the payment of incentives should be made.

The form of the application from paragraph 2 of this Article is printed with this rulebook and is an integral part of the same as Schedule 2.

IX. ENTRY INTO FORCE OF THE RULEBOOK

Article 20

This rulebook enters into force on the day following the date of its publication in the "Official gazette of the Republic of Serbia".

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In Belgrade, on April 6th 2016.

MINISTER

Zeljko Sertic