[ES] Fiscal and labour measures for the protection of creators and artists

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On 6 September 2018, the Plenary of the Congress of Deputies approved the report of the subcommittee for the elaboration of the Statute of the Artist, through which the government was requested to approve urgent measures which would improve the working conditions of Spanish creators. The Statute of the Artist includes up to 75 suggestions and measures in the domains of tax nature, labour protection and social security as well as the compatibility between retirement benefits and income from copyright, whose ultimate purpose is to try to adapt the regulatory scheme applicable to the specificities of artistic work.

In the hurry to comply with the provisions of the aforementioned report, on 29 December 2018, Royal Decree Law 26/2018 (Real-Decreto ley) of 28 December was published in the Official State Gazette (Boletín Oficial del Estado), approving emergency measures regarding the creation of artistic and cinematographic works. In the first place, in the area of tax, Title I of the said Royal Decree-Law modifies Law 35/2006 of 28 November on Personal Income Tax and, partially, the Laws of the Corporate Tax on the Income of Non-Residents and on Property, reducing the percentage of the withholding tax and on account income over the yields from movable capital derived from intellectual property (from 19% to 15%) when the taxpayer is the author.

Secondly, Law 37/1992 of 28 December on Value Added Tax (VAT) has been amended in order to apply the reduced rate of 10% to services provided to producers and organisers of works and cultural shows by individuals working as interpreters, artists, directors or technicians. Thirdly, Law 27/2014 of 27 November on Corporation Tax has been modified, allowing a deduction of 20% for those expenses incurred on the Spanish territory in the execution of the foreign production of feature films or audiovisual works, provided that the expenses of the said production amount to at least one million euros. The amount to be deducted for each production may not exceed three million euros.

Next, Title II of this legal text modifies Article 249b of the revised text of the General Law on Social Security, approved by Royal Legislative Decree 8/2015 of 30 October, which establishes that artists in public shows may continue to be included in the General Social Security Scheme during their periods of inactivity on a voluntary basis, provided they credit at least 20 days registered with real

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provision of services in the said activity during the previous year, having to exceed the remuneration received for those days to the amount of three times the minimum statutory wages in monthly computation. Finally, in the second final provision, it was established that the government, within a maximum period of six months from the publication of the Royal-Decree Law, should proceed to the approval of a regulatory rule that, in development of Article 213 of the revised text of the General Law on Social Security, regulates the compatibility of the retirement pension with the activities of those professionals dedicated to artistic creation who receive intellectual property rights for that activity.

In order to comply with the provisions of the previous provision and its development, on 26 April 2019, the government approved Royal Decree 302/2019, which regulates the aforementioned compatibility of the contributory retirement pension and the activity of artistic creation. The personal scope included in Article 2 of this Royal Decree provides that the beneficiaries of a contributory retirement pension who perform an activity of artistic creation for which they receive income derived from intellectual property rights, may benefit from the aforementioned compatibility; including those generated by their transmission to third parties, regardless of whether they receive other related remuneration for the same activity.

Regarding the compatibility scheme of artistic creation contained in Article 3, it will be compatible with 100% of the amount that the beneficiary receives or, in this case, was receiving for the contributory retirement pension. Similarly, artistic creation activity will be compatible with receiving 100% of the maternity leave allowance. In this sense, the beneficiary will be considered a pensioner for all purposes. Finally, and as stated in Royal-Decree Law 26/2018 in its second final provision, the recognition of compatibility should be accompanied by a solidarity contribution of 8%, which in case of being employed by others, should be split between the employer (6%) and the employee (2%).

Other measures that are included in the report of the Statute of the Artist, and which are still pending for special regulation are, for example, the risk benefits for pregnancy and maternity prior to childbirth, union representativeness and the deduction of expenses from work income for training and work equipment.

To conclude, what is aimed to be achieved through the Statute of the Artist and its gradual legislative expression is the vindication of the professionalisation of cultural sectors. It is about improving the working conditions of creators and highlighting the importance of culture, seeking fair protection and remuneration for authors and artists, and equating their activity to that of other workers.

Informe de la Subcomisión para la Elaboración de un Estatuto del Artista

http://www.congreso.es/backoffice_doc/prensa/notas_prensa/61825_153623093980

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Report by the sub-commission for the Drafting of a Statute of the Artist

Real-Decreto ley 26/2018, de 28 de diciembre, por el que se aprueban medidas de urgencia sobre la creación artística y la cinematografía

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-17990

Royal Decree-Law 26/2018, of December 28, which approves emergency measures on artistic and cinematographic creation

Real Decreto 302/2019, de 26 de abril, por el que se regula la compatibilidad de la pensión contributiva de jubilación y la actividad de creación artística, en desarrollo de la disposición final segunda del Real Decreto-ley 26/2018, de 28 de diciembre, por el que se aprueban medidas de urgencia sobre la creación artística y la cinematografía

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-6298

Royal Decree 302/2019, of April 26, which regulates the compatibility of the contributory retirement pension and the activity of artistic creation, in development of the second final provision of Royal Decree-Law 26/2018, of 28 December

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