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MEDIA AND ENTERTAINMENT

Film Financing and Television Programming

A Taxation Guide

Sixth Edition

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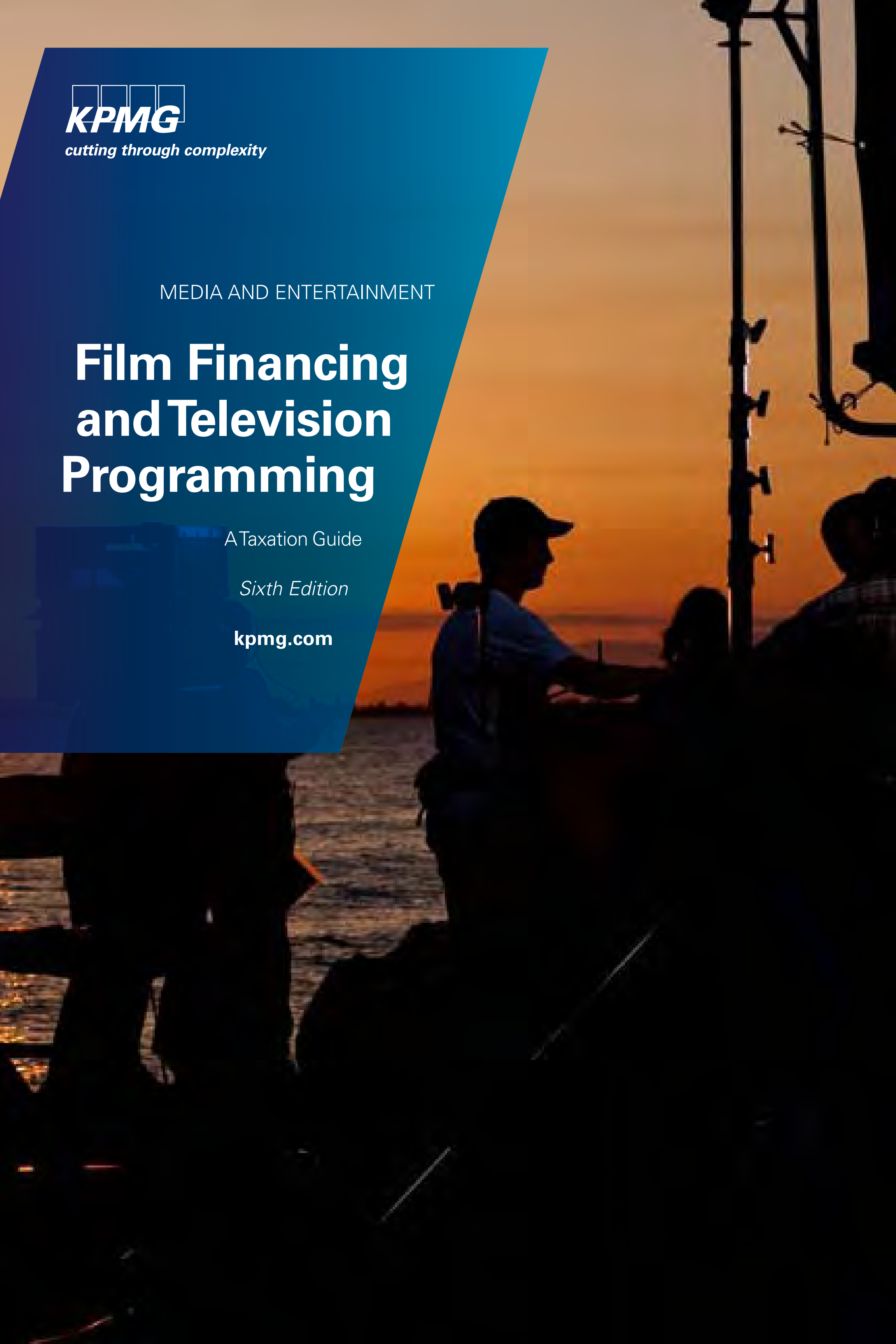

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Preface

KPMG LLP's (KPMG) Film Financing and Television Programming: A Taxation Guide, now in its sixth edition, is a fundamental resource for film and television producers, attorneys, tax, and finance executives involved with the commercial side of film and television production. The guide is recognized as a valued reference tool for motion picture and television industry professionals.
Its primary focus is on the tax and business needs of the film and television industry with information drawn from the knowledge of KPMG International's global network of media and entertainment Tax professionals.

KPMG published the first guide more than 15 years ago as a resource for global coverage of incentives and tax updates as they apply to the film and television industry. Subsequent editions expanded into coverage of financing techniques, credits/incentives, and a thorough appendix of withholding tax rates–a valuable reference tool for all finance and tax professionals.

Each chapter of the sixth edition focuses on a single country and provides a description of commonly used financing structures in film and television, as well as their potential commercial and tax implications for the parties involved. Additionally, the United States chapter focuses on both federal and state incentives, highlighting the states that offer the more popular and generous tax and financial incentives. Key sections in each chapter include:

Introduction
A thumbnail description of the country's film and television industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts
At-a-glance tables of corporate, personal, and VAT tax rates; normal non-treaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures
Descriptions of commonly used financing structures in film and television in the country and the potential commercial tax implications for the parties involved. The section covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-effective structures.

Tax and Financial Incentives
Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

Corporate Tax
Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

Personal Tax
Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

Appendices
Additionally, withholding tax tables setting forth the non-treaty and treaty-based dividend, interest, and film royalty withholding tax rates for the countries surveyed are included as an appendix and can be used as a preliminary source for locating the applicable withholding rates between countries.

KPMG and Member Firm Contacts
References to KPMG and KPMG International member firm contacts at the end of each chapter are provided as a resource for additional detailed information.

The sixth edition of KPMG's Film and Television Tax Guide is available in an online PDF format at www.kpmg.com/filmtax and on CD. The guide is searchable by country.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this book should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Finally, we would sincerely like to thank all of the KPMG International member firm Tax professionals from around the world who contributed their time and effort in compiling the information contained in this book and assisting with its publication. Production opportunities are not limited to the 35 countries contained in this guide. KPMG and the other KPMG International member firms are in the business of identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

Thank you and we look forward to helping you with any questions you may have.

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Chapter 01

Australia

Introduction

Since 1999, the Australian government has undertaken a program of significant business tax reforms. The result is a changed Australian tax landscape that includes the broad based goods and services tax (GST), tax consolidation regime, specific tax rules to classify financial instruments as debt or equity, thin capitalization rules, simplified dividend imputation rules, comprehensive tax rules for recognizing and calculating foreign exchange gains and losses and new rules redefining the taxation of financial arrangements.

On the international front, double tax agreements with countries such as France, Norway, Japan and New Zealand have come into force in the last few years. As a result, changes are being made to the way overseas profits earned by Australian entities and their affiliates are taxed in Australia. Other significant changes on the international front include amendments to capital gains tax, which include, amongst other changes, the exemption from Australian capital gains tax for non-residents in certain circumstances and the exemption for capital gains and losses in relation to shares in a foreign company in certain circumstances.

Of more direct relevance for film projects has been the phasing out of the Division 10B and Division 10BA tax incentives and the introduction of new Australian Screen Production Incentives as a result of a review in 2006 to reform and strengthen the Australian screen media industry. The shift toward producer based incentives is a reaction to the limited effectiveness of the investor based incentives offered by Division 10BA and Division 10B and is designed to make Australia a more attractive location for overseas film investment by improving the accessibility of the tax offsets available.

The producer incentives are available in three streams; the Producer Offset, the Location Offset and the Post, Digital and Visual Effects Production (PDV) Offset. The offsets can only be claimed by a production company which is either an Australian resident or a foreign resident that has a permanent establishment in Australia and has an Australian Business Number (ABN). Only one of the three offsets may be claimed for a film production.

On 29 July 2011, draft legislation was released for public consultation outlining proposed changes to the film producer offset, location offset, and the PDV offset originally announced as part of the 2011 – 12 Federal Budget.

In 2008, a new authority named Screen Australia was established to bring together the functions of the Australian Film Commission, Film Finance Corporation Australia Limited and Film Australia Limited and carry out additional functions regarding the support and promotion of Australian film and the provision of tax incentives to film producers. The Screen Australia

webpage (http://www.screenaustralia.gov.au) and the Department of the Prime Minister and Cabinet – Office of the Arts webpage (http://www.arts.gov.au/topics/film-television/australian-screen-production-incentive) provide all the relevant information to taxpayers wishing to invest in the film industry.

Key Tax Facts

Corporate income tax rate	30% (proposed reduction to 29% from 2013-14, however, not yet legislated)
Highest personal income tax rate	46.5%
Goods and services tax rate	10%
Annual GST registration turnover threshold	A$75,000
Normal non-treaty withholding tax rates: Unfranked dividends	30%
Franked dividends	0%
Interest	10%
Royalties	30%
Tax year-end: Companies	June 30
Tax year-end: Individuals	June 30

Film Financing

Financing Structures

Co-production

Australia has entered into a number of co-production agreements with other countries. Currently, Australia has full co-production treaties with the United Kingdom and Northern Ireland (currently being renegotiated), Canada, Italy, Israel, Ireland, Singapore, China, and Germany, and "less-than-treaty" memoranda of understanding (MOU) with New Zealand and France. Further, a co-production treaty with South Africa has been signed but is not yet in force. Australia is also negotiating co-production treaties with India, Denmark, Malaysia and the Republic of Korea. It is possible to apply for a one-off MOU on a particular project as an appropriate way to "trial" whether general MOU of a treaty with the country in question should be pursued.

Screen Australia administers the official co-production program and is the "competent authority" for purposes of the program. Screen Australia administers the program within the terms of the "International Co-Production Program Guidelines" (version issued 27 April 2011) available on the Screen Australia webpage. If a production qualifies as an official co-production, it may be eligible for certain benefits such as investment by Screen Australia and tax benefits. To qualify, productions must meet certain tests which require an overall balance of all creative and financial elements to be maintained across co-productions over a period of time. Broadly, the following must be satisfied:

- There must be a producer from each co-production country;
- The Australian co-producer must retain a share of copyright in the co-production, i.e. in the finished film;
- The film must be made in the co-production countries. However, some co-production arrangements provide for the competent authorities to consider requests to undertake location filming outside the co-producing countries in exceptional circumstances;
- Participants in the making of the film must be national or permanent residents of Australia or the co-producing country/ies;
- A film may be based on an underlying work from any country;
- Australian minimum participation levels are set out in each co-production arrangement. The minimum is typically 20 or 30 percent;
- The proportion of the budget raised by the Australian co-producer must be reasonably similar to the proportion of the budget spent on Australian elements; and
- Each co-production is made in accordance with an agreement entered into by each of the co-producers.

Australian participation in a co-production is determined by a points system, Australian Qualifying Points ("AQP"). The AQP must reach at least the minimum contribution level prescribed by the relevant co-production arrangement as a percentage of the total creative points and must also be reasonably proportionally similar to the financial contribution that the Australian co-producer makes to the co-production. A 5 percent leeway is allowed.

Each test has a set number of roles that are always counted (top-line key creative roles). These roles attract 'compulsory points'. In addition, the Australian co-producer may select roles in the discretionary point section to make up the level of points required for the film. However, Screen Australia reserves the right not to accept the allocated discretionary points.

For example, note the points values system for feature films and TV drama in the table below:

Australian Points System – Feature Films and TV Drama	Points
Compulsory points	
Writer	2
Director	2
Director of Philosophy	1
Editor/Picture Editor	1
Cast (4 principal roles)	4
Discretionary points (select 5 from below)	
Composer	1
Costume Designer	1
Production Designer	1
Script Editor	1
Sound Designer	1
Underlying work	1
VFX Supervisor	1
Other senior key role specific to the film such as choreographer, special make-up design etc.	1
Total:	15

Partnership

Limited partnerships are taxable as companies in Australia and accordingly are not commonly used in any investment structure.

Where an unlimited (i.e. general) partnership is formed in Australia to make a film in Australia, the Australian tax treatment will be straightforward. General partnerships are not tax paying entities; however, they are required to lodge tax returns in Australia disclosing the partnership profit sharing arrangements. All partners will be subject to full Australian tax on their share of the partnership profits as the carrying on of a business by the partnership will give each partner a permanent establishment in Australia. Relief from double taxation should be available.

In the event that a partner is resident in Australia but the partnership carries on business outside Australia under the control of a non-Australian resident, the non-Australian resident partner would clearly not be liable to Australian tax. The Australian resident partner would still be liable to Australian tax on its share of the partnership profits.

Equity Tracking Shares

The term "equity tracking shares" is not used in Australia. Internationally, the term refers to shares that provide for dividend returns dependent on the profitability of a film production company's business. These shares have the same rights as the production company's ordinary shares except that dividends are profit-linked and have preferential rights to assets on a liquidation of the company.

If the production company is resident in Australia, these tracking shares would be regarded as preference share capital. Normally, the dividends paid on the tracking shares would be treated in the same way as dividends paid on ordinary shares. Dividends paid on ordinary and preference shares in Australia are normally treated similarly provided that the equity tracking shares are considered to be an equity instrument under the debt/equity rules.

If the tracking shares are acquired by an Australian resident investor, but the production company is resident elsewhere, any dividends received on the tracking shares would be treated in the same way as dividends received on ordinary shares. Where the Australian resident company has a greater than 10 percent voting interest in the foreign production company, any dividends received on the tracking shares may qualify for an exemption from income tax in Australia, provided certain conditions are met. Any tax withheld in the foreign jurisdiction would be dealt with according to the dividend article of the appropriate double tax treaty.

Yield Adjusted Debt

A film production company may sometimes issue a "debt security" to investors. Its yield may be linked to revenues from specific films. The principal would be repaid on maturity and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplementary (and perhaps increasing) interest payment may be paid where a predetermined target is reached or exceeded (such as revenues or net cash proceeds).

For Australian tax purposes, this "debt security" would probably be classified as debt under the debt/equity rules. Generally, if the parties are at arm's-length the interest would be regarded as fully tax deductible to the payer and subject to a 10 percent withholding tax irrespective of the jurisdiction of the lender (unless the lender is a financial institution resident in, for example, the U.K., the U.S., New Zealand, Japan, Finland, or Norway, where Australia's double tax agreements provide for no withholding).

Any repayment of the principal would not be subject to any form of withholding.

Sale and Leaseback

A purchase and leaseback of a film is not usually tax effective in Australia as the purchaser is regarded as having made a capital payment and would only be able to amortize the purchase price over the life of the film's copyright. Any license payments received by the purchaser/lessor of the film would be fully assessable to tax.

Other Tax-effective Structures

Australian Subsidiary

An Australian subsidiary will provide foreign film makers with the greatest flexibility. To the extent that funds are required in Australia, the subsidiary could obtain a limited license from a foreign copyright holder and make the film in Australia under that license. The fee to the production company can be structured on a cost-plus basis.

Tax and Financial Incentives

Investors

Australian tax legislation has a general anti-avoidance provision whose broad impact is that any transaction that has the dominant purpose of avoiding tax can be attacked by the Australian revenue authorities.

Filmed Licensed Investment Companies

The filmed licensed investment companies (FLIC) pilot scheme ran in parallel with the Division 10BA and Division 10B film concession. The FLIC Scheme 2005 followed a pilot scheme that operated between the 1999 and 2002 financial years. Under the FLIC Scheme 2005, a company was granted a non-transferable license to raise concessional capital to be invested in qualifying Australian films.

No further FLIC licenses have been issued since the introduction of the Australian Screen Production Incentives.

Australian Screen Production Incentives
The Australian Screen Production Incentives comprise the Producer Offset, Location Offset and PDV Offset. The Producer Offset scheme is administered by Screen Australia and both the Location Offset and the PDV Offset are administered by the Department of the Prime Minister and Cabinet – Office of the Arts.

Producer Offset
The Producer Offset is a refundable tax offset of 40 percent of a film's Qualifying Australian Production Expenditure (QAPE) for Australian feature films and 20 percent where the Australian film is not a feature film. The Producer Offset is to be claimed in the income tax return for the income year in which the project is completed.

The Producer Offset is available to productions which incur eligible expenditure on or after 1 July 2007, in relation to certain types of eligible productions. In order to claim the Producer Offset, the production company must first obtain a certificate of eligibility from Screen Australia.

The types of films which are eligible for the Producer Offset include feature films, single episode programs, series, a season of a series, and other short form animated dramas. To be eligible, the film must have "significant Australian content" or be a film made in accordance with the requirements of a co-production agreement (in which case it is considered to meet the significant Australian content test).

The determination of "significant Australian content" is a matter of judgment based on consideration of all the elements of a particular project. Where there are non-Australian elements in a particular aspect of the film, the applicant should provide justification for these elements and it is expected that there would be reliance on strong Australian elements in other aspects of the film. Screen Australia has provided the following guidance for matters it will consider in determining whether "significant Australian content" exists (refer to the "Producer Offset: Guidance on Significant Australian Content (SAC)" (September 2009) publication available on the Screen Australia webpage):

- Subject matter of the film: Whether or not the film looks and feels significantly Australian. This involves considering whether it is based on an Australian story, the extent to which it is about Australian characters and is set in Australia, whether the core origination of the project took place in Australia or under Australian control, the length and extent of association that Australian citizens or residents have had in its development, and other relevant factors which are peculiar to an individual project. This is one of the more important matters in satisfying the significant Australian content test;
- Place where the film was made: Whether the film was to a significant extent produced in Australia. Screen Australia will take into account each phase of the production cycle separately (pre-production, production and post-production). Where a film is shot mostly overseas it will need strong claims in other matters to pass the significant Australian content test;
- Nationalities and places of residence of the persons who took part in the making of the film: Whether the nationality (citizen or permanent resident of Australia) and residence (if nationality not Australian) of filmmakers are Australian. That of the producer, writer and director is especially important, followed by that of the lead cast, Heads of Department, and other cast and crew. Foreign personnel in key roles would reduce a film's claim in this matter;
- Details of the production expenditure incurred in respect of the film: Extent to which the Australian film industry benefits from a film's production expenditure with respect to its maintenance and development. This includes the extent to which Australian citizens or residents receive the expenditure and the extent the expenditure is spent on Australian goods and services; and
- Other matters that the film authority considers to be relevant: Screen Australia may take into account anything else that it considers relevant, for example policy issues, copyright ownership, creative control, etc.

Screen Australia requires that any film with numerous non-Australian elements provide additional information to support it in a significant Australian content claim. This may include development timelines regarding the length of Australian association, photos demonstrating impact of Australian landscape on the film, etc.

Under the Producer Offset, sources of financing of copyright ownership are no longer specific factors to be considered in determining eligibility for the offset. The Producer Offset is only available to a production company if it is either an Australian resident or a foreign resident that has a permanent establishment in Australia and has an ABN.

A key criterion to access the Producer Offset is that the production must satisfy a minimum QAPE threshold depending on the type of project undertaken. For a feature film, the minimum level of QAPE to obtain the Producer Offset is $1 million.

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A film's production expenditure is the expenditure incurred or reasonably attributable to actually making the film and any other activities undertaken to bring the film up to the state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public. This includes pre-production activities, shooting of the film and post-production activities.

QAPE defines those costs that are eligible for the tax offset to be the production expenditure for the film that is incurred or reasonably attributable to:

- Goods and services provided in Australia
- The use of land located in Australia
- The use of goods located in Australia at the time they are used in making the film

There are specific inclusions and exclusions to this definition.

Generally, the following costs are excluded from production expenditure and QAPE in order to focus the tax offset on the expenditure that occurs in the activity of making the film:

- Financing expenditure (including forms of insurance which constitute financing)
- Foreign development expenditure – expenditure on development work undertaken outside of Australia
- Foreign-held copyright acquisition – acquiring copyright from a non-Australian resident (this applies to the purchase and licensing in pre-existing works)
- Foreign business overheads – expenditure incurred to meet the business overheads of the company
- Publicity and promotion expenditure – except those incurred in producing Australian copyrighted promotional material and producing additional content
- Deferments and profit participation – payments which are deferred until the production provides financial returns
- Residuals paid out after the film is completed – amounts payable in satisfaction of the residual rights of a person who is a member of the cast
- Advances – amounts paid by way of advance on a payment
- Costs incurred in the acquisition of depreciating assets

A production company is not entitled to the Producer Offset if it or any other person in relation to the underlying copyright of the film has:

- Claimed a tax deduction for the project under Division 10B; or
- Been issued with a final certificate under Division 10BA; or
- Been issued with a final certificate for the Location Offset or PDV Offset; or
- Been issued with a final certificate for the Refundable Film Tax Offset (RFTO); or
- Received investment support under the FLIC scheme; or
- Received production funding from the FFC, AFC, Australian Film, Television and Radio School or Film Australia prior to 1 July 2007

The Producer Offset can be applied for in two parts. A producer can make an application for a Provisional Certificate, which will provide guidance on whether a production is likely to qualify for the Producer Offset, or for a Final Certificate, a mandatory application which provides the base for the calculations for the payment of the Producer Offset by the Australian Taxation Office (ATO). While a Provisional Certificate application can be made once financing and distribution arrangements have been completed, a Final Certificate application can only be submitted when the film is completed, all expenditure has ceased and the project has evidence of distribution.

As of 31 March 2011, 519 projects have been issued with provisional certificates in relation to the Producer Offset, comprising 173 feature films, 239 non-feature documentaries and 107 other projects. Also, as of 31 March 2011, 296 projects have been issued with final certificates in relation to the Producer Offset, comprising 62 feature films, 163 non-feature documentaries and 71 other projects.

Location Offset

As a financial incentive for the producers of large budget films to locate in Australia, in 2001, the government introduced a refundable tax offset scheme. The tax offset was intended to complement the diversity of Australia's locations, the skills and flexibility of Australian crews and creative teams, and the internationally recognized standards of Australia's technical facilities and post-production services. The refundable film tax offset scheme was reviewed in 2006, and the Location Offset introduced as part of the new producer incentives.

The new Location Offset is effectively an enhancement of the previous refundable film tax offset scheme aimed to encourage large scale film productions to locate in Australia. The Location Offset provides a 15 percent refund (an increase from 12.5 percent) on the total of the production company's QAPE on the film. The general test for QAPE for the Location Offset is the same as that for the Producer Offset, including specific inclusions and exclusions and rules related to expenditure generally. However, there are a few additional rules which apply to the Location Offset and the PDV Offset.

Consistent with the other Australian Screen Production Incentive offsets, the Location Offset is to be claimed in the income tax return for the income year in which the film is completed, and can only be claimed by an eligible film production company that is either an Australian resident company or a foreign corporation with an Australian Business Number (ABN) that is operating with a permanent establishment in Australia.

The Location Offset will apply to film and television projects which commence principal photography or production of the animated image on or after 8 May 2007. A film will be eligible for the Location Offset if it is a feature film or a film of a like nature, a telemovie, a miniseries, or certain television series.

The Location Offset is administered by the Department of the Prime Minister and Cabinet – Office of the Arts. Applicants must first apply to the Office for a certificate of eligibility, which is issued by the Minister for the Arts in order to guarantee receipt of the Location Offset (refer to the "Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets – Incentives for large-budget screen production in Australia (July 2011)" publication available at http://www.arts.gov.au/).

The key criterion to access the Location Offset is a minimum level of QAPE of $15 million on the production of the film. Once this criterion is satisfied, the film will qualify for the tax offset irrespective of the percentage of the film's total production expenditure that is spent on film production activity in Australia.

To be eligible for the location offset, a company must have either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film. It is not necessary for the company to be responsible for the entire production.

An eligible production company can apply for the Location Offset in the income year in which the QAPE ceased being incurred.

PDV Offset

The Post, Digital and Visual Effects (PDV) Offset is designed to attract post-production, digital and visual effects production to Australia as part of large budget productions, no matter where the film is shot. Consistent with the other Australian Screen Production Incentive offsets, the PDV Offset is to be claimed through the production company's income tax return for the income year in which the qualifying PDV expenditure ceased being incurred.

The PDV offset offers a 15 percent refund on all "qualifying PDV expenditure" for an eligible film or television program. The offset will be available for PDV production work that commences on or after 1 July 2007. The date which production commences on the film for which the PDV work is being undertaken has no effect on whether the PDV offset can be accessed. The formats eligible for the PDV Offset are feature films and films of a like nature (including direct-to-DVD), mini-series, telemovies and television series.

The PDV Offset is administered by the Department of the Prime Minister and Cabinet – Office of the Arts. Applicants must first apply to the Office for a certificate of eligibility, which is issued by the Minister for the Arts in order to obtain the PDV Offset (refer to the "Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets – Incentives for large-budget screen production in Australia (July 2011)" publication available at http://www.arts.gov.au/).

The key criterion to access the PDV Offset is a minimum threshold of $500,000 on QAPE expenditure to the extent that the QAPE related to the PDV production of a film. Qualifying PDV expenditure is broadly expenditure incurred in relation to PDV production work in Australia. "PDV production" is defined as:

- The creation of audio or visual elements (other than principal photography, pick ups or the creation of physical elements such as sets, props or costumes) for the film
- The manipulation of audio or visual elements (other than pick ups or physical elements such as sets, props or costumes) for the film
- Activities that are necessarily related to the above activities mentioned

PDV production includes post-production, all digital production and all visual effects production on the film, but does not include principal photography, whether the footage is shot on film or digitally. Expenditure on any PDV work that does not take place in Australia is not PDV expenditure.

Before granting a certificate of eligibility, in addition to being satisfied that the application meets the expenditure threshold, the Minister for the Arts must also be satisfied that the applicant company is the sole company that is responsible for all the activities that were necessary for PDV production in Australia. Depending on the production, this could be for example:

- An Australian company set up to manage or commission one or more Australian companies to provide PDV work for the production
- The "lead" Australian PDV company which either undertakes all the PDV work in Australia and/or subcontracts Australian PDV work to other companies
- An Australian production company or production services company
- An applicant company is not entitled to the PDV Offset where:
- A deduction has been previously claimed under Division 10B; or
- The film has been issued with a final certificate under Division 10BA; or
- The film has been granted a final certificate for either the Producer Offset or the Location Offset

An eligible production company can apply for the PDV Offset in relation to a project once QAPE in relation to PDV expenditure has ceased being incurred.

Product Rulings
Under the product rulings system administered by ATO, it is possible to obtain a ruling which is legally binding on the Commissioner of Taxation and which confirms the tax consequences to a class of investors contemplating an investment in a film.

As the Australian Screen Production Incentives are producer, rather than investor, related incentives, the role of product rulings has lessened.

No film product rulings in relation to the new Australian Screen Production Incentives have been issued since their introduction.

Businesses
Interest payable on loans and other forms of business indebtedness can generally be deducted for tax purposes. However, the loan principal can never be deducted in calculating taxable profits.

Other general tax incentives for investment include certain beneficial rates of tax depreciation (known as "capital allowances") for plant and buildings and certain qualifying investments. Capital allowances have generally become less generous in recent years following the removal of accelerated depreciation and the Australian tax authorities' determination of longer effective lives. However, the Australian Government has introduced further concessions, including an increase from 150 to 200 percent in the diminishing value depreciation rate and the broadening of the scope for business related deductions.

Government Funding Schemes

Screen Australia
Screen Australia is the Australian Government's key direct funding body for the Australian screen production industry, replacing the Australian Film Commission (AFC), Film Australia Limited (FAL) and the Film Finance Corporation Australia Limited (FFC). Screen Australia commenced operation on 1 July 2008, bringing together the functions of the FFC, FAL and most of the functions of the AFC. Previously, the FFC was the Australian Government's principal agency for funding the production of film and television in Australia and had invested in over 1,000 features, television dramas and documentaries.

Through Australian Government appropriations and revenues earned from investments in previous years and with the collaboration of private investors and marketplace participants in individual projects, the FFC was able to support a diverse volume of Australian product. From 2008/09, the former FFC's functions will be funded through Screen Australia.

The underlying principle for Screen Australia's co-investment with the Producer Offset will be similar to that of its predecessor agency, the FFC. Namely, where a project meets the general eligibility requirements outlined in Screen Australia's Terms of Trade, Screen Australia may provide production funding for certain productions.

Screen Australia may provide finance for feature films, television drama, low budget drama, documentaries, children's television drama, Indigenous films and documentaries, projects produced under the All Media Program and some other types of productions.

The amount Screen Australia will invest in a production depends on the available funding for the particular program, the number of applicants satisfying the program requirements, the quality of the projects, and a cap based on the production type (refer to the "Screen Australia – Terms of Trade" publication available at http://www.screenaustralia.gov.au).

In return for its production investment, Screen Australia requires a copyright interest in the production, equity in the production, recoupment of its investment and credit for its investment, commensurate to its investment in the production.

State Government Schemes

All of Australia's State governments have established specific offices/bodies designed to promote, support, and facilitate film and television activities in their State. Most of these provide funding for development and production support as well as a range of other forms of assistance including small equity investment, free locations, presentations, and surveys for green-lit productions and other incentives to shoot in their State such as payroll tax exemption.

The relevant State offices/bodies are as follows:

State/Territory	Office/Body	Web site
New South Wales	Screen NSW	www.screen.nsw.gov.au
Victoria	Film Victoria	www.film.vic.gov.au
South Australia	South Australian Film Corporation	www.safilm.com.au
Queensland	Screen Queensland	www.screenqueensland.com.au
Western Australia	ScreenWest	www.screenwest.com.au
Tasmania	Screen Tasmania	www.screen.tas.gov.au
Northern Territory	NT Film Office	www.filmoffice.nt.gov.au

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in Australia on any issue of new ordinary or preference shares.

Stamp Duties

All States and Territories of Australia impose stamp duty on certain types of transactions. The provisions imposing stamp duty and the rates of duty differ between jurisdictions.

The transfer of shares in an unlisted company registered for incorporation in New South Wales and South Australia is subject to duty at the rate of 60 cents for every $100 (or part thereof) of the greater of the consideration paid and the unencumbered value of the shares. Duty on the transfer of shares in unlisted companies will be abolished in New South Wales and South Australia on July 1, 2012.

In addition, if the company has interests in land, it is necessary to consider whether the land-rich or landholder provisions of the stamp duties legislation have any application. If the land-rich or the landholder provisions apply, duty at rates as high as 6.75 percent of the unencumbered value of the land holdings (land holdings and goods in New South Wales, Western Australia and South Australia) will be imposed.

New South Wales imposes duty on mortgages or charges securing property located wholly or partly in this State at rates up to 0.4 percent of the amount secured. Mortgage duty will be abolished in New South Wales on July 1, 2012.

Exchange Controls and Regulatory Rules

There are no specific exchange controls or other regulatory rules in Australia. Therefore, there is nothing to prevent a foreign investor or artist repatriating income arising in Australia back to their home territory. However, under the financial transactions reporting legislation it is necessary to file a currency transfer report to transfer more than $10,000 (or foreign currency equivalent) in or out of Australia.

No changes to reintroduce such controls are expected in the foreseeable future.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Australian-Resident Company

If a special purpose company is set up in Australia to produce a film without acquiring any rights in that film, i.e., a "camera-for-hire" company, the tax authorities often query the level of income attributed to Australia if they believe that there is flexibility in the level of production fee income that may be attributed such that it is below a proper arm's-length amount. It is difficult to be specific about the percentage of the total production budget that would be an acceptable level of income attributed to Australia but in our experience an acceptable level could lie between one and five percent of the production budget. The lower the percentage, the more likely an enquiry.

It is seldom possible to negotiate with the Australian tax authorities in advance about an acceptable level as there are formal ruling processes that are designed for taxpayers to seek binding rulings from the tax authorities. Australia's tax authority no longer gives advice binding them to a position other than via the formal ruling processes.

Non-Australian Resident Company

If a company is not resident in Australia but has a production office to administer location shooting in Australia, it is possible that the tax authorities may try to argue that it is chargeable to tax here by being regarded as having a permanent establishment, subject to specific exemptions under an applicable double tax treaty. The Australian authorities would determine whether or not a "permanent establishment" exists by applying the appropriate article in an applicable double tax treaty (i.e., presences such as a branch, office, factory, workshop or similar site). If no treaty existed, they could still be expected to apply a similar set of criteria.

If a company is not resident in Australia and does not have a production office here, but undertakes location shooting here, it is unlikely that it would have an Australian tax liability since it would not be regarded as having a permanent establishment.

If the Australian tax authorities attempt to tax the company on a proportion of its profits on the basis that it has a permanent establishment, they would first seek to attribute the appropriate level of profits that the enterprise would be expected to make if it were a distinct and separate enterprise engaged in that activity. Clearly, however, a proper measurement of such profits would be difficult. It is likely that the Australian tax authorities would measure the profit enjoyed by the company in its own resident territory and seek to attribute a specific proportion of this, perhaps by comparing the different levels of expenditure incurred in each location or the periods of operation in each territory. The level of tax liability would ultimately be a matter for negotiation.

The foreign investor would have to rely on an applicable treaty and/or its home country rules to obtain relief from double taxation.

Examples of the relief provided for under Australia's treaties are as follows:

U.S.	Australian tax on business profits creditable against U.S. tax (Article 22)
U.K.	Australian tax on business profits creditable against U.K. tax (Article 22)
Netherlands	Business profits can be taxed in the Netherlands and a deduction against that tax may be allowed where the income has already been taxed in Australia (Article 23)
Japan	Australian tax on business profits creditable against Japanese tax (Article 25)
Singapore	Australian tax on business profits creditable against Singapore tax (Article 18)
Malaysia	Australian tax on business profits creditable against Malaysian tax (Article 23)
Thailand	Australian tax on business profits creditable against Thai tax (Article 24)

Film Production Company – Sale of Distribution Rights

If an Australian-resident production company sells distribution rights (i.e., licenses rather than assigns the copyright) in a film to an unconnected distribution company in consideration for a lump-sum payment in advance and subsequent periodic payments based on gross revenues, the sale proceeds would normally be treated as income arising in the trade of film rights exploitation. The same rules would apply to whatever type of entity is making the sale.

If intangible assets such as distribution rights are transferred from Australia to a connected party in a foreign territory, it is preferable to help ensure that such a transfer is carried out as part of a commercially defensible transaction, as the tax authorities may well seek to attribute an arm's-length price.

Film Distribution Company

If an Australian resident distribution company acquires rights by way of a lump-sum payment for distribution rights from an unconnected production company, the payment for the acquisition of the rights is normally treated as an expense in earning profits. The expense is not regarded as the purchase of an intangible asset but as a royalty payment. Revenue rulings establish that these payments are fully deductible in the year that the obligation to

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pay arises. This would be the case whether the company exploits the rights in Australia or worldwide, and whether or not the production company is resident in a country that has a double tax treaty with Australia.

Where the recipient of the payments is non-resident and not subject to tax in Australia, payments for distribution rights may be subject to Australian withholding tax.

The Australian tax regime does not discriminate between royalty payments for films or other intellectual property. In the absence of a treaty all royalties are subject to a withholding of 30 percent.

Examples of the relevant treaty royalty withholding rates are as follows:

U.S.	5%
U.K.	5%
Netherlands	10%
Japan	5%
Singapore	10%
Malaysia	15%
Thailand	15%

The income arising from exploiting such rights is normally recognized as trading income. The distribution company would be taxed on the income derived from the exploitation of any of its acquired films, wherever and however these are sublicensed, provided that the parties are not connected. If they were connected, the tax authorities might question the level of income returned. For Australian taxation purposes, income in this case is normally recognized when the right to be paid has been irrevocably determined.

Transfer of Film Rights Between Related Parties

Where a worldwide group of companies holds rights to films and videos, and grants sublicenses for exploitation of those rights to an Australian-resident company, care needs to be taken to help ensure that the level of profit earned by the Australian company can be justified. Any transactions within a worldwide group of companies are liable to be challenged by the Australian tax authorities since they would seek to apply an open-market third-party value to such transactions. Indeed, if an Australian resident company remits

income to a low tax territory via a sublicensing distribution agreement, the Australian tax authorities can be expected to query the level of such income.

There is no specific level that the Australian tax authorities seek to apply. They always have regard to comparative deals that other unconnected parties may make. It is always wise to obtain evidence at the time a deal is struck to verify that the price agreed can be substantiated at a later date.

It is possible to obtain formal clearance in advance from the Australian tax authorities by way of an Advance Pricing Arrangement.

Amortization of Expenditure

Production Expenditure

Where a production company owns a copyright in a film, the expenditure will be included in the effective life depreciation regime, and taxpayers can either self-assess the effective life of the film copyright or use the 'safe harbour' effective life specified by the Commissioner of Taxation. In the case of film copyright, the Commissioner has specified a 'safe harbour' effective life of 5 years.

At times a distributor may acquire the copyright in a film. Generally, this is done by way of an assignment of the copyright by the producer. The distributor will obtain a deduction for the purchase price of the copyright over the period of the purchase. For example, where a distributor purchased the Australian rights for a film for five years, the distributor would be entitled to amortize the purchase price over five years. Any payments that are exclusively referable to an assignment of copyright would not be subject to any withholding.

The tax treatment of the assignment of copyright as a true purchase of property consisting of the copyright, rather than a payment for the use of, or the right to use, the property (and therefore a royalty) will depend on all relevant facts and circumstances. The Commissioner of Taxation has indicated in a published ruling (2008) that an assignment of copyright amounts to an outright sale if:

- It is for the full remaining life of the copyright; and
- It extends geographically over an entire country or several countries; and
- It is not limited as to the class of acts that the copyright assignee has the exclusive right to do; and
- The amount and timing of the payment or payments for the assignment are not dependant on the extent of exploitation of the copyright by the assignee

Other Expenditure

Neither a film distribution company nor a film production company has any special status under Australian tax law. Consequently, they are subject to the usual rules to which other companies are subject. For example, in calculating taxable trading profits, they may deduct most normal day-to-day business expenditure such as the cost of film rights (as detailed above), salaries, rents, advertising, travel expenses, and legal and professional costs normally relating to the business.

Certain other expenditure cannot be deducted, for example any expenditure on capital account, such as the purchase of land and buildings, goodwill and investments. Nor can the acquisition of plant and machinery be deducted, although capital allowances can be deducted at specific rates and in some circumstances these rates can be generous. Additionally, certain day-to-day expenditure (e.g., business entertainment) and any expenditure that is too remote from any business purpose are not allowable.

Losses

To the extent to which a production company has any carried forward losses, the continuity of ownership test (COT) or (if the COT is not satisfied), the same business test (SBT) must be satisfied in order to utilise those losses in the current year.

The COT considers whether the same persons beneficially owned the same shares in the company from the beginning of the loss year to the end of the income year. The COT is satisfied where the same persons beneficially own between them shares that carry the rights to greater than 50% of voting power, dividend and capital distributions in the company.

The SBT considers whether the company is carrying on the same business as it carried on immediately before the change in ownership by reference to the business carried on and transactions entered into.

Foreign Tax Relief

Producers and Distributors

There are no special rules for producers and distributors when it comes to foreign tax relief. They are treated as ordinary taxpayers.

If an Australian resident film distributor/producer receives income from unconnected, non-resident companies, but suffers overseas withholding tax, it is normally able to rely on Australia's wide range of double tax treaties to obtain relief for the tax suffered. If no such treaty exists between the territories concerned, it would expect to receive credit for the tax suffered on a "unilateral" basis.

Further, if income is considered as receipt from the exploitation of a film overseas, it will be considered as foreign income.

Indirect Taxation

Goods and Services Tax

Goods and Services Tax (GST) of 10 percent is payable by an entity on the *taxable supplies* that it makes. An entity makes a taxable supply if the supply is made for consideration, in the course or furtherance of an enterprise that an entity carries on, the supply is connected with Australia and the entity is registered for GST or required to be so registered. A supply will not be a taxable supply if it is *GST-free* or *input taxed*.

An entity is entitled to input tax credits for the GST component of its *creditable acquisitions*, that is, for the acquisitions incurred in carrying on its enterprise except to the extent that the acquisition relates to making supplies that are input taxed or the acquisition is of a private or domestic nature.

If a supply is "input taxed," no GST is payable on it but the supplier cannot claim input tax credits for the GST payable on its acquisitions that relate to that supply or it is entitled to reduced input tax credits only (75 percent) on a limited class of acquisitions. Input taxed supplies include supplies of residential accommodation and certain supplies of financial services (e.g., loans, mortgages, guarantees). A supplier may be entitled to input tax credits for its acquisitions relating to financial supplies (even though financial supplies are input taxed) if the supplier does not exceed the "financial acquisitions threshold" which is a *de minimis* test for taxpayers who make very few input taxed financial supplies. In addition, a supplier will be entitled to full input tax credits for borrowing expenses if the borrowing relates to the supplier making supplies that are not input-taxed.

If a supply is GST-free this means that no GST is payable on it but that the supplier is entitled to claim credits for the GST payable on its acquisitions that relate to that supply (i.e., equivalent to zero-rated in other GST/VAT environments). GST-free supplies include exports and other supplies that are for consumption outside Australia.

There is no GST on exported release positive prints or negatives provided that the goods are exported by the exporter within the earlier of 60 days of the date of invoice or the date on which the supplier receives any consideration. However, release positive prints or negatives imported into Australia are subject to GST calculated on the sum of the customs value of the goods, cost of overseas freight, and insurance and any customs duty.

Customs Duties

Blank videotapes, recorded tapes, video masters, and cinematographic film, exposed and developed, are free of customs duty.

Customs duty on publicity, advertising, and promotional materials will depend upon the particular type of good, i.e., some advertising material is free of customs duty while other material is subject to a customs duty rate of five percent of the customs value. GST of 10 percent will apply to any imported publicity, advertising, and promotional materials. The value the GST is calculated on at the time of importation is the customs value, plus overseas freight and insurance, plus the customs duty (if any) times 10 percent.

In any case, consignments with a customs value less than a $1000 may be afforded duty and GST free entry, subject to certain conditions.

Costumes and theatrical properties meeting prescribed requirements may also receive a concessional customs duty rate of free.

Customs duty for most goods is levied on an ad valorem basis. The valuation system is based on the WTO valuation agreement with some variations. Generally, the customs value is determined by reference to the price of the goods at the place of export (the location where the goods were placed into a container, posted or placed on board a ship or aircraft). The following additions are made to the price to determine the customs value:

- Commissions other than buying commissions
- Foreign inland freight and insurance (to the extent these are not already included)
- Packing costs
- Cost of materials and services required for production of imported goods, supplied by the purchaser free of charge at reduced costs
- All or part of proceeds for resale, use, etc. that accrue to the vendor
- Certain royalties

The legislation in this area is quite complex and each import must be examined individually to determine the correct customs value.

The Australian Customs & Border Protection Service (Customs) administers a system of strict liability/administrative penalties. Where customs duty is underpaid, the maximum judicial penalty that can be imposed is 100 percent of the short paid duty, and the maximum administrative penalty that may be

imposed is 20 percent of the short paid duty. Penalties can also apply where incorrect information is supplied to Customs even if there is no duty short payment. The maximum judicial penalty for non-revenue errors is $5500 per statement, while the maximum administrative penalty is the lower of $55 per error or $1100 per statement.

Personal Taxation

Non-Resident Artists (self-employed)

Income Tax Implications

Subject to its double tax treaties Australia taxes the income arising to a non-resident artist from a performance in Australia and any other activities carried on in Australia. The authorities would also seek to tax income received outside Australia in connection with an Australian performance but not if it relates to services carried on outside Australia.

If a non-resident artist receives any payment arising from or in consequence of an Australian activity, the Australian payer is obliged to deduct "pay as you go" (PAYG) tax and remit this tax to the authorities. An entity carrying on an enterprise in Australia, whether an Australian entity or a foreign entity, must withhold an amount from payments made to another entity or individual, subject to certain exemptions discussed below.

To strengthen the collection of Australian taxes, a specific withholding regime applies for payments made to non-resident entertainers (including a performing artist). The rates of withholding for payments to entertainers that are individuals are the marginal rates applicable to non-residents, unless no ABN is provided. If no ABN is provided to the payer, withholding is required at 46.5 percent. The rate of withholding for payments made to non-resident entities is the company tax rate of 30 percent (46.5 percent if no ABN is provided).

The specific withholding regime also addresses payments made to related support staff (e.g., choreographer, costume designer, director, director of photography, film editor, musical director, producer, production designer, set designer) that are not engaged as employees. Non-resident support staff are not required to provide a Tax File Number (TFN) or ABN if they are tax resident of a country with which Australia has a double tax agreement and they are present in Australia for not more than 183 days during the financial year. If they do not meet the above criteria, withholding is required at non-resident rates or at 46.5 percent if no ABN is provided.

Australia's double tax agreements provide the following rules:

U.S.	U.S. artists (or an entity that provides the services of an artist) are taxable in Australia to the extent to which they carry out activities in Australia except where the payment does not exceed U.S. $10,000 (Article 17)
U.K.	U.K. resident artists (or an entity that provides the services or an artist) are taxable in Australia to the extent to which they perform services in Australia (Article 16)
Netherlands	Dutch resident artists are taxable in Australia to the extent to which they perform services in Australia (Article 17)
Japan	Japanese resident artists are taxable in Australia to the extent to which they perform services in Australia (Article 16)
Singapore	Singapore resident artists are taxable in Australia to the extent to which they perform services in Australia (Article 12)
Malaysia	Malaysian resident artists are taxable in Australia to the extent to which they perform services in Australia (except where the visit is supported by government funds) (Article 16)
Thailand	Thai resident artists are taxable in Australia to the extent to which they perform services in Australia (except where the visit is supported by government funds) (Article 17)

It will be noted that non-resident artists are taxable only on the remuneration received in respect of the services they perform in Australia. Provided that genuine services are performed outside Australia and an arm's-length fee is payable for those services by the production company no tax would be levied in Australia on those payments.

It is common practice for an artist's representative to negotiate with the Australian revenue authorities on the deductions that can be claimed against the Australian source income.

Employers are liable for superannuation contributions equivalent to nine percent of the Australian fee paid to the artist. For the 2011/12 year the earnings cap that applies for superannuation contribution purposes is $175,280 (i.e., total remuneration of approximately $191,000 including the superannuation component). No further superannuation contribution is required on fees that exceed that amount. Superannuation contributions may be refunded to the artist after negotiation.

Payroll tax (which is a State/Territory tax) is levied at differing rates throughout Australia and may be as high as 6.85 percent of the salary cost.

Fringe benefits tax (FBT) is levied at 46.5 percent on the employer in respect of benefits such as employer-provided cars, free or low interest loans, free or subsidized residential accommodation or board, goods and services sold at a discount or provided free by an employer, and expenses paid on behalf of an employee. However, contributions to superannuation funds, employee share acquisition schemes, the use of certain commercial vehicles where private use is restricted to travel between home and work, residential accommodation provided to an employee living away from home, and a number of other minor items are exempt from FBT.

The taxable value of a fringe benefit is calculated as follows:

Type 1 – Where GST applied to cost of benefit	cost to employer x 2.0647
Type 2 – Where GST did not apply to cost of benefit	cost to employer x 1.8692

The employer is entitled to an income tax deduction for FBT paid by the employer.

Resident Artists (self-employed)

Resident artists are taxed similarly to employees, although they may not require PAYG withholding by the payer if they perform services through a company. However, please note the tax authorities may challenge the arrangement and, accordingly, most resident artists are taxable as individuals.

Employees

Income Tax Implications

Employers of employees working in Australia are obliged to make regular, periodic payments to the Australian tax authorities in respect of employees' personal tax liabilities arising from salaries or wages paid to them. Deductions are made under the "pay as you go" (PAYG) system. Employers deduct PAYG based on tax tables supplied by the tax authorities. The tables are designed to approximate the tax liability on annual salaries.

Employers are also generally obliged to deduct the employees' Medicare levy liability at the rate of one point five percent of PAYG salary or wages.

Social Security Implications

Employers are liable for superannuation contributions in respect of payments of salaries or wages. Currently the minimum superannuation contribution is nine percent with a single annual concessional contribution limit of $25,000 (or $50,000 for those aged 50 and above during a transitional period to 30 June, 2012), and post-tax contributions will be limited to $150,000 per annum (subject to averaging over three years).

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Chapter 02

Austria

Introduction

Due to the enormous international success of the Austrian film production "Die Fälscher" which won the Oscar 2008 in the category "Best Foreign Film", the movie "Revanche" which was nominated for the Oscar 2009, the director Michael Haneke who was awarded at the film festival of Cannes 2009 as well as the Austrian actor Christoph Waltz who was also awarded at Cannes 2009 for his acting in Quentin Tarantinos movie "Inglourious Bastards", the Austrian filming industry established itself as a warrantor for sophisticated successful movies and consequently got in the focus of the international filming business.

Nevertheless, despite these highlights, the Austrian filming industry cannot be compared with international film production industry at all. There are some public funds available to foster the Austrian film business, but there are no special tax rules to further support the development of the film business and no tax incentives to attract private money. According to the budget available the "Österreichisches Filminstitut" organized by the Austrian government is the biggest governmental promoter followed by funds controlled by several Austrian provinces; Vienna as the capital of Austria has the biggest budget for promoting the filming industry in Austria.

Compared to Germany, Austrian legislation does not provide specific rules in order to promote the filming business in Austria; Germany as an example introduced a "media decree" providing guidance on tax issues in regard to the production, distribution and financing of films. Besides, like in Germany, Austrian tax authorities limited possibilities to create a tax efficient model of film funds for private individuals by applying § 2/2a of the Austrian Income Tax Law. According to that rule losses arising out of tax deferral schemes may neither be used to offset income nor can they be deducted pursuant to the general loss carry forward rules. Instead, such losses can only be used to offset income of the taxpayer arising from the same source as such losses. According to this legislation a "tax deferral scheme" is given, if a scheme or structure gives rise to tax benefits in the form of book losses. This rule that is pointed out in Nr. 160 of the Austrian Income Tax Guidelines has more or less prevented private investors from investing in film funds.

The financing as well as the taxation of a movie and filming production in Austria is based on the general tax legislation. Hence, the following should give an overview about the possibilities available for financing and structuring filming productions in Austria.

Key Tax Facts

Corporate income tax rate	25%
Flat rate on branch profits of non-resident corporate entities	25%
Highest personal income tax rate	50%
VAT rates	10%, 20%
Normal non-treaty withholding tax rates for non-residents:	
Dividends	25%
Interest	0%
Tax year-end: Companies	December 31*
Tax year-end: Individuals	December 31

A loss carry-forward is basically possible; there is no loss carry-back

* a different tax year-end for companies is possible

Organizational Set-up

The tax consequences differ depending on the business structure chosen. As mentioned before there is no unique structure available for the film business in Austria, thus the general tax rules and the general company law apply. The final decision what form of organization is chosen depends on various reasons like limitation of liability, economical factors, decision procedure, taxation etc.

Co-production Joint Venture

It is possible for an Austrian as well as for a foreign investor to enter into a co-production joint venture to finance and produce a film in Austria. Each participant in the joint venture is entitled to the film rights and, consequently, to the exploitation in particular countries or regions.

The participants to the co-production joint-venture are seen as the holder of the film rights. To create a joint-venture the participants set up an agreement that states the terms and conditions of cooperation in regard to producing a film. In most cases joint-ventures are set up in the legal form of the Austrian "Gesellschaft bürgerlichen Rechts" (GesbR) or as a co-entrepreneurship.

In order to start the business of the co-production joint-venture the participants contribute e.g. film rights or funds to the legal form chosen (GesbR or co-entrepreneurship). The ownership right of the participants is

not defined by share capital but by contractual agreements and by the budget contributed for the film production. The co-operation agreement concluded between the parties involved regulates the control rights as well as the profit distribution during the film production and during the exploitation of these film rights. After production the film rights belong to the partners according to and on the basis of the co-operation agreement.

If the financing structure of a co-production joint venture is chosen, regularly a permanent establishment is created by foreign investors in Austria. According to § 29 of the Austrian General Tax Code a permanent establishment is every fixed place of business in which the business of an enterprise is wholly or partly carried on. Hence, the production of films in Austria through foreign investors could meet the requirements of § 29 of the Austrian General Tax Code. If a film production in Austria does not take longer than six months a permanent establishment is usually not created. A film production in Austria that lasts longer than six months creates a permanent establishment with all the tax consequences related such as the taxation of the profits attributable to the permanent establishment. Despite this, no withholding tax in Austria is due when the profits are distributed out of the permanent establishment.

Partnership

In principle, a partnership is a more formal arrangement than the co-production joint venture in the legal form of a GesbR described above. Austrian tax law treats partnerships and joint-ventures as transparent for tax purposes; this means that not the partnership itself is treated as a taxable entity but the related partners are taxed with their respective partnership profits. This transparent tax treatment applies not only to partnerships created under Austrian law but also to comparable entities created under foreign law.

In Austria basically two different types of partnerships namely the unlimited and the limited partnership exist. The unlimited partnership is characterized through full liability of the partners whereas the limited partnership has on the one hand fully liable partners but also partners that are only liable to the extent of their capital contribution.

Moreover, the production of a film through a partnership could create a permanent establishment in Austria according to § 29 of the Austrian General Tax Code. The profits would be subject to 25 percent corporate income tax (in case of corporate partners) or progressive income tax (in case of individuals), but no withholding tax if the profits are distributed.

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In contrast to the GesbR described above, the partnership is able to conduct business and sign contracts in its own name and as a result the partnership itself is able to hold rights in films.

It has to be noted that contributions of equity by the direct shareholders to a limited partnership, where a corporate entity is unlimited partner, are subject to 1 percent capital contribution tax.

Austrian Limited Liability Company or Corporation

If a foreign film production company intends to maintain an ongoing Austrian film production activity in which Austrian resident investors receive a return, it could be advisable to establish an Austrian subsidiary. Austrian investors generally prefer to receive dividends directly from an Austrian company rather than through a foreign parent company.

If dividends are distributed to shareholders abroad 25 percent withholding tax is levied form the payments. However, there are possibilities to reduce or completely avoid the withholding tax either on the basis of a double tax treaty or if the receiving company is seated within the European Union on the basis of §94a of the Austrian Income Tax Law. Please note, that § 94a of the Austrian Income Tax Law implements the EU-Parent-Subsidiary-Directive and is only applicable to companies that hold at least a 10 percent interest in the Austrian company during a time period of one year.

Moreover, the Austrian capital contribution tax of 1 percent is levied on capital contributions of direct shareholders to the company. However, if a grandparent contributes capital to the Austrian subsidiary, the Austrian capital contribution tax law should not be applicable and consequently no capital contribution tax is due.

Camera for Hire Model

The basic idea of a "camera for hire model" is to carry out film productions through a special purpose vehicle set up in Austria by the parties or the party that is aiming to produce a film; usually this model is carried out through a limited liability company subject to Austrian corporate taxation. This production company produces the film on a "work-made-for-hire" basis under a production contract with the parties or the party ("contracting entity") involved, entitling it to an appropriate production fee, but would not become the owner of any rights in and to the film; all rights in and to the film should remain at the (foreign) contracting entity. The film rights would then be exploited by the contracting entity.

The camera for hire model is from a tax point of view nothing more than a service provided from one company to another even though the contracting entity is shareholder of the special purpose company. However, this business structure and the production fees paid should comply with the arm's length principle; otherwise the Austrian tax authorities would not accept this structure at all.

This model basically does not create a permanent establishment of the foreign contracting entity in Austria due to the fact that no offices are needed and no personnel of the contracting entity is used for production. However, there is a risk of creating a permanent establishment in Austria if the film rights are exploited in Austria. In this respect the revenues generated would then be subject to Austrian corporate taxation (see above).

Accounting & Tax

The taxation of businesses in Austria depends mainly on the legal form and on the business structure chosen. A corporate entity is subject to corporate income taxation (25 percent flat rate) whereas the partnership is treated as tax transparent which means that taxation depends on the legal form of the shareholders (25 percent corporate income tax or income tax up to 50 percent).

The applicable accounting and tax rules in regard to the commission production, the sale or the licensing of films are described below independent of the legal form in which the business is carried out.

Independent Production and Distribution of Films and Film Rights in Austria

In this structure a company in Austria is set up that produces and exploits the film independently.

From a tax point of view it has to be noted that a film which is self-produced and self-exploited cannot be capitalized as a fixed asset within the balance sheet according to § 197/2 of the Austrian Company Law and § 4/1 of the Austrian Income Tax Act. Expenses incurred in course of the self-production are immediately deductible from the tax base. Due to the fact that self-produced film rights cannot be capitalized as fixed assets no amortization takes place in later years. The deductible costs of the production years usually generate a loss carry forward which can be offset with exploitation profits in later years (specific restrictions in regard to the offset of loss carry forwards need to be obeyed).

Revenues generated from the exploitation of the film rights are subject to 25 percent corporate income tax if the exploitation is carried out through a corporate entity or an Austrian permanent establishment of a foreign corporate. If a partnership or joint-venture exploits the film rights, taxation depends on the shareholders behind the partnership or the joint-venture and whether or not an Austrian permanent establishment exists.

Sale or Licensing of Distribution Rights

If an Austrian resident company intends to transfer the exploitation rights in a film to a third party it has to be clarified whether this transaction qualifies as a sale or a license. Usually such transactions are characterized through lump-sum payments or/and subsequent periodic payments.

The qualification as a sale or a license depends mainly on the restrictions agreed in connection with the exploitation of the film rights. In this respect a sale is assumed if no restrictions like a limited period of time are applicable and the beneficial ownership is transferred. Such sale agreement is concluded after the production (at the own risk of the production company) is finished. If a sale agreement was entered before the actual production such contract would qualify as a commission production (see below). The revenues generated from a sale are subject to 25 percent corporate income tax if the selling entity is a limited liability company or corporation. If the sale is carried out through a partnership or joint-venture taxation depends on the shareholders behind the partnership or the joint-venture and whether or not an Austrian permanent establishment exists.

A license model is usually characterized through a limited period in which a company is able to exploit the film right. The licensee does not acquire beneficial ownership of the film right itself. However, in the case of a license, the license fees are only subject to taxation when actually realized.

In addition it should also be considered that the sale or the license payments between related parties must meet the requirements of the arm's length principle. To be in line with the arm's length principle the payments for the sale or the license should reflect the future earning capacity of the film.

Commission Production

If a company produces a film for a third party without the intention to own and exploit the film right itself, it has to be clarified whether this commission production is qualified as a genuine commission production or a modified commission production. Both business structures create different taxation obligations which are described hereunder:

Genuine Commission Production ("echte Auftragsfertigung")

A genuine commission production is characterized through a production company that produces a film at its own risk for a third party with the obligation to assign all rights in the produced film to the third party. Moreover, the production costs incurred as well as the intangible rights created have to be capitalized as current assets without the possibility of amortization over the useful life at the level of the production company. After production the film rights are transferred to the company that intends to exploit the film rights. In this regard the production company is only awarded for the production itself and is not involved in the exploitation.

However, if both, the production company as well as the third party, are closely linked to each other, the business structure should comply with the arm's length principle.

Modified Commission Production ("unechte Auftragsfertigung")

A modified commission production is characterized through a production company that renders services to a third party only in connection with the film production. In contrast to the genuine commission production the whole risk of production is with the third party and consequently the production company does not capitalize the production costs or the intangible rights generated as current assets. The production costs are fully deductible as business expenses at the time they occur and the production fee paid by the third party is booked as income when the production is finished and the rights are transferred to the third party.

As mentioned before, the production fees paid should comply with the arm's length principle if both companies are related to each other.

Acquisition of Film Rights

If film rights are bought by a distribution company in Austria, the film rights have to be capitalized within the balance sheet as fixed assets. After capitalization the film rights are amortized in accordance to their useful life. The useful life of a right depends mainly on the time period earnings are generated; as a consequence the useful life of a film right varies between one to 50 years and more. The normal depreciation method is on a straight-line basis.

However, if the right to exploit a film was acquired through a licensing model for a specific period of time without purchasing economic ownership of the film right itself, the film right cannot be capitalized within the balance sheet. The licensing model usually qualifies as a rental transaction with regular fees. Normally a licensing model is characterized through a fixed rental term.

Tax and Financial Incentives

Investors

There are no specific tax incentives for investors.

Producers – Federal Incentives

In order to promote the production and marketing of Austrian films, the Austrian "Filmför¬derungs¬gesetz" regulates the granting of incentives. Incentives are given to productions that fulfil specific requirements such as the necessity that the applicant is seated within the European Union and the necessity for the produced film to be shown in cinema. Moreover, the film is not allowed to be produced by an international film production company. Consequently, more or less, only low budget films that cannot be financed without subsidies are supported by the Austrian government.

In order to receive incentives from the government a request has to be made to a governmental committee that decides about the granting of the incentives.

Apart from the "Filmförderungsgesetz" the office of the Federal Chancellor also awards incentives especially to Austrian low budget film projects. In this respect the Office of the Federal Chancellor supports innovative Austrian new talent, documentary and experimental films as well as animation films. Funding can be made available for production, script development, release and marketing, and film festival participation.

The Austrian government does not grant tax relief or specific tax rulings for film producers; the general taxation rules are applicable.

Producers – Regional Incentives

In addition, there are a number of regional funds that grant incentives to film productions at provincial and municipal level. In respect to the budget available the "Filmfonds Wien" is the biggest regional funding organization in Austria.

Actors and Artists

There are no specific incentives available for actors or artists engaged in a film production.

Cinemas and Film Supporting Industry

There are also incentives for cinemas and the film supporting industry in Austria that follow the requirements mentioned before. It is possible for these businesses to claim subsidies at federal as well as at regional level.

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Chapter 03

Belgium

Introduction

Belgian domestic tax law foresees various incentives for the movie industry, in particular with respect to the financing of films such as the tax shelter regime for audiovisual works. Belgium is moreover considered to be a favorable location for the establishment of a holding company; taking into account the Belgian tax treatment of a.o. capital gains on shares and dividend income, the tax deduction of expenses related to the acquisition of shares, and its large treaty network.

Key Tax Facts

Highest corporate income tax rate	33.39%*
Highest personal income tax rate	50%
VAT rates	21%, 12%, 6%, 0%
VAT registration threshold	N/A
Normal non-treaty withholding tax rates:	
Dividends	25%/15%
Interest	15%
Royalties	15%
Tax year-end: Companies	Financial year-end
Tax year-end: Individuals	December 31

* Small and medium sized companies benefit from a reduced progressive tax rate provided certain conditions are met (i.e., taxable income not exceeding EUR 322,500 and not more than 50 percent of the shares of the Belgian company are held by another company).

Film Financing

Financing Structures

Co-production

A Belgian resident investor may enter into a co-production joint venture with another non-resident investor to finance and produce a film in Belgium. A joint venture (legal entity) is subject to the general corporate income tax rules (see "Corporate Taxation" discussion below).-

Partnership

For Belgian tax purposes, a partnership will be treated as transparent for tax purposes in Belgium and, therefore, the relevant question in determining whether the foreign partners are liable to Belgian tax, is whether there is a permanent establishment in Belgium to which income can be attributed.

Income derived by transparent entities (partnerships) is taxable in the hands of the partners. In the case where a foreign partner participates in a Belgian partnership, subject to the relevant tax treaty provisions, the foreign partner may be considered to have a permanent establishment in Belgium; the income attributable to which, would be subject to Belgian non-resident taxation.

Debt-equity Financing

Capitalization

The formation or increase of the share capital of a Belgian company by contributions in cash, or in kind, is exempt from Belgian contribution tax (only a fixed registration duty of EUR 25 applies).

The legally required minimum share capital of a Belgian limited liability company (naamloze vennootschap (NV) or société anonyme (SA)) amounts to EUR 61,500, whereas the minimum share capital of a Belgian limited liability company (besloten vennootschap met beperkte aansprakelijkheid (BVBA) or Société privée à Responsabilité limitée (SPRL)) amounts to EUR 18,550. The funding of a Belgian company with loans is not subject to any registration duties.

Notional Interest Deduction

As from tax assessment year 2007 (financial year 2006), Belgian companies and Belgian branches of foreign companies are entitled to a new tax incentive called the notional interest deduction (hereafter "NID"). The NID is intended to encourage the strengthening of equity capital by narrowing the discrimination between funding with equity capital or with loans.

In a nutshell, the NID provides in a deduction, from the company's taxable basis, of a deemed interest calculated on the company's equity but corrected with a number of items a.o. the net fiscal value of shares and participations held by the company and recorded as financial fixed assets.

The rate of the NID is linked to the rate of 10-year government bonds and amounts to 3.425 percent for assessment year 2012 (financial year 2011). Excess NID can be carried forward for a maximum period of seven taxable periods.

Debt/Equity Restrictions
The Belgian tax law does not foresee, in general, thin capitalization rules with respect to the funding via loans.

Only very specific anti-abuse measures should be taken into account when funding via loans;

- Interest expenses are not deductible if the latter exceed the market interest rate, taking into account the terms and conditions at which the loan has been granted, the risk, the credit worthiness of the debtor and the term of the loan
- A 1:1 equity/debt ratio in respect of interest paid by a company to advances made by foreign companies (or by individuals) who exercise a function of director, manager, liquidator or similar mandate in the interest paying company. If and to the extent that either the interest rate exceeds the market interest rate or the advances exceed the sum of the taxed reserves at the beginning of the taxable period, and the amount of the paid-up capital at the end of the taxable period, these interest payments will be requalified into non-deductible dividends
- A 1:7 equity/debt ratio in respect of interest paid directly or indirectly to a beneficiary who is not subject to corporate income tax, or is subject to a corporate income tax regime, which is considerably more advantageous than the Belgian tax regime

Other Tax-Effective Structures
See Tax and Financial Incentives below.

Tax and Financial Incentives

Investors – Tax Shelter Regime for Audiovisual Works

General
In order to stimulate investments in "recognized Belgian audio-visual works" (as defined), the Belgian government has elaborated a favorable tax regime[1] to encourage such investments, known as the Belgian "tax shelter" regime for audiovisual works. This Belgian "tax shelter" regime offers Belgian qualifying investors (see point II below) that invest a certain amount (see point III below) in recognized Belgian audio-visual works a partial exemption (also see point III below) of their taxable profits.

[1] Program Law of 2 August 2002 (approved by the Royal Decree of 3 May 2003) and modified by the Program Law of 22 December 2003 (published in the Belgian Official Gazette dated 31 December 2003) and by the law of 17 May 2004 (published in the Belgian Official Gazette dated 4 June 2004).

Qualifying Investor Profile
In order to benefit to the maximum extent from the tax concessions as foreseen by the Belgian tax shelter regime, the qualifying investor should be able to simultaneously meet at least the following conditions:

- Being a Belgian corporation (i.e. subject to the Belgian corporate income tax regime) or being a Belgian establishment of a foreign corporation (i.e. subject to the Belgian non-resident corporate income tax regime)
- Being an entity that is not itself engaged in the production of audio-visual works and is not a Belgian or foreign TV station
- Realizing taxable retained earnings[2] of at least EUR 1.500.000 per year
- Prepared to make an investment in a movie production for a maximum amount of EUR 500,000, either through a participation in the ownership rights of the film (with a minimum of 60 percent of the investment) or through a loan (with a maximum of 40 percent of the investment)

Tax Exemption
Each Belgian qualifying investor can exempt from its taxable retained earnings during a certain accounting year an amount equal to 150 percent of amounts that it will invest and paid up during that accounting year in a qualifying audio visual work in execution of the concept-agreement concluded with a Belgian production company. However, this exemption can never exceed the lower amount of the following two limitations:

- 50 percent of the taxable retained earnings before the compilation of the tax free reserve
- or EUR 750,000[3]

The exempt profit has to be accounted for on a separate account on the liability side of the balance sheet (i.e. a reserve not available for profit distribution) and may not serve for any result allocation what so ever[4].

Note that, in case of insufficient taxable retained earnings, the qualifying investor may carry forward the remaining unused exemption to future accounting years[5] with future retained earnings.

[2] Taxable retained earnings are defined as follows: the net increase, during the taxable period, of all taxable reserves (including the hidden reserves, but excluding the exempt reserves such as capital gains, depreciations or provisions)

[3] The so-called "intangibility" condition

[4] Up to a maximum of three accounting years

The exemption becomes definitive, and the exempt profit becomes available for distribution at the latest 4 years after the conclusion of the concept-agreement, when the qualifying investor is in the possession of:

- an attestation from the competent tax authorities; from which the production company depends, confirming that the latter has fulfilled the conditions that must allow the Belgian qualifying investor to benefit from the tax shelter concession
- an attestation from the relevant Community certifying that the realization of the audio-visual work has been completed and that the global financing of the project has met the conditions and limits foreseen

Non-deductible Amounts
The mirror side of the above tax exemption is that all expenses, depreciations, write downs and provisions, made in respect of a qualifying investment (such as depreciations or capital losses on the ownership rights, etc.), are not tax deductible, nor exempt in the hands of the Belgian qualifying investor.

Non-transferability of the Participation Rights and Loan.
Each Belgian qualifying investor is required to maintain its entire investment in full ownership during the entire production period of the audio-visual work, and in any case, during a period of at least 18 months as from the entry into force of the concept agreement that is concluded between the Belgian qualifying investor and the production company. This requirement is applicable both on the portion of the investment that is represented by participation rights or by loans.

Late Payment Interest
Should one of the above-mentioned conditions no longer be respected during any financial year, the previously exempt profit will be considered as taxable profit in hands of the qualifying Belgian investor for the year in which the condition is no longer fulfilled. Also, a late payment interest will be due as from 1 January of the year in which the concept agreement between the production company and the Belgian qualifying investor is concluded. Note that no late payment interest will be due when the "intangibility" condition would no longer be respected in case of the liquidation of the Belgian qualifying investor.

Producers

Tax-free Investment Reserve
Within certain restrictions, companies qualifying for the reduced progressive tax rate can build up a tax free investment reserve, amounting to 50 percent of their taxable result during the taxable period (with a maximum of EUR 37,500.00), reduced by:

- The tax exempt capital gains on shares
- Twenty-five percent of capital gains realized on cars
- Increase of the advances of the company on the shareholders and director as well as their spouses and children

The calculated investment reserve is only tax exempt to the extent that the taxable reserves, before the booking of the investment reserve and at the end of the taxable period, are higher than the taxable reserves at the end of the previous taxable period, in which an investment reserve has been accounted for and to the extent that the other requirements are fulfilled.

An amount equal to the investment reserve should be invested in material or immaterial fixed assets that can be amortized and to the extent that they met the conditions to claim the investment deduction. This investment should take place within 3 years as of the first day of the taxable period in which the investment reserve has been booked and, at the latest, at the moment of the liquidation of the company.

Further, several conditions with respect to the investments should be met.

Please note that companies who build up an investment reserve cannot invoke the notional interest deduction for the year in which the investment reserve has been applied for, as well as for the two subsequent financial years.

Withholding Tax on Interest Payments
Interest payments are in principle subject to a Belgian domestic withholding tax of 15 percent.

Belgian holding companies can benefit from a withholding tax exemption on interest payments if following conditions are met in hands of the holding company:

- It must be a Belgian company or a Belgian branch of a foreign company
- It must own shares that qualify as financial fixed assets and have an acquisition value of at least 50 percent on average of the total assets on its balance sheet at the end of the taxable period prior to the attribution or payment of the interest

- Its shares are listed on a recognized stock exchange, or are held for at least 50 percent, directly or indirectly, by a stock listed company that is subject to corporate tax or to a similar foreign income tax regime

Other domestic withholding tax exemptions on interest may apply, provided some conditions are met.

As a consequence, Belgian listed holding companies or Belgian intermediary holding companies that are part of a listed group should qualify for the above withholding tax exemptions on interest paid/or received.

Further to the implementation of the European Interest and Royalty Directive in Belgian tax law, an exemption will apply on interest payments between associated companies established in the European Union (EU) provided specific conditions regarding participation level, holding period, etc. are fulfilled.

Withholding Tax on Royalty Payments

Royalty payments are, in principle, subject to a Belgian domestic withholding tax of 15 percent.

Domestic withholding tax exemptions on royalties may apply, provided some conditions are met.

The same conditions for exemption as for the payment of interests should be met with respect to the exemption based on the Interest and Royalty Directive.

Withholding Tax on Dividends

The domestic withholding tax rate for dividends in principle amounts to 25 percent. If certain conditions are met (nominative shares paid-up in cash and issued after January 1, 1994), the rate is reduced to 15 percent.

Dividend distributed by a Belgian company to its parent company located in a treaty jurisdiction are, in principle, exempt from dividend withholding tax provided that the concerned double tax treaty or any other treaty foresees in an information exchange clause and that the conditions of the Parent-Subsidiary Directive are met:

- The parent company must, at the moment of the payment of the dividend, hold a participation of at least 10 percent or an acquisition value of EUR 2.5 million (since 1 January 2009) in the capital of the Belgian HoldCo
- The participation must be kept for an uninterrupted period of at least one year
- Other domestic exemptions/reductions may apply depending on the beneficiary of the dividend income and its location.

Withholding Tax on Copyrights

Based on a new law (published in the Official Gazette on July 30, 2008), any debtor of income relating to copyrights, such as income resulting from the transfer, concession, licensing of copyrights as well as any connecting income derived there from, will be required to withhold a tax of 15 percent on the net qualifying copyright income which will constitute the final tax burden for the individual recipient. The latter means that the recipient should no longer report this income from copyrights in his individual income tax return.

This final withholding tax (of 15 percent) will only apply on an amount not exceeding EUR 37,500.00 (EUR 51,920.00 after indexation for assessment year 2010).

A lump sum amount of expenses can be deducted in order to determine the net amount of the income from the concession of copyrights. This lump sum costs deduction is calculated based on the following brackets:

- 50 percent on the first bracket of EUR 10,000.00 (EUR 13,840.00 after indexation for assessment year 2010)
- 25 percent on the bracket as from EUR 10,000.00 to EUR 20,000.00 (EUR 13,840.00 to EUR 27,690.00 after indexation for assessment year 2010)

No withholding tax should be levied on the payment of copyrights to Belgian companies, administration companies for copyrights and taxpayers, or residents and non-residents subject to the legal entities tax.

When erroneously no withholding tax has been levied, the copyrights paid will be considered as paid out on a net basis, whereby the net amount will need to be grossed up with 100/85 on which the withholding tax of 15 percent will still be due by the grantor of the royalty income.

Whereas 2008 has to be seen as a transitional year, as from 1 January 2009, the debtors of income relating to copyrights are required to withhold a tax of 15 percent on the net qualifying copyright income and to file a withholding tax return relating to copyrights (form 273S).

Movie Vouchers

The Belgian tax authorities have explicitly included movie vouchers on the list of social advantages that are not taxable for the employee. The exemption applies in particular to movie vouchers that give access to movie theatres and film festivals.

Movie vouchers will, however, only be considered as tax-exempt social advantages if certain conditions are met. The vouchers must have an insignificant value and must be granted to the employees with a clear social objective and not as remuneration for services rendered.

It can certainly be defended that movie vouchers fall under the list of tax-exempt social advantages that are also deductible for the employer. The tax deductibility for the employer is subject to a number of conditions. As is also the case for gift and present vouchers, movie vouchers must be issued for St Nicholas, Christmas, or New Year's and must not exceed EUR 35 per employee per year, to be increased by a maximum of EUR 35 per dependent child with an overall maximum of EUR 105 per employee.

Corporate Taxation

Recognition of Income

The net income from film rentals attributable to a Belgian company or a permanent establishment in Belgium, is subject to the Belgian corporate income tax.

With respect to foreign source royalty income (including film rental income) on which a foreign withholding tax has been levied, a foreign tax credit is granted, amounting to almost 18 percent of the net income. The above credit is first added to the taxable basis and then credited against income tax due, the excess being non-refundable. With respect to Belgian source royalty income (including film rental income), an exemption from withholding tax is provided in most cases (see below). If a withholding tax has been levied, the latter is first added to the taxable basis of the beneficiary and then credited against its income tax due, with the excess being refunded.

Royalties Under Double Taxation Treaties

United States

The new Belgium – United States tax treaty entered into force on January 1, 2008 (except for withholding taxes (February 1, 2008)). The new treaty foresees a withholding tax exemption for royalties paid to a resident of the other State. When the beneficiary of royalties has a permanent establishment (PE) in the income originating country, the income shall be attributed to that PE. The remuneration received shall then be taxable as business profits.

United Kingdom

Royalties paid from Belgium to a U.K. resident could be subject to U.K. tax but are fully exempt from Belgian withholding tax.

Australia

Belgian withholding tax levied on royalty payments may not exceed 10 percent of the gross amount of the royalties paid or attributed. The royalty income could be taxable in Australia.

Canada

Belgian withholding tax may not exceed 10 percent of the gross amount, provided that the Canadian recipient is the beneficial owner of the royalties.

Other Double Taxation Treaty Rates (non-exhaustive list)

Denmark	0%
France	0%
Germany	0%
Hungary	0%
Israel	10%
Italy	5%
Luxembourg	0%
Netherlands	0%
New Zealand	10%
Norway	0%
South Africa	0%
Spain	5%
Sweden	0%
Switzerland	0%

It should be noted that, according to the double taxation treaties concerned, the above-mentioned withholding tax percentage is computed on the gross royalty income.

In order to claim a reduction or an exemption from Belgian withholding tax, the beneficiary of the royalties should file a copy of the Form 276R with the appropriate tax authorities in his or her country of residence. A copy of the certified Form 276R should be filed with the Belgian tax authorities by the Belgian debtor. To the extent that a full withholding tax exemption is not available, a withholding tax return should also be filed with the competent Belgian tax authorities.

Film Production Company – Production Fee Income
In order to determine the tax treatment of the fees paid, it must be determined whether the fees paid qualify as royalty income (subject to withholding tax, under various exemptions/reductions) or business income. Both are subject to (non-resident) corporate tax at the normal rate. However, royalty income benefits from a tax credit as explained above.

Film Distribution Company
Pursuant to case law, an agreement whereby a Belgian company is granted the right to exploit a motion picture, limited in time and place, is not considered to be a sale but a concession of a movable good. The Belgian company may "expense" its related costs. In the hands of the (Belgian) grantor, the income is considered to be royalty income subject to withholding tax (under various exemptions/reductions mentioned above). This income is subject to (non-resident) corporate tax at the normal rate and benefits from a tax credit as mentioned above.

Transfer of Film Rights Between Related Parties
In respect of transactions between related parties, such transactions should be "at arm's-length". The Belgian tax authorities recommend that the taxpayer maintains documentation sustaining his or her transfer pricing policy. This documentation must be relevant, comprehensive, and reliable. The Belgian tax authorities joined up with the European commission's guidelines for Transfer Pricing Documentation. The European Transfer Pricing Documentation consists of a master file and a country specific file.

It is possible to obtain an advance transfer pricing agreement (APA) from the federal tax authorities in respect of the arm's-length nature of a pricing arrangement.

Also, in case of such a transfer, the tax treatment depends on the classification given to the income, i.e., royalty income (subject to withholding tax under various exemptions/reductions) versus business income (see above).

Amortization of Expenditure

Production Expenditure
As a general principle, expenses incurred or borne by the company during the taxable period in order to obtain or safeguard taxable business income are considered tax deductible. In order to be deductible, these expenses must be justified by proper documentation.

Depreciation
For tax purposes, formation expenses can be capitalized and depreciated or taken as an expense. Intangible and tangible fixed assets with limited economic lives have to be capitalized and depreciated as explained below.

Depreciation is calculated on the basis of the cost price and the useful life of the asset. Two depreciation methods are applicable. A straight-line method, which is the most commonly used method, and a double declining-balance depreciation method, which is optional.

Under the straight-line depreciation method, the asset is depreciated over its useful economic lifetime based on a fixed percentage of the acquisition value.

The double declining balance method takes as a depreciation percentage the double of the straight-line depreciation percentage with a maximum of 40 percent of the acquisition value. Each following year, the depreciation is calculated on the value of the asset at the end of the previous financial year. Once the annual depreciation is lower than it would be under the straight-line depreciation method, the taxpayer must switch back to the straight-line method.

The following maximum depreciation rates are set by administrative instructions:

- Commercial buildings and office buildings: 3 percent
- Industrial buildings: 5 percent
- Machinery and plant equipment: 10 to 20 percent
- Office furniture and equipment: 10 to 15 percent
- Vehicles: 20 to 25 percent
- Small equipment: 33 to 100 percent

Companies may deviate from these percentages in particular circumstances.

As a general principle, intangible fixed assets are to be depreciated on a straight-line basis over a period of no less than three years in case of investments for research and development, and no less than five years for other investments.

As an exception to this rule, an advantageous depreciation regime is foreseen for investments in audiovisual works. Audiovisual works may be works of Belgian or foreign source, irrespective of the duration of projection, including news and commercials films, video clips, etc. These investments may be depreciated according to the general rules. Consequently, they may be depreciated following the straight-line basis or the double declining balance method depending on their economic life.

Other Expenditures
Expenses are mainly disallowed if and to the extent that they are not incurred to obtain or safeguard, during the taxable period, taxable business income, or to the extent that their tax deductibility is specifically limited or disallowed by the Belgian tax law (e.g., automobile costs, restaurant and reception costs, social benefits) or if they are deemed excessive (not at arm's-length).

Capital Losses/Capital Gains
Capital losses are in principle deductible for corporate income tax purposes. As an exception to this rule, capital losses on shares are not tax deductible unless and to the extent that they are incurred at the closing of the liquidation of the subsidiary and reflect a permanent loss in the paid-in share capital of the latter.

Capital gains are, in principle, taxable upon their realization. As an exception to this rule, capital gains on shares are tax-free, under some conditions. Moreover, a spread taxation regime is provided for capital gains realized on qualifying assets, under some conditions, e.g., the sales price should be reinvested, in Belgium, in qualifying assets and within a certain period of time.

Unrealized capital gains (e.g., gains that are merely expressed in the accounts) can be tax-free, under the condition that their amount is accounted for on a separate account of the liability side of the balance sheet (i.e. a reserve not available for distribution) and does not serve for any distribution to the shareholders.

Losses
Tax losses can be carried forward unlimited in time and be deducted from future profits. Tax losses cannot be carried back.

The deduction of losses is not allowed on received abnormal or benevolent advantages nor on the secret commissions tax.

The further use of losses may become (partly) unavailable where a company is involved in:

- Certain tax-exempt reorganizations such as mergers and divisions (partly unavailable)
- A change of control that does not meet economical or financial needs (totally unavailable)

Foreign Tax Credit for Withholding Tax on Interests and Royalties

Producers and Distributors
Belgian domestic tax law provides for a foreign tax credit on interest and royalties in view of the avoidance of international double taxation.

In case of interest, this tax credit equals in principle to the effective foreign taxation withheld at source, while the lump-sum foreign tax credit for royalties amounts to an effective tax credit of almost 18 percent.

Indirect Taxation

Value Added Tax

Belgium charges Value Added Tax (VAT) on the supply of goods and services for consideration in the course or the furtherance of business. The Belgian VAT regulation is broadly in line with the EU VAT legislation, but substantial differences may be observed with the rules existing in other EU countries. For example, in Belgium in most cases, no input VAT can be recovered in respect of food and drinks, accommodation, entertainment, and goods and services not purchased for business purposes. The deduction of VAT on costs related to cars is in principle deductible up to a maximum of 50 percent.

Supply of a Completed Film Via Material Means
A **local sale in Belgium** of cinematographic and video films via material means is treated as a supply of goods taxable for VAT purposes and, in principle, subject to the standard rate of 21 percent. However, in case the supplier is a non established taxpayer and the recipient is an established taxpayer or a non established taxpayer registered through the appointment of a fiscal representative, a general reverse charge mechanism applies. This implies that no VAT can be invoiced, but the recipient has to reverse the VAT through its periodic VAT return.

In general, VAT is due at the time of the supply of goods or on completion of the services. However, if the payment is received in advance of the delivery of a completed film, VAT becomes due at the date of the pre-payment. A VAT registered person must submit its VAT return and account for any VAT payable to the tax authorities by the 20th of the month following the month in which the VAT became due. Businesses whose yearly turnover is less than EUR1 million may opt to submit quarterly returns.

Where a company established in Belgium delivers a completed film to a company established in another EU Member State, the intracommunity supply would be VAT exempt provided that the customer is registered for

VAT in another Member State and that the film would be dispatched outside Belgium. The Belgian supplier must, however, be able to provide evidence that the goods have been physically shipped outside Belgium.

When a Belgian company delivers completed films to EU VAT registered persons, it is required to submit a European Sales Listing which discloses the value of sales to each VAT registered customer outside Belgium but within the EU. Taxpayers that file monthly VAT returns must file their European Sales Listing on a monthly basis.

Other taxpayers can file their European Sales Listing on a quarterly basis, unless they perform more than 100,000 EUR of exempt intra-community supplies of goods during a calendar quarter.

In addition, where the value of yearly sales exceeds a certain threshold, the Belgian company will be required to submit a monthly Intrastat return (for statistical purposes only).

When a company established in Belgium delivers a completed film to a company outside the EU and goods are transported outside Belgium, the VAT exemption for export (with input VAT credit) applies. In order to prove the right to the exemption, the supplier must be able to prove that the goods have been transported outside Belgium. There are basically no special reporting requirements other than the requirement to complete customs formalities (i.e. to have a valid export document mentioning the supplier or under certain conditions, the customer as the exporter of the goods) and to issue a sales invoice following the terms and conditions outlined in the Belgian VAT law.

Supply of a Completed Film Via Electronic Means

The supply of films via electronic means qualifies as the supply of electronic services.

In a business to business environment, electronic services are taxable in the country of the recipient under the reverse charge mechanism.

Also the supply of films via electronic means to private individuals by a third country supplier is taxable in the EU member state where the recipient is established. Subsequently the supplier will have an obligation within the EU to obtain a VAT registration for electronic services. In order to avoid the obligation to register in several Member States, a special regime, the so-called "one stop shop", is put in place following which the third country supplier can comply with all VAT obligations in one Member State.

On the other hand, the supply of films via electronic means to private individuals by a European supplier is for the moment still taxable at the place where the supplier is located. As from 2015, also this last category will become taxable at the place where the private individual is located. In order to avoid multiple VAT registration throughout the EU, a similar regime will be implemented allowing an EU provider to comply with all VAT obligations in one single Member State.

Pre-sale of Distribution of Rights

In principle, VAT is charged at the rate of 6 percent on a pre-sale of distribution rights to a person established in Belgium. If the rights concern advertising, the rate will be 21 percent. However, if the supplier is not established in Belgium and the Belgian recipient qualifies as a VAT taxpayer, the reverse charge mechanism applies. This implies that no VAT must be invoiced since the VAT is due by the Belgian recipient.

A pre-sale distribution right to a VAT taxpayer established in another EU Member State, or to any purchaser outside the EU, is not subject to Belgian VAT. However, any input VAT incurred in relation to making the film and selling the rights is fully recoverable to the extent that all VAT invoicing formalities are met.

Royalties

Where a company established in Belgium pays royalties for a copyright to another company established in Belgium, VAT is chargeable under certain conditions at the rate of 6 percent.

Where a company established in Belgium pays royalties to a company that is established outside Belgium, there will be no VAT mentioned on the invoice but the Belgian company must self-account for VAT at the rate of 6 percent in its Belgian VAT return.

Where a company established in Belgium receives royalty income from a taxpayer established in another EU Member State, or from any person outside the EU, no Belgian VAT can be invoiced. However, the recipient established in the EU will be required to account for VAT in its own Member State under the reverse charge rules.

The receipt of a royalty by a Belgian established company from a private person in the EU would be subject to 6 percent Belgian VAT.

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Peripheral Goods and Merchandising
The sale of peripheral goods connected to the distribution of a film (such as books, magazines, published music and clothing) will be subject to a certain rate depending on the nature of the goods.

For example, printed books and booklets are in principle subject to 6 percent, or 21 percent if they have an advertising character. The sale of merchandising connected with the distribution of the film such as the sale of clothes, toys, etc. is in general subject to 21 percent VAT.

Again, in case the supplier is a non established taxpayer and the recipient is an established taxpayer or a non established taxpayer registered through the appointment of a fiscal representative, the general reverse charge mechanism applies.

Promotional Goods or Services
The VAT treatment of business promotions is a complex area upon which it is recommended that advice is provided on a case by case basis. However, as a general rule, the VAT incurred on the purchase of promotional goods given away free of charge may only be reclaimed if the value of those goods does not exceed EUR50 (excl. VAT).

Again, in case the supplier is a non established taxpayer and the recipient is an established taxpayer or a non established taxpayer registered through the appointment of a fiscal representative, the general reverse charge mechanism applies.

Catering Services to Film Crew and Artists
The supply of catering services in Belgium is in principle subject to VAT at 12 percent.

Services Rendered by Actors and Interpreters
Services by individual actors or musicians to film producers are VAT exempt, without credit, regardless whether the services are provided by private individuals or organized by means of a legal entity.

Services of interpreters are in principle subject to VAT at 21 percent, with a few exceptions.

Recording of Music Master Tapes
Unlike films, recording of music master tapes are services and VAT is in principle due at a rate of 21 percent. In case, however, the music is recorded and operated into a mix, VAT is due according to the same rules as for royalties at a rate of 6 percent.

Import of Goods
Goods imported into Belgium from outside the EU will be subject to VAT at importation. In addition, depending on the nature of the goods, customs duties, and/or excise duties may be payable on importation. The Belgian company can recover import VAT through its periodic VAT returns although any customs/excise duty paid is not recoverable.

A way for an importer of goods to avoid the pre-financing of VAT at importation is the application of the deferral of VAT in case of import of goods from outside the European Union into Belgium.

The deferral of VAT payment means that the VAT at importation is no longer to be paid at the moment of entry of the goods into Belgium, but the VAT will be accounted for in the importer's Belgian VAT return by means of a reverse charge.

Customs Duties
Customs rules are identical in all Member States of the EU. In general, a film company established outside the EU should be entitled to import on a temporary basis without payment of customs duty or VAT, professional equipment for use in the making of a film. The equipment is normally imported under cover of an ATA Carnet.

Personal Taxation

Non-Resident Artists
Belgian tax law provides that all income received by non-resident artists in consideration for activities that they carry on in Belgium is subject to non-resident income tax, regardless of whether the income is paid or granted to the artists themselves or to some (other) natural person or legal entity. Neither the status (as self-employed or employee) under which these services are provided nor the legal person to which the compensation is paid is relevant here.

Organizers of artistic events must deduct income tax at source from income earned by non-resident artists in consideration for artistic activities. The professional withholding tax equals 18 percent of the total gross payment received and is a final tax. As such, in principle, this income no longer needs to be reported in a Belgian tax return.

The professional withholding tax is calculated based on the total amount of all gross payments, including benefits in kind received, less a lump-sum allowance of EUR 400 for the first day of performance and EUR 100 for each subsequent day of performance. Deduction of these lump-sum allowances is limited to 10 working days per organizer and per taxpayer each year.

Resident artists, however, are taxed at progressive income tax rates and can deduct their professional expenses. This can lead to foreign artists paying higher taxation than their Belgian-resident counterparts. To settle this matter Belgium changed its legislation. From assessment year 2009 non-resident artists can file an individual income tax return, which means they can deduct their professional expenses.

If the artist is a resident of a country with which Belgium has not concluded a double taxation treaty, the above-mentioned rules are applicable.

If the artist is a resident of a country with which Belgium has concluded a double taxation treaty, the above-mentioned rules are only applicable if the treaty grants the right to tax to Belgium. Almost all Belgian double taxation treaties contain a separate provision attributing the right to tax income from artistic activities to the country where the artistic activities are performed. However, certain double taxation treaties grant the right to tax the artistic income to the state of residence of the artist. The latter leads to an exemption from professional withholding tax with regard to the artistic activities in Belgium. The Belgian tax authorities introduced an advance tax ruling procedure in this respect. Under this procedure, certain types of income may qualify for exemption from professional withholding tax, including income received by certain categories of foreign artists and certain categories of foreign entities specialized in providing performances or events.

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Chapter 04

Brazil

Introduction

Since 1994, with the issuance of *Plano Real*, Brazil has enjoyed a degree of economic stability with a broad basis for industry´s growth. Brazil has produced many critically acclaimed films in recent years. Notable successes include *O Quatrilho, Four days in September, Central do Brasil, Elite Squad*, which received an Oscar nomination in the best foreign language film category, won the best film award at the Berlin Film Festival, won a Golden Globe award for best foreign language film, and won the best film award at the International Berlin Film Festival respectively and *City of God*, which received four Oscar nominations (directing, cinematography, film editing, and writing (adapted screenplay)).

There are also successful co-productions between Brazil and other foreign partners, such as *Rio – the Movie* (with USA, directed by Carlos Saldanha from *The Ice Age*) and *Waste Land* (with United Kingdom, which received an Oscar nomination for Best Documentary Feature and won the Audience Award for World Documentary in the Sundance Film Festival).

The Brazilian government considers film production an important industry and, as a result, a series of incentives to promote the local production of films and their distribution both locally and abroad have been introduced during the last years. The growth of film industry in Brazil can be illustrated by a number of national film festivals and events promoted by Ancine (Brazilian Agency of Cinema) as well as by national hubs for the development of the cinema industry.

Paulínia and Gramado are the main examples of cities involved in foment initiatives focused on the cinema industry. Paulínia (located in the State of São Paulo) has a Cinematographic Hub and hosts a local Film Festival since 2008. Gramado (located in the State of Rio Grande do Sul) hosts a renowned film festival annually since 1969, in which foreign productions may participate in a separated category for foreign full length films. Many other cities in Brazil also promote their own film festivals, such as Rio de Janeiro which hosts Rio's Festival and Anima Mundi (Brazilian International Animated Film Festival).

Brazil has been encouraging filmmaking for many years. Last year, the Federal government issued "Screen Quota" (Decree 7.414), an initiative to foment national film production that imposes a minimum quota of films produced in Brazil to be regularly displayed in local movie theaters. This initiative may also be extended to international co-productions duly approved by ANCINE.

Key Tax Facts

Corporate income tax rate	25%*
Social contribution tax on profits rate	9%
Highest personal income tax rate	27.5%
Service tax rates	2–2 a 5%
Sales tax rates	0–25%
Excise tax rates	0–330% (in general 10-15%)
Normal non-treaty withholding tax rates: Dividends	0%
Interest	15% or 25%*2
Royalties	15% or 25%*2
Services	15% or 25%*3
Tax year-end: Companies	December 31
Tax year-end: Individuals	December 31

* 15% plus 10% on the amount of profit annually exceeding R$240,000.

*2 25% tax rate in case the non resident is located in a low tax jurisdiction.

*3 Rate may vary according to the type of service rendered and the location of the non resident, whether a low tax jurisdiction or not.

Film Financing

Financing Structures

Today, very few sectors of the economy are off limits to the foreign investor. For instance, foreign ownership of media services was prohibited until 2002, when the Federal Constitution was amended in order to allow foreign investment in a media service provider entity; limited to a 30% of shareholding interest.

In regard to film or video productions, Brazilian legislation does not impose legal impediments to foreign investors. Nevertheless, ANCINE requires that a Brazilian producer must be hired by foreign producers to develop foreign audiovisual projects in Brazil (except for journalistic productions). In this case, the local producer will act as a representative before ANCINE.

Co-production
Any kind of co-production effort should be subject to the law applicable to ordinary businesses. Under Brazilian tax laws, entities engaged in film production and distribution can conduct their investments either through a branch, a limited liability company (*sociedade limitada*) or a corporation (*sociedade anônima*).

In general lines, a co-production is an engagement of residents and non residents working together in a project recognized by the authorities of both countries.

Currently, Brazil has co-production agreements with Argentina, Germany, Canada, Chile, Colombia, Spain, France, Italy, Portugal, Venezuela and Uruguay. There are also multi-lateral agreements such as the Latin-American co-production agreement and the Ibero-American cinematographic integration convention.

In addition, international co-productions are usually considered as national projects in their origin countries. In Brazil, co-production should be considered national provided that the project is registered before ANCINE and fulfills the requirements set forth in international co-production agreements (if applicable) or Brazilian law.

Branch of a Foreign Entity
Limited liability companies and corporations are more often incorporated in Brazil by multinational corporations in comparison to branches due to bureaucratic procedures set out for a branch's incorporation. Presently, the formation of a branch of a foreign corporation requires prior approval from the Federal Government, by means of a specific authorization from the Ministry of Industry and Commerce, which should be a very lengthy process.

Sociedade Limitada
A *sociedade limitada* (Ltda.) tends to be the most common approach for foreign companies intending to incorporate Brazilian subsidiaries. This is generally the case because the *limitada* is not required to be audited or to publish its financial statements (provided that the legal entity presents a gross revenue lower than R$300,000,000 or an amount of assets lower than R$240,000,000). In a *limitada*, the responsibility of the quotaholders for liabilities of the company is, with few exceptions, limited to the amount of the unsubscribed capital of the company. In case the capital is fully subscribed, quotaholders' responsibility is limited to their participation in the society.

A *limitada* must have at least two quotaholders, regardless of citizenship or residency. The share capital is divided into quotas, which may have different values, depending on what is determined in the articles of incorporation. In addition, the capital must be evaluated in Brazilian *Reais* (BRL). In the absence of any contrary agreement, voting rights and profit distributions will be proportional to the interest held by each quotaholder. In general, a manager can be indicated in the *limitada's* articles of incorporation.

As of January 11, 2003, the new Brazilian Civil Code entered in force and new rules were introduced for *limitadas*, including rules with respect to the number of quotaholders necessary to approve certain changes in corporate documents, and the inclusion of the *limitada's* corporate activities in its corporate name. It is necessary to point out that these new rules approximated the corporate requirements applicable to a S.A. (see below) to the *limitada*.

Companies, as well as individuals, may be quotaholders of a *limitada*. Non-resident quotaholders must grant a power of attorney to a representative in Brazil to receive service of notice and act on its behalf at meetings of the quotaholders.

Recently, Law 12,441/2011 created the EIRELI, (Individual Limited Liability Entity) which is a new type of entity that may have only one quotaholder.

Sociedade Anônima
The organization and operation of a sociedade anônima (S.A.) in Brazil is subject to Law 6,404/76 – also known as Corporations' Law, amended by Laws 9,457/97, 10,303/01 11,638/07 and 11,941/09 (which introduced several modifications into Corporation Law as an harmonization between BR-GAAP and IFRS). Corporations' Law was designed to stimulate the development of the Brazilian capital market and to provide additional protection for minority shareholders.

The S.A.s may be publicly held (in this case supervised by the Brazilian Securities Exchange Commission – CVM) or privately held, depending on whether their securities are accepted for trading in the securities market.

There are other forms of business organizations; however, they are unlikely to be used by a foreign investor.

Tax and Financial Incentives

Incentives for Film Production in Brazil

Film productions in Brazil may take advantage of two main sets of tax incentives, which are set forth in Laws 8,685/1993, also known as *Lei do Audiovisual* (for audiovisual projects only) and 8,313/1991, also known as *Lei Rouanet* (for cultural projects in general).

It is important to mention that companies that calculate their taxable income under the presumed profit system are not allowed to benefit from the incentives provided by *Lei Rouanet* and *Lei do Audiovisual*. For more details regarding the corporate income tax computation please refer to "Corporate Taxation" section.

According to Law 8,685/1993, focused on Brazilian audiovisual projects previously approved by ANCINE, there are two types of incentives that may grant income tax reductions until 2016: (i) in case of investments in independent Brazilian film productions through the purchase of quotas of distribution rights negotiated on the stock market, the individual may deduct up to 6% of its income tax due and the legal entity may deduct the investments from its income tax computation as well as from the income tax due (up to 3%); and (ii) in case of sponsoring of independent Brazilian film productions, the individuals/legal entities may deduct the expenses related to the sponsorship from the income tax due up to 6%/3%, respectively. However, expenses incurred with the sponsorship should not be deductible for income tax purposes. In principle, legal entities taking advantage of the tax incentives mentioned herein should observe a limit of 4% of maximum deduction of the income tax due.

Also, in regard to the withholding tax assessed on amounts remitted abroad in consideration for the acquisition of rights/exploration of licenses related to transmission of films and events in Brazil, audiovisual tax incentive may grant a tax reduction of 70% of the WHT levied provided that the amount is reinvested in the local development of independent productions in Brazil.

In order to qualify for the tax benefits of the *Lei do Audiovisual*, projects must satisfy the following requirements:

- At least five percent of the project must be self-financed or third-party financed
- Maximum financing amount of R$4 million (for income tax deduction incentive) and R$ 3 million (for withholding income tax reduction incentive)
- ANCINE´s approval for the project subject to investment/sponsorship

In regard to *Lei Rouanet*, this tax incentive may also grant tax reductions on the income tax due both by individuals and legal entities. In general lines, donations or sponsoring amounts invested directly to cultural projects or by way of a specific fund (National Culture Fund – FNC) may be deducted from the income tax due. In order to be eligible for this tax incentive, the cultural project should be pre-approved by the Culture Ministry or, when applicable, ANCINE.

As seen below, the *Rouanet* tax incentive establishes two distinct limitations for tax reduction on the income tax due.

For instance, a legal entity supporting general cultural projects by way of donations and sponsorships may deduct up to 40%/30% of these amounts from the income tax due, respectively, provided that this deduction does not exceed 4% of the income tax due.

<table>
<tr><th>Type of cultural project</th><th colspan="2">Generic limitation</th><th>Total limitation</th></tr>
<tr><td rowspan="4">General cultural projects</td><td rowspan="2">Individuals</td><td>80% of amount donated</td><td rowspan="2">6%</td></tr>
<tr><td>60% of sponsorship</td></tr>
<tr><td rowspan="2">Legal entities</td><td>40% of amount donated</td><td rowspan="2">4% (considering incentives from Audiovisual)</td></tr>
<tr><td>30% of sponsorship</td></tr>
<tr><td rowspan="2">Special cultural projects</td><td>Individuals</td><td>Amount donated/ sponsorship</td><td>6%</td></tr>
<tr><td>Legal entities</td><td>Amount donated/ sponsorship</td><td>4% (considering incentives from Audiovisual)</td></tr>
</table>

Please note that the sum of investments in *Lei Rouanet* and *Lei do Audiovisual* together may not exceed 6%/4% percent of individuals/legal entities income tax payable, respectively.

For instance, a legal entity supporting general cultural projects by way of donations and sponsorships may deduct up to 40%/30% of these amounts from the income tax due, respectively, provided that this deduction does not exceed 4% of the income tax due.

Local tax benefits for encouraging cultural activities

Besides the initiatives from Federal Government such as *Audiovisual* and *Rouanet*, States and Municipalities also developed incentive programs in order to attract investments and foment cultural activities.

States as Rio de Janeiro, São Paulo, Minas Gerais and Rio Grande do Sul grants tax incentives focused on the development of culture. In general, investors and sponsor companies may deduct from the ICMS due the amount invested in cultural projects. In the same way, several municipalities also offer incentives to reduce the ISS due by companies that support or sponsor local cultural projects.

As a general rule, companies should be in compliance with its tax obligations in order to be eligible for the tax incentives.

Bank Financing

In addition to the tax benefits available, some Federal Development Banks can also support Brazilian independent motion pictures with financial investments.

The National Bank for Economic and Social Development (BNDES) operates a series of funding programs designed to stimulate the growth of Brazilian-owned industry, mainly through subsidized-rate financing. BNDES offers specific loans for companies intending to establish or expand facilities for the production of goods considered important to the social well-being of the population, finances the acquisition of such goods and promotes the expansion of private capital ownership by underwriting share issues. As a general rule, non resident companies may qualify for BNDES acquisition financing provided that local content of the equipment meets minimum requirements.

Also, BNDES has a specific financing program called *Cinema Perto de Você* (Theaters Near You). This program is designed to support the construction and improvement of movie theaters in specific cities indicated by ANCINE.

Other Financing Considerations

CONDECINE

Provisional Measure 2,228-1/2001, altered by Law 10,454/2002, introduced several changes in the film industry. The most significant change was the creation of a special contribution entitled "Contribution for the Development of the National Cinema Industry" (CONDECINE), which is levied on the marketing and promotion, production, and distribution of commercial motion picture and video works.

The CONDECINE will be due at a fixed amount once in five years per:

I – Title or chapter of motion picture or video work for the following market segments:

i) Movie theater

ii) Domestic video

iii) Radio and TV

iv) Electronic communication subscription services for the general public

v) Other markets, as per a list attached to *Provisional Measure* 2,228/01

II – Title of advertising work for each market segment

Also, CONDECINE is also assessed at a rate of 11% on the amounts paid to non resident producers, distributors, or intermediaries, in consideration for the commercial use of motion picture or video works, or their purchase or import. An exemption of CONDECINE may take place in case the entity invests an amount correspondent to 3% of the income paid, credited, used, remitted, or delivered in Brazilian video and audio productions approved by ANCINE.

CONDECINE will be due in the date of the payment, credit, use or remittance of the income related to commercial use, acquisition or import of motion picture or video work.

CONDECINE may be reduced to:

i) Twenty percent, in the case of Brazilian non-advertisement motion picture or video work

ii) Thirty percent in the case of audiovisual works destined to the market share of exhibition movie theaters explored upon six copies; and also in the case of motion picture or video works for TV or radio produced twenty years before the registry of the contract with ANCINE

Also, it is important to mention that sport events, journalistic motion pictures and export operations of national motion pictures or video works and the broadcast of national content are exempted of CONDECINE.

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The taxpayers liable for CONDECINE are the following entities:

i) Owners of the commercial rights or license in Brazil

ii) Producers, in case of Brazilian works, or owners of the exhibition license, in case of foreign works

iii) Withholding entity/individual responsible for the payment, credit, use, remittance or delivery of the income from the commercial use, acquisition or import of motion picture or video

Note that tax treaties between Brazil and other countries do not cover CONDECINE (not included in income tax definition). Considering that CONDECINE should be levied on Brazilian payer, the non resident may not be entitled to a tax credit.

Special Contribution (CIDE)

CIDE is a special contribution levied on payments to non-residents in the form of royalties and technical services, at a rate of 10%. This contribution is imposed on the Brazilian payer (and not on the non resident).

Initially, CIDE was applicable only to certain royalties and services rendered involving the transfer of technology. However, as of January 1st, 2002, CIDE applies to all types of technical services and also to royalties related to the use of trademarks and copyrights.

Note that until December 31, 2013 the taxpayer may take a tax credit of 30% of the CIDE paid to be off-set against subsequent CIDE payments related to royalties from the use of trademarks and copyrights.

Compliance of Central Bank regulations

Brazilian Central Bank (BACEN) imposes foreign exchange controls for both inflow and outflow of funds into/from the country. In general lines, the investor should provide proper documentation to the private bank responsible for the transaction, which should be registered in Central Bank´s electronic system (RDE)

With regard to financial transactions involving the remittance of rental income of home video and films may be performed through any Bank authorized by the Central Bank to operate in the foreign exchange market.

Corporate Taxation

Currently, corporate income tax (IRPJ) is assessed at a rate of 15%, plus a surtax of 10% on the amount of taxable income exceeding R$240,000 per year.

In addition to the corporate income tax, there is also a social contribution (CSLL) charged at a 9% tax rate.

There are two main methods for income tax and social contribution tax computation—the actual profit system and the presumed profit system.

Actual Profit System

Under the actual profits system, taxable income is net accounting profit, adjusted for non-deductible expenses and non-taxable revenues. Taxpayers on the actual system may choose to calculate tax on a quarterly basis or on an annual basis. The election is made at the beginning of each calendar year and may not be changed for the remainder of the year. Under the quarterly basis, taxable income is computed and paid quarterly.

It is important to mention that some companies are legally obliged to be in the actual profit system, such as financial institutions, factoring companies or entities that accrue revenue higher than R$48 million per year.

Presumed Profit System

If certain conditions are met, Brazilian entities may elect presumed profit system to calculate taxable income. Under the presumed system, taxable income is deemed to be equal to a fixed percentage of gross revenues. The applicable profit percentage depends upon the activity of the company and differs for corporate income tax and social contribution on profits.

For example, for companies engaged in render of services, a 32% of deemed profit margin is applied. To reach the taxable income, the presumed profit (which is obtained by multiplying the gross revenue by the presumed profit margin) is increased by revenues other than sales revenue, such as income from financial transactions and capital gains.

Note that only companies with gross revenues lower than or equal to R$48 million per year, which are not financial institutions or factoring companies, that do not earn profits or gains from abroad and that do not qualify for an tax exemption or reduction of corporate income tax or social contribution on profits.

Withholding income tax obligations

The remittance of payments abroad is generally assessed by withholding income tax, which rates depend upon the nature of the payment, the residency of the beneficiary and the existence of tax treaties between Brazil and the country where the beneficiary is located. The most common rates range from 15% to 25%. As a general rule, income paid to beneficiaries located in low tax jurisdictions is subject to 25% withholding tax.

The following are the main withholding tax rates applicable to payments made to nonresidents:

- Interest – 15%
- Interest on equity – 15%
- Royalties – 15%
- Technical service and technical assistance fees – 15%
- Non technical service fees – 25%
- Lease and rental fees – 15%.

In regard to amounts paid to foreign producers and distributors related income derived from the exploration of foreign audiovisual productions of its acquisition or importation, withholding income tax should be assessed at a 25% rate.

In regard to amounts remitted abroad for the acquisition or remuneration in consideration of any type of right, including rights of transmission of films and events, WHT should be levied at a 15% tax rate.

The following are currently not subject to withholding tax (some requirements may apply):

- Dividends (if related to post-January 1996 profits) – 0%
- Interest and commission on export financing – 0%
- Interest and commission on export notes – 0%
- Export commissions – 0%
- Interest on certain government bonds – 0%
- Rental fees for aircraft and ship – 0%
- Air and sea charters, demurrage, container and freight payments to foreign companies – 0%
- International hedging – 0%

Indirect Taxation

Customs Duties

Import Tax (II)

In principle, the applicable rate depends on the fiscal code of the goods, set on Mercosur's (South Cone Market) Common External Tariff (TEC). The Mercosur Agreement provides that all member countries (Argentina, Brazil, Paraguay, Uruguay, and Venezuela) must apply the same import duty on goods from third-party countries, except for certain goods listed in each country's exception list (this list is generally driven by political or economic reason, i.e., the protection of local industry, the essentiality of the product to the importer country, among others). Customs duties rates among Mercosur countries is zero-rated, provided the products have a Mercosur certificate of origin. Mercosur origin rules are generally based on minimum local added value and changes in the classification of the product.

Importation

Brazilian legislation provides for the mandatory registration of all foreign or domestic motion pictures, home video, and television contracts distributed and transmitted within Brazil with the Ministry of Culture (Audiovisual Development Bureau).

Brazilian entertainment law provides that Brazilian film labs must produce the film prints that will be distributed within Brazil.

The importation of marketing materials is subject to duties, which may vary according to the item. Posters and black-and-white stills must be printed in Brazil, while negative and color stills may be imported.

Excise Tax

Excise Tax (IPI) is a federal tax levied on the import and manufacture of goods. In many aspects, IPI mechanics is similar to a VAT, since it is charged on the value aggregated to the merchandise. As a general rule, the IPI paid on a prior stage can be used to offset the IPI debts generated in subsequent operations. Similarly to the import tax, the applicable rate depends on the tax classification of the product.

IPI also has a regulatory nature, i.e.,the Federal government may increase (or decrease) IPI´s rates at any time as a way to implement financial and economic policies.

Additionally, IPI rates can be higher for non-essential products such as cigarettes, perfumes, etc. Export transactions are not subject to IPI.

ICMS (State VAT)
ICMS is a state tax levied on the import and physical movement of products. Rates may vary from 7 to 12 percent for interstate transactions and from 17 to 19 percent for intrastate or import transactions, which may vary according to the type of product involved.

ICMS is a non-cumulative tax and, therefore the ICMS paid on a prior stage may be used to offset the ICMS tax levied in subsequent operations. Export transactions are not subject to ICMS.

Service Tax
Service Tax (ISS) is a municipal tax assessed on revenues in connection to render of services. While ISS is a municipal tax, services subject to ISS are defined by a federal law (Complimentary Law 116/03). The applicable rate depends on the legislation of each municipality and on the service rendered. Rates may range from 2% to 5%.

Complimentary Law 116/03 introduced important changes to the ISS legislation. As of January 2004, ISS also applies to the import of services, which should be withheld by the Brazilian entity.

Furthermore, Complimentary Law 116/03 also provides an ISS exemption for revenues generated from the export of services. However, the definition of exported services specifically excludes services rendered in Brazil that showed results within the country (even if the Brazilian entity receives the payment from abroad).

PIS/COFINS
PIS (Social Integration Program) and COFINS (Social Security Financing Contribution) are charged on gross revenues through two regimes: cumulative and non-cumulative. Revenues related to export transactions are immune from these contributions.

Entities that are subject to the PIS/COFINS cumulative regime will be subject, in general, to a 0.65% tax rate for PIS and 3% tax rate for COFINS. On the other hand, PIS/COFINS taxpayers under the non-cumulative regime are subject to a 1.65% (PIS) and 7.6% (COFINS) rates and are allowed to recognize a tax credit for PIS/COFINS paid on certain inputs.

As a general rule, entities may opt between the non-cumulative or the cumulative regime of PIS/COFINS. However, some companies are obliged to adopt the cumulative system, such as entities assessing corporate income taxes under presumed profit system, financial institutions and health insurance companies, among others.

Tax on Financial Transactions (IOF)
IOF is a financial tax levied on financial transactions such as credit, exchange, insurance, securities, etc. The main IOF rate assessed on most currency exchange transactions is 0.38%. However, we must note that IOF legislation imposes specific rates according to the operation involved. For instance, the currency exchange transaction related to cross border loans with an average term lower than 720 days are subject to IOF at a 6% tax rate. It is important to mention that IOF rates may be increased (or reduced) at any time by the Brazilian government, without congressional endorsement.

Personal Taxation

Resident
Residents of Brazil, whether from a foreign nationality or not, are subject to tax on their worldwide income. Individuals reporting income received from abroad may take a credit on their annual tax return for taxes paid in the country of origin, provided that a reciprocal tax treatment takes place.

Income subject to tax includes all monetary remuneration and fringe benefits. In case of expatriates, the main items in this category is the cost of travel for family home leave and allowances for housing, educational, and medical or other expenses. Any reimbursement of taxes paid is included in taxable income. Non-monetary fringe benefits, such as the use of a company car or country club membership, are also included in taxable income. No distinction is made between personal expenses reimbursed by the company to the employee and personal expenses paid directly by the company. Moving allowances are usually non-taxable, but in certain circumstances, they may be treated differently.

Also, it is important to mention that non-residents individuals' earnings received in Brazil are subject to withholding income tax. They must communicate to the source of the payment the condition of non-resident.

Concept of Residency

Permanent Visa Test
Individuals transferring to Brazil on a permanent basis are subject to tax as residents upon the date of arrival.

On departure, the individual must report his or her income and pay any taxes due up to that date. The taxpayer will receive a final tax clearance (granting him or her non-resident tax status) that will enable him or her to request Central Bank permission to repatriate all assets held in local currency, provided that these assets have been properly reported on the annual tax returns.

Permanent working visas are generally granted to applicants who will perform management activities as business administrators, general managers, or directors of Brazilian companies (duly appointed as so in the company´s articles of association).

The Brazilian company has basically two options to formalize the recruitment of an individual with a permanent visa: (i) with an employment contract, where the company will pay a monthly salary and will incur in other labor charges, as well as being included in the Brazilian company's payroll; or (ii) without an employment contract, where the company will pay a pro labore remuneration in Brazil. Specific rules must be observed for the issuance of a permanent visa for a non resident contracted to manage companies in Brazil.

Temporary Visa Test

The temporary visa is granted to foreign individuals under specific conditions, such as teachers, researchers or scientists, artists, individuals under technical assistance agreements, render of services agreements involving transfer of technology, among many others.

Individuals under render of services involving transfer of technology agreements, a temporary visa of 90 days (for short term agreements) or a work authorization valid for one year (for emergency situations or agreements not comprehended in the first situation) may be granted.

A temporary visa may also applicable to artists and technicians related to entertainment activities to be performed in Brazil. The visa should be valid for 90 days and is not applicable to foreign artists with labor contracts with Brazilian entities.

Foreign individuals under labor contracts with local entities should hold a temporary visa of 2 years (subject to extension). The Brazilian employer must file the visa application and provide the required documents in order to hire the foreign employee.

Business Visa

In the business visa, the foreigner is allowed to participate in business meetings, conferences, summits, visit potential clients, study of Brazilian market, etc. However, the employee must not perform any kind of work for a local company during his stay in Brazil and neither receive any Brazilian-sourced remuneration, in order to avoid penalties such as fines and deportation. Business visa limits to 90 days the permanence of the individual (renewable for an equal period).

In any case, please note that eventual income earned from a Brazilian source should be subject to taxation in Brazil.

Capital Gains

In case a non resident individual sells an asset located in Brazil, capital gains will be subject to withholding tax at 15 percent (25 percent if the seller is located in a listed low tax jurisdiction) in Brazil

Allowances and Deductions

Taxpayers may deduct on income tax computation amounts paid to Social Security (INSS) and any alimony payments. A special deduction of R$157,47 (as of April 2011) per dependent is granted as well. Unreimbursed medical, dental, and educational expenses, limited to R$2,830.84 per student, are allowed as deductions only on the annual tax return.

Tax Rates

Tax is withheld at source on a monthly basis from 7.5 to 27.5 percent depending on income level (see below). This withholding tax is applicable only to payments made by Brazilian entities. When an expatriate is on a split-payroll basis, the amount paid abroad should not subject to Brazilian withholding tax, but is subject to monthly tax, which must be paid by the end of the month following the month in which the income was received.

Tax is paid monthly in accordance with a five-bracket tax table. For the 2011 calendar year, individuals earning under R$1,499.15 are exempt from taxation. Individuals (i) with a monthly income above R$1,499.15 and under R$2,246.75 are subject to a withholding tax of 7.5 percent of income reduced by a deduction of R$112.43; (ii) with a monthly income above R$2,246.75 and under R$2,995.70 are subject to a withholding tax of 15 percent of income reduced by a deduction of R$280.94; (iii) with a monthly income above R$2,995.70 and under R$3,743.19 are subject to a withholding tax of 22.5 percent of income reduced by a deduction of R$505.62. Taxpayers whose monthly income is over R$3,743.19 are taxed at a rate of 27.5 percent reduced by a deduction of R$692.78.

Annual Tax Return

Annual returns must be filed by the end of April, reporting income earned in the previous calendar year.

All resident taxpayers are required to file as part of their tax return an annual statement of personal assets and liabilities held at December 31 of the taxable year in Brazil or abroad. Any increase in net assets not attributable to reported taxable or non-taxable income may be subject to tax.

The Brazilian Central Bank also imposes tax return filing for resident individuals or entities on an annual basis reporting all assets located abroad with a value equal to or exceeding US$100,000.

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Chapter 05

Canada

Introduction

The Canadian film and television production industry is a vibrant industry which has flourished since the early 1980's when a combination of factors brought more talent into the industry, more investment by private investors, governments and financial institutions, and more foreign productions to Canada. The cheaper Canadian dollar attracted foreign producers, especially U.S. studios, independents and broadcasters. As a result, a large talent pool has developed and excellent facilities have been built and continue to be enhanced. Canadian sites have often been referred to as *Hollywood North*.

In addition there have been tremendous advantages provided by tax incentives, as well as government support through loans, grants, equity investment and pools of funds investing in development and distribution. In addition, there are now corporate funding and industry association funding, including the Canadian Media Fund (see below).

Within the last few years there has been a significant change in the financing of Canadian film and television production. In order to access lucrative tax incentives (both federal and provincial), it is no longer possible to raise financing through tax shelter syndications sold to passive individual investors; such a structure would put a film project offside with respect to the tax credit systems, which are designed from a government policy perspective to replace all previous tax shelter structures for both Canadian certified film, as well as production services activity accessing the Production Services Tax Credits.

Tax legislation provides a refundable tax credit system. In its February 27, 1995 Federal budget, the Department of Finance first introduced the refundable Canadian Film or Video Production Tax Credit (CPTC). A credit is available equal to 25 percent of qualified salaries and wages, in respect of Canadian residents, now limited to 60 percent of the total certified film cost, net of assistance, hence resulting in a tax credit of a maximum of 15 percent of the total certified film cost. It is available only to a qualified Canadian-owned, taxable corporations that are primarily in the business of Canadian film or video production. The CPTC is administered by the Canada Revenue Agency (CRA) as it is claimed in the tax return of the production company; however, the film certification process is administered by the Department of Canadian Heritage through its Canadian

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Audio-Visual Certification Office (CAVCO). CAVCO performs two distinct functions: 1) Canadian content certification, and 2) valuation of the estimation of the eligible expenses of production.

In 1997, the Federal Film or Video Production Services Tax Credit (PSTC) was first announced as an 11 percent credit with respect to "qualifying Canadian labor expenditures" paid to Canadian residents or taxable Canadian corporations for services provided to the production in Canada. There is no cap on the amount of credit that may be claimed, furthermore, it may be claimed by either a Canadian or foreign producer. This credit is now 16 percent and is administered in a similar manner to the CPTC through the tax return filing process. CAVCO must accredit the particular production.

All provinces plus the Yukon Territory have followed suit, providing tax credits and other subsidies for both certified film as well as production services, with respect to qualifying labor expenditures made in their province.

Several Canadian producers and distributors are publicly listed companies. This has provided them with the opportunity to raise a significant amount of capital to invest in film properties, equipment and related business ventures, including interactive technology, broadcast assets, and other new forms of media and entertainment, allowing them to become more fully integrated entertainment companies.

Several film production and distribution companies have merged to create more efficient, integrated entertainment companies and more recently several have been targeted for takeover by foreign entertainment or venture capital companies.

Another opportunity is that several producers, in partnership with others including foreign broadcasters, have been granted cable specialty channel licenses, providing more opportunity for exploitation of film properties within Canada.

Key Tax Facts

Highest corporate profits tax rate*	26.5%
Highest personal income tax rate*	46.41%
Federal GST (Goods and Services Tax)	5%
Federal Harmonization Sales Tax (HST)	12% (BC), 13% (ON, BN, NF) and 15% (NS)
Annual GST registration limit	C$30,000
Normal non-treaty withholding tax rates: Dividends	25%
Interest (other than certain exempted interest)**	25%
Royalties (other than certain copyright royalties eligible for 0%)	25%
Tax year-end: Companies (other than excepted businesses)	Fiscal year
Tax year-end: Individuals and unincorporated business	Calendar year

* Combined Federal and Provincial effective January 1, 2012, using Ontario as sample province.

** No withholding tax on interest paid to non-related non-resident.

Note that corporate tax returns are due six months after the fiscal year-end and there are no extensions. However the final corporate tax payment is due two months after the year-end; in certain cases Canadian controlled companies may have until the end of the third month to make their final installment. Personal returns are due April 30th after the calendar year, though there is an extension to June 15th in respect of those earning business income; the final tax payment is due April 30th.

Film Financing

Financing Structures

Co-Production

Canada has production treaties with about 55 countries as well as several additional agreements with other countries. Pursuant to these treaties and agreements, the Canadian producer/partner spends a portion of the production budget in Canada and in return retains certain territories from which revenues can be earned, including Canada; similarly the producer/partner from the other country contributes his share of the production costs, usually in his country. It is possible to arrange a treaty co-production among producers from multiple countries as participants. The treaties are administered by Telefilm Canada through its Co-production department.

Co-productions must be certified by the Minister of Canadian Heritage and as a result become eligible for enhanced Canadian license fees, and tax depreciation as a certified production with respect to the Canadian portion of the budget. As well, the Canadian certified budget should qualify for the CPTC.

The co-production structure does not create a partnership or joint business venture unless that is the intention of the parties and it is so structured. Thereby the foreign party to the co-production should not become subject to tax in Canada unless they otherwise carry on business in Canada.

Careful planning is required to ensure that the worldwide exploitation of the co-production does not constitute the carrying on of a business in Canada, to avoid reporting all of the distribution activity in Canada. Often it is the case that there is some form of revenue collection agreement by which all parties are "equalized" after recovering revenues in their respective territories. These arrangements should be carefully structured to avoid unnecessary tax withholding and reporting in more than one country.

Non-Certified Film

There is no co-production treaty with the U.S. In the past U.S. producers have used other structures to produce in Canada and/or to gain access to benefits of Canadian tax incentives. Specifically, the PSTC is not dependent on certification of the film asset and to an extent was designed as an incentive to U.S. producers and other foreign producers wishing to film in Canada. They can use their own production subsidiary to produce the film in Canada in order to access these credits.

It is also possible to consider producing in a structure to qualify not only for the PSTC but also for Canadian Content rules under the CRTC, which would allow for other Canadian non-tax related benefits. This is referred to as the Co-venture Structure and requires that the production be made by a Canadian producer (as defined). These rules are outlined in CRTC Public Notice 2000-42.

In some cases, U.S. producers have licensed production rights to a Canadian producer so that the production can be made as a certified film. In some cases U.S. broadcasters or distributors provide revenue guarantees to assist in completing the financing structure of a particular production. In all situations of "co-productions" with non-treaty partners, care must be taken to ensure that the film remains certifiable, specifically that the producer control guidelines are respected, as more fully described below.

Public Companies

Several Canadian film producers and distributors are publicly listed companies on Canadian stock exchanges. A few have been listed on U.S. exchanges as well.

By virtue of selling shares or units to the public, they have raised a substantial amount of capital which has been applied among other things to acquire new film properties either for production or exploitation, enhancing their respective film libraries and acquiring new production equipment. In addition, some have made significant acquisitions in related/complementary businesses including animation, post-production, distribution and broadcasting.

Tax and Financial Incentives

Tax credits are obtained through the filing of corporate tax returns accompanied by prescribed forms calculating the credit, as well as the applicable form of certification or accreditation to confirm the project qualifies for the respective credit. Other incentives include enhanced depreciation for certified film assets as described below.

Canadian Film or Video Production Tax Credit (CPTC)

In its 1995 federal budget, the government introduced a fully refundable tax credit for qualified Canadian production companies that own the copyright in the production. Since a November 14, 2003 announcement by the Ministers of Finance and Canadian Heritage, this tax credit is worth up to 25 percent of qualified labor expenditures on an eligible Canadian film or video production, to a maximum credit of 60 percent of certified production costs, resulting in a maximum credit of 15 percent of the film cost, net of assistance.

The CPTC can be assigned to lenders as security for bridge financing; in this manner producers can obtain financing from third parties for this portion of their production budget, since obtaining the refund is potentially subject to long delays for processing the certification (discussed below) and audit of the tax return by CRA. CRA has committed to 120-day turnaround for tax return filings which are complete, though subsequent delays do arise if CRA requires more substantiation or other outstanding tax matters exist in respect of the company.

The Income Tax Act and Regulations outline the tests that a Canadian production must meet to earn this production credit. These tax rules also create a separate depreciation class for productions that qualify for the credit.

The CPTC is available to taxable Canadian corporations whose primary business activity is the production of Canadian *certified films*, carried on through a permanent establishment in Canada ("Eligible Production Company").

A company must file with its tax return a Canadian Film or Video Production Certificate obtained from the Minister of Canadian Heritage. The certification process effective in 2006 is a two part process. A Part A certificate ("Canadian Film or Video Production Certificate") is obtained by filing a Part A application form including all requested material; this includes providing a detailed budget, a breakdown of eligible labor expenditures, a copy of production financing agreements, and a copy of all distribution, exploitation and license agreements. A final Part B certificate ("Certificate of Completion") can be obtained by filing the "Application for a Certificate of Completion" which requires the inclusion of a declaration by the producer that the production is fully complete and commercially exploitable, a final cost report, a breakdown of the eligible labor expenditures, an audited schedule of production costs (productions under $500,000 may not require an audit), and a declaration of citizenship for all production and creative related personnel. This certificate also certifies that the production was completed within two years after the end of the corporate taxation year in which the principal photography began. In addition, the submission must include a DVD copy of the production. In respect of obtaining this certification the Minister/CAVCO issued the proposed guidelines discussed below.

No credit is available to a production which is a tax shelter investment, or in respect of which a person with an interest in it, is a tax shelter investment (as prescribed in the Income Tax Act).

To ensure that the credit is reserved for productions that are developed, produced and exploited by Canadians and under the effective control of Canadians, the Department of Canadian Heritage has provided "Producer Control Guidelines" that will need to be met in order for the production to be certified as Canadian. In addition they have issued documents Public Notice – CAVCO 2006-02 and Public Notice CAVCO 2007-01 which set out the current positions of the Department of Canadian Heritage.

The producer is defined as the individual who is:

- the central decision maker for the production
- directly responsible for acquiring the story or screenplay, the development, creative and financial control, and exploitation of the production
- identified as the "producer" in the production

For purposes of the credit, "Canadian" includes Canadian citizens, permanent residents (defined in the Immigration Act) and Canadian-controlled corporations (as defined in the Investment Canada Act).

Canadian broadcasters may qualify for this credit, but the Department of Finance has announced that their production activity will be monitored to ensure their proportionate share of certified productions does not increase beyond historical levels, in order to protect the viability of the Canadian independent production sector.

Public Notices

As noted in the November 14, 2003 announcements of amendments to the tax credit laws by the Ministers of Finance and Canadian Heritage, CAVCO has issued the below referenced Notices to announce their guidelines. In addition, it is noted that Department of Canadian Heritage continues to review the requirement that a production company have ownership of copyright in order to access the CPTC.

The following are the guidelines from Public Notice – CAVCO 2005-01:

- *Copyright Ownership:* Only prescribed taxable Canadian corporations and persons qualify. Canadian producers must retain ownership of copyright in the production as demonstrated by a clear chain-of-title, though profit participation, under certain conditions, will be allowed for example as part of financing arrangements with distributors, broadcasters and interim lenders. Any security interest in the production must be lifted after delivery

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- The term of copyright ownership is currently set at 25 years. Access to foreign tax-based funds that require copyright ownership in foreign hands, will render the production ineligible for Canadian certification
- *Production Financing:* Distribution advances and broadcast pre-sales should be characterized as license fees. Only financing from Telefilm Canada and other qualified corporations such as private financing funds of Canadian broadcasters, should be treated as equity in a production
- *Acceptable Share of Revenues from Exploitation in a Non-Canadian Market:* A production corporation or a taxable Canadian corporation related to it must retain an "acceptable share of revenues" requiring minimum profit participation and limits on exploitation rights held by distributors and broadcasters. They must retain not less than 25 percent of the worldwide value, in addition to Canada, which includes not less than 25 percent of worldwide net profits from ancillary and subsidiary rights in non-Canadian markets; maximum term for a distribution arrangement is 25 years ; distribution fees must be reasonable and expenses direct and actual; broadcast licenses are not recoupable in any territory; profit participation outside an investor's territory shall not exceed its percentage of production financing; the Canadian territory cannot be cross-collateralized with non-Canadian, nor can it provide revenue to non-Canadian investors; and other investors cannot include federal tax credits in their revenue stream
- *Control of Initial Licensing:* Must be held by the production corporation. A production is ineligible where meaningful development or exploitation arrangements were initiated by non-Canadians before copyright ownership is secured by the eligible Canadian. Also, non-Canadian owners of underlying rights would not be permitted to obtain exploitation rights in the completed production in any territory
- Non-Canadian show runners must submit an affidavit declaring that all work is under the control of the Canadian producer. The contract for this person must be submitted. The Producer Control Guidelines set out criteria to determine if the Producer has control over the production
- A format program produced under a licence issued by a non-Canadian owner, is eligible for CPTC however the Canadian producer must demonstrate they control the initial exploitation of the Canadian version
- There are a series of Screen Credits Guidelines to ensure the Canadian producer has prominence and that non-Canadians given credits provide an affidavit that their duties were carried out under the direction and control, and with full knowledge of the Canadian producer

Production Control Guidelines

The producer of the production must be a Canadian resident individual or eligible corporation from beginning to end. The producer is involved in and ultimately responsible for the acquisition and/or meaningful development of the story; the commissioning of the writing of the screenplay/series bible; the selection, hiring and firing of key artists and creative personnel; the preparation, revision and final approval of the budget; all overages; the binding of the production company to talent and crew contracts; the arranging of the production financing; the supervision of the filming/taping and post-production; final creative control (as per contract); production expenditures (as per contract); production bank accounts (sole and unfettered cheque signing authority); and the arranging of the commercial exploitation of the production.

- *The Canadian Producer:*
  - Must have and maintain full control over the development of the project from the time at which the producer has secured underlying rights
  - Must have and maintain full responsibility and control over all aspects (creative and financial) of the production of the project
  - Must have and maintain full responsibility and control over all aspects of production financing
  - Must have and maintain full responsibility and control over the negotiation of initial exploitation agreements
  - Is entitled to a reasonable and demonstrable monetary participation in terms of budgeted fees and overhead, and participation in revenues of exploitation

NOTE: The producer will have the onus of establishing all of the above, to the satisfaction of CAVCO.

- *Limited Use Rights:* Rights related to underlying works acquired under license, are acceptable if the copyright owner retains worldwide copyright for all commercial purposes for 25 years, and no one other than the copyright owner can commercially exploit the production. It is expected that an arrangement such as the following will be treated as a service deal not eligible for CPTC: where the original owner of a right has all distribution rights outside Canada; where the rights to the story and exploitation in certain territories and medium are retained by the author; where a Canadian producer exploits the concept only in Canada; where the producer does not acquire world rights. The production may however qualify for production services tax credits (see discussion below)

The credit is available for Canadian film or video productions that are treaty co-productions, and for other productions that meet all of the following criteria:

- The producer must be a Canadian at all times during the production
- Six "points" for Canadian creative services involved in the production, must be allotted by the Minister of Canadian Heritage (see below)
- At least 75 percent of costs for services provided in respect of the production must be payable to, and in respect of, services provided by Canadians. This calculation excludes, among other things, amounts payable in respect of insurance, financing, legal and accounting fees; remuneration payable to individuals or the producer in respect of all the "points" categories; and post-production costs
- At least 75 percent of costs incurred for post-production, including sound rerecording, picture editing and so on, is incurred in respect of services provided in Canada

The production must obtain a Certificate of Completion (Part B) as described above, from the Minister of Canadian Heritage within 30 months of the end of the corporation's taxation year in which principal photography began, certifying that it was completed within two years after the end of that year. This signifies the completion of the certification process.

Under the currently applicable guidelines:

- The corporation (or a related taxable Canadian corporation) must hold the exclusive worldwide copyright for all commercial exploitation for twenty-five years after the completion of post-production. The corporation must also control the initial licensing of commercial exploitation and retain a share of revenue from the exploitation in non-Canadian markets that is "acceptable to the Minister of Canadian Heritage"
- A written agreement must exist for fair market value consideration with a Canadian film or video distributor or a CRTC-licensed broadcaster, to have the production broadcast in Canada within two years of the production's completion. Within these first two years, it cannot be distributed in Canada by a non-Canadian

Also note that credits are specifically denied for certain genres of productions, including non-dramatic television programming such as news, current affairs and sports programs, game shows (unless aimed at minors), talk shows, and productions made for industrial, corporate or institutional purposes. Also excluded are productions "for which public financial support would be contrary to public policy, in the opinion of the Minister of Canadian Heritage".

Qualified Labor Expenditures

To be eligible for the production credit, labor expenditures of qualified corporations must be "reasonable" and they must be included in the production's cost. Salary or wages qualify for the credit; amounts determined by profits or revenues, and stock option benefits do not qualify. Qualifying labor expenditures are reduced by any assistance received or expected to be received by the production, including provincial tax credits.

Salary or wages must be attributable to the period from the final script stage (following acquisition of the story or script) to the end of post-production, and they must be paid within 60 days of the year end. Remuneration paid to a non-employee for personal services or the services of that person's employees in respect of the production, qualifies for the purposes of the credit. Expenditures in respect of non-residents of Canada do not qualify for the credit other than in respect of Canadian citizens. Also eligible are payments to taxable Canadian corporations, partnerships carrying on business in Canada, and Canadian personal service corporations, subject to certain tests to determine the percentage of the remuneration which qualifies.

Wholly-owned subsidiaries of taxable Canadian corporations will be able to reimburse their parents for labor expenditures that would otherwise qualify in respect of a production.

Qualifying post-production services are specifically identified in the regulations, and include certain sound effects, editing, special effects, computer graphics and printing tasks.

"Production costs" for purposes of calculating the credit arise from the "final script stage" and can be incurred from as early as two years prior to commencement of principal photography, but not before incurring the first development cost or the acquisition of the story.

The Points System

Non-animated productions. To qualify as "Canadian" for purposes of the new production tax credit, the director or principal screenwriter and one of the two highest paid performers must be Canadian. The production must also have a total of six "points", which are earned by having Canadians occupy the following key creative roles:

- director
- principal screenwriter (i.e., if more than one writer is credited, each writer must be Canadian, or one writer must be Canadian and the screenplay must be adapted from a Canadian work published in Canada)

- lead performer (highest remuneration; billing and screen time may also be considered).
- 2nd lead performer (second highest remuneration; billing and screen time will also be considered)
- art director
- director of photography
- music composer
- picture editor.

Each of the above except for director and principal screenwriter qualifies for one point. Director and principal screenwriter qualify for two points.

Animated productions. To qualify as "Canadian", the director or both the principal screenwriter and storyboard supervisor, must be Canadians; one of the two highest paid voices must be Canadian; and the key animation must be performed in Canada. The production must also have a total of six "points", which are earned by having Canadians occupy the following key creative roles or by having key creative work done in Canada:

- director
- lead voice with highest or second highest remuneration (length of time voice is heard may also be considered)
- design supervisor
- camera operator (if camera operation is done in Canada)
- music composer
- picture editor
- principal screenwriter and storyboard supervisor (if both are Canadian)
- layout and background done in Canada
- key animation done in Canada
- assistant animation and in-betweening done in Canada.

Each of the above qualifies for one point.

Documentary productions. For documentary productions, all creative positions must be occupied by Canadian individuals unless the "six points" test is otherwise met.

Film or Video Production Services Tax Credit (PSTC)

On October 29, 1997, the Department of Finance first released draft legislation to implement a refundable tax credit to corporations carrying on a production services business in Canada. This program now provides a credit of 16 percent of qualified labor expenditures incurred and is available to Canadian as well as foreign-based film producers.

PSTC is designed primarily to encourage the employment of Canadians by a producer. In return for hiring Canadian residents to perform work in Canada, the producer may be entitled to this fully refundable tax credit. A production that receives CPTC is not eligible for a PSTC.

The credit is available to corporations including foreign corporations. The corporation has to meet the following conditions to be entitled to the credit:

- Its activities in Canada should be primarily (50 percent or more) a film or video production business or a film or video production services business carried on through a permanent establishment in Canada
- Have contracted directly with the owner of the copyright to provide production services if the owner is not an eligible production corporation in respect of the production

The Department of Canadian Heritage is responsible for ensuring that the production conforms to the following requirements:

- The film or video's production cost should be in excess of Canadian $1,000,000 or with respect to TV series, episodes of less than 30 minutes cost more than $100,000 or if longer, cost more than $200,000.

Ineligible productions include:

- news, current events or public affairs programming, or a program that includes weather or market reports
- a talk show
- a production in respect of a game, questionnaire or contest
- a sports event or activity
- a gala presentation or awards show
- a production that solicits funds
- reality television
- pornography

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- advertising
- a production produced primarily for industrial, corporate or institutional purposes

An accreditation certificate must be obtained from the Minister of Canadian Heritage certifying that the production is an accredited production. The application to CAVCO for an accreditation certificate can be made by either the copyright owner or by an agent appointed by the copyright owner, referred to as the "Official Designee". If the latter, then the copyright owner must sign and notarize the Official Designee Affidavit and provide all documentation requested. In addition, if there is more than one copyright owner, an affidavit from only one of these owners, will be sufficient to fulfill the requirements of the program. It can be applied for any time after the budget for the production or series is locked-in and a detailed synopsis of the production or series can be provided.

Qualified Labor Expenditures

Labor expenditures that are incurred and which are directly attributable to the production, qualify for the credit, as long as they are "reasonable" in amount. The expenditure should relate to services rendered in Canada for the stages of the production from the final script stage to the end of the post-production stage. The expenses have to be paid by the corporation in the year or within 60 days after the year-end end to employees of the corporation who are residents of Canada at the time of payment, or to a person, corporation or a partnership that carries on a business through a permanent establishment in Canada, for services rendered to the corporation.

Provincial Tax Credits

Note that unless otherwise stated, there are fees charged to apply for each credit.

Ontario

Ontario Film and Television Tax Credit (OFTTC)

The OFTTC is a refundable tax credit available to qualifying production companies with respect to eligible Ontario labor expenditures in respect of eligible Ontario productions. The OFTTC is calculated as 35 percent of the eligible Ontario labor expenditures, net of assistance reasonably related to these expenditures, incurred by a qualifying production company with respect to an eligible Ontario production. An enhanced credit rate of 40 percent on the qualifying labor expenditure subject to certain thresholds is available for first time producers. Productions that are shot in Ontario entirely outside of the Greater Toronto area, or that have at least five location days in Ontario (or in the case of a television series, the number of location days is at least equal to the number of episodes in the series), and at least 85 percent of the location days in Ontario are outside the Greater Toronto Area, receive a 10 percent bonus on all Ontario labor expenditures incurred for the production.

A qualifying production company must be a Canadian corporation which is Canadian-controlled, maintains a permanent establishment in Ontario, and files an Ontario corporate tax return. Only productions with at least 6 out of 10 Canadian content points or international treaty co-productions are eligible. Productions must be in the eligible genre; have an agreement to be shown commercially in Ontario within two years of completion; have an Ontario producer; meet a minimum Ontario threshold of spending 75 percent of total final costs on Ontario expenditures and 85 percent of principal photography days in Ontario; and if for broadcast, be suitable for at least 30 minute time slot. The producer must have been a resident of Ontario at the end of the two calendar years prior to commencement of principal photography.

Ontario Production Services Tax Credit (OPSTC)

The OPSTC is a refundable tax credit net of any Ontario taxes payable. The OPSTC has been expanded for expenditures incurred after June 30, 2009, and is calculated as 25 percent of eligible Ontario production expenditures incurred after December 31, 2007 by a qualifying production company with respect to eligible production net of assistance. For expenditures incurred before this date, the OPSTC is calculated as 25 percent of the eligible Ontario labor expenditures incurred, net of assistance relating to such expenditures. There is no limit on the amount of labor expenditures which may be eligible or other production expenditures. In addition, this credit can be combined with the federal Film or Video Production Services Tax Credit. There are no per project or annual corporate tax credit limits. The credit is available to eligible production companies (including foreign-owned production companies) in respect of Ontario production expenditures in connection with eligible film or television productions. Production companies must be taxable Canadian or foreign-owned corporations with a permanent establishment in Ontario, and must own the copyright or contract directly with the copyright owner to provide production services. Productions must be in an eligible genre and have production expenditures net of government assistance in excess of $1,000,000 CDN per feature production or $200,000 per episode (greater than 30 minutes, otherwise $100,000 per episode). A production that receives an OFTTC is not eligible for an OPSTC, Ontario Computer Animation and Special Effects Tax Credit (OCASE)

The OCASE tax credit is a 20 percent refundable tax credit (net of Ontario taxes payable) on eligible Ontario labor expenditures for eligible computer animation and special effects activities in respect of eligible film or television productions. The credit is available to taxable Canadian or foreign owned corporations which perform eligible activities at a permanent establishment in Ontario, and can be claimed by a wholly owned subsidiary in respect of expenditures incurred by its parent in respect of the subsidiary's production, for productions after March 22, 2007. Productions must be produced for commercial exploitation and be of an eligible genre. OCASE may be claimed in addition to the OFTTC or OPSTC.

Ontario Interactive Digital Media Tax Credit (OIDMTC)
The OIDMTC is a refundable tax credit based on eligible Ontario labor expenditures and eligible marketing and distribution expenses claimed by a qualifying corporation with respect to interactive digital media products. A qualifying corporation is a Canadian corporation (that is Canadian or foreign-owned), that develops an eligible product at a permanent establishment in Ontario operated by it, and files an Ontario tax return. A qualifying small corporation meets these criteria as well, and had during the preceding taxation year (on an associated company basis) neither annual gross revenues in excess of $20 million nor total assets in excess of $10 million.

The OIDMTC is calculated as 40% of eligible Ontario labor expenditures and eligible marketing and distribution expenses incurred after March 26, 2009 by qualifying corporations, regardless of the size of corporation, to create "non-specified" interactive digital media products in Ontario. For those qualifying corporations applying for an OIDMTC on "specified products", products developed under a fee-for-service arrangement, the OIDMTC tax rate is 35% on qualifying expenditures incurred after March 26, 2009. There is no limit on the amount of eligible Ontario labor expenditures which may qualify and there are no per project or annual corporate limits on the amount of the OIDMTC which may be claimed. Eligible marketing and distribution expenses are capped at $100,000 per non-specified product.

British Columbia

British Columbia Film and Television Tax Credit (FTTC)
The FTTC program provides five refundable tax credits to corporations that produce eligible film and/or video productions in British Columbia. The tax credits are for domestic productions with qualifying levels of Canadian content and are based on the British Columbia labor expenditures.

The FTTC program includes five distinct tax credits to encourage film and television production in British Columbia.

The Basic Tax Credit incentive assists British Columbia producers in the form of a tax credit of up to 35 percent of eligible British Columbia labor costs. The tax credit is available to British Columbia.-controlled production companies that have controlling ownership of the copyright in qualifying productions. The producer must be a British Columbia resident and a Canadian.

The Regional Tax Credit incentive stimulates production outside Vancouver with a tax credit of up to 12.5 percent of eligible British Columbia labor for productions that shoot a minimum of 5 days and a minimum of 50 percent of the total number of days in which principal photography is done in British Columbia and have production offices outside the Vancouver area. This incentive can be accessed together with the Basic Incentive or alone.

The Distant Location Regional Tax Credit is an additional 6 percent of qualifying British Columbia labor expenditure. The credit is prorated by the number of days of principal photography done in a distant location in British Columbia, over the total number of days in which principal photography is done in British Columbia. You can view a detailed map of the regional and distant locations areas on the British Columbia Film website.

The Film Training Tax Credit incentive promotes the development of skilled workers in the industry. The available tax credit is calculated as the lesser of 30 percent of trainee salaries or 3 percent of total eligible labor costs. It must be accessed in conjunction with one of the other credits. It assists producers to hire trainees registered in recognized training programs.

The Digital Animation or Visual Effects Tax Credit incentive is calculated on the British Columbia labor expenditures directly attributable to digital animation or visual effects activities. The tax credit available is 17.5 percent of expenditures incurred after February 28, 2010, for productions that started principal photography after February 28, 2010 and 15 percent of the expenditures incurred after December 31, 2002, for productions that started principal photography after March 31, 2003 and must be accessed in conjunction with the Basic Incentive.

The qualified British Columbia labor expenditure for a taxation year is the lesser of the following amounts:

- the total of the corporation's British Columbia labor expenditures for the production for the year, and for the prior taxation year, if not previously included in the qualified B.C. labor expenditures, and

- for production that started principal photography prior to March 1, 2010, the amount by which 48 percent of total production costs incurred, less assistance, exceed the total of the labor expenditures for prior years, or
- for production that started principal photography after February 28, 2010, the amount by which 60 percent of total production costs incurred, less assistance, exceed the total of the labor expenditures for prior years.

There is no minimum size of production that may qualify. There is also no project cap limiting FTTC that can be claimed with respect to a particular production and no corporate cap limiting FTTC that a corporation or group of corporations may claim.

There are conditions which production companies and their productions must meet to qualify for the FTTC incentive. The corporation claiming the tax credit must be Canadian-controlled, and must own more than 50 percent of the copyright for 25 years, whether by itself or an affiliate which is a British Columbia controlled company owns the copyright in the production. The production must qualify as "Canadian content", which means it must achieve 6 out of 10 Canadian content points; these points are represented by key Canadian individuals in a production, such as the director and lead actors. At least 75 percent of total production and post production costs must be spent in British Columbia and be paid to British Columbia residents or companies, and at least 75 percent of a project's total days of principal photography must occur in British Columbia. The production must be distributed by a Canadian distributor or broadcaster and be exhibited in Canada within two years. There are excluded genres and special rules for international treaty co-productions and interprovincial co-productions.

In addition, during the relevant taxation year, an eligible production corporation must have a permanent establishment in British Columbia and its activities must primarily be the carrying on of a film or video production business through a permanent establishment in Canada. The eligible production corporation must be British Columbia -controlled, which requires one or more British Columbia -based individuals to own a majority of the voting interests of the corporation throughout the taxation year.

The producer of the film or video production must be a British Columbia -based individual who is a Canadian citizen or permanent resident. The corporation must own more than 50 percent of the worldwide copyright in the production for the 25-year period following the completion of the production; and control the initial licensing of the commercial exploitation. The remaining copyright interests in the production may be held by

a Canadian-controlled film or video production company, a Canadian broadcaster, a federal or provincial government film agency or a non-profit organization funding film or video productions.

British Columbia Production Services Tax Credit (PSTC)
This tax credit is 33 percent of qualified British Columbia labor costs with no limitation. There is a 12 percent (maximum) regional credit as well. The tax credits are available to taxable corporations with a permanent establishment in British Columbia in the business of film production. There is also a Digital Animation or Visual Effects PSTC incentive which is calculated on the British Columbia labor expenditures directly attributable to digital animation or visual effects activities; the available tax credit is 17.5 percent of those costs and must be accessed in conjunction with the Basic Production Services Tax Credit.

Alberta

Alberta Multimedia Development Fund (AMDF)
The AMDF is designed to assist conventional production practices and encourage new business models and alternative distribution or broadcast delivery options for screen-based audio-visual content creators.

The AMDF provides funding for screen-based content creation through the following five funding programs:

- Alberta Production Program (APP) – support for the production of screen-based content (note that it was formerly known as the Alberta Film Development Program (AFDP).
- Project/Script Development Program – support for Alberta writers, directors, and producers towards the creation of qualified marketable and commentarial production-ready projects/scripts.
- Alberta Stories Program – support to encourage the production of stories that are inherently Albertan in content and expression; stories written and produced by Albertans that reflect some aspect of Alberta in screen-based production.
- Export Market Development Program – support to assist professional producers of quality screen-based content in expanding marketing opportunities for Alberta products and services; applicants must demonstrate well-conceived, researched and documented marketing and/or export development plans.
- Training and Mentorship Program – support for mentorship opportunities specific to the creation, marketing and distribution of screen-based content for broad audiences.

APP is available to corporations incorporated in Alberta or registered to conduct business in Alberta. The production must be an eligible production as defined in the AMDF guide. The amount spent in Alberta for the project must be greater than $50,000 for projects with commercial license agreement and $100,000 for projects without a commercial license agreement. The maximum annual funding available to any project is $5 million.

APP is offered under the following three Streams:

Stream I – Majority Albertan Ownership – 27 percent of all eligible Alberta costs. The following are the requirements:

- Minimum 51 percent Albertan ownership with major financial and creative control
- Minimum employment of Albertans in two of the eight key creative positions
- Bonus funding of 1 percent for each additional Albertan key creative person employed, to a maximum of 29 percent of Alberta production costs

Stream II – Equal or Minority Albertan Ownership – 25 percent of all eligible Alberta costs. The following are the requirements:

- Between 11 percent to 50 percent Albertan ownership
- Minimum employment of Albertans in 2 of the 8 key creative positions or one key creative position and two trainee key creative positions
- Bonus funding of 1 percent for each additional Albertan key creative person employed to a maximum of 27 percent of Alberta production costs

Stream III – All other Eligible Productions – 20 percent of all eligible Alberta costs where the producer is an Alberta incorporated company (foreign ownership permissible):

- No minimum Albertan employment requirements
- Bonus funding of 0.5 percent for each two Albertan key creative person employed, to a maximum of 22 percent of Alberta production costs

Saskatchewan

Saskatchewan Film Employment Tax Credit (SFETC)
The SFETC, is 45 percent of eligible Saskatchewan labor costs (including non-Saskatchewan labor where there is no qualified Saskatchewan resident, and a detailed training plan is in place for the non-Saskatchewan resident to train a resident) to a maximum of 50 percent of the total production cost. There is

also a bonus tax credit of 5 percent on all production costs if the fixed base of operations of the corporation is more than 40 kilometers outside of Regina or Saskatoon. Additionally, there is a "key position bonus" of an additional 5 percent. The key position bonus is an incentive designed to encourage visiting and local producers to hire specific Saskatchewan crew members and technicians in both above-the-line and below-the-line positions.

The eligible corporation must pay at least 25 percent of salaries to Saskatchewan residents; it must be incorporated under Federal or Saskatchewan statutes; and its primary business is film, video or multimedia production. It must not hold a broadcasting license issued by the Canadian Radio Television and Telecommunications Commission (CRTC) or deal non-arm's length with a corporation that holds such a license. It must not be controlled by a corporation that does not have a permanent establishment in Saskatchewan or by individuals non-resident of Saskatchewan.

A film will be deemed eligible if the production is intended for a television, cinema, videotape, digital, CD-ROM, multimedia or non-theatrical production. The subject matter must be drama, variety, animation, children's programming, music programming, an educational resource, an informational series or a documentary; certain genres of film do not qualify.

Manitoba

Manitoba Film and Video Production Tax Credit (MFVPTC)
The MFVPTC is a fully refundable corporate tax credit available to qualifying producers of eligible Manitoba productions and co-productions. The MFVPTC, which was set to expire March 1, 2011, has been extended to March 1, 2014. Corporations must have a permanent establishment in Manitoba and be incorporated in Canada. As well they must be a taxable Canadian corporation with less than $50 million in assets, and should not have a CRTC license. The credit is up to 45 percent of approved Manitoba labor expenditures. Starting with productions which commence principal photography after March 2010, production companies will be able to elect to claim either the maximum aggregate 65 percent film tax credit described above based on eligible labor cost or a new 30 percent tax credit based on production costs incurred and paid for labor, goods and services provided in Manitoba that are directly attributable to the production of an eligible film.

Effective April 1st 2007, changes will allow eligible producers to have their application administered at the same time as applications for similar federal tax credits reducing the redundancy and costs of multiple audits and accelerating processing times.

Quebec

Quebec Film and Television Production Tax Credit
A corporation may claim a tax credit for Québec film productions for qualified labor expenditures incurred and paid to produce a Québec film. This refundable tax credit is jointly administered by Revenu Québec and the Société de développement des entreprises culturelles (SODEC).

To qualify for the tax credit, a corporation must have an establishment in Quebec; carry on a film or television production business in Quebec; and not be controlled by one or more persons resident outside of Quebec at any time in the year or in the 24 months preceding the year.

Only a film or television production business that is a corporation may claim the tax credit for a Québec film production. The maximum tax credit was previously $2,187,500 per film or series. However, for a taxation year ending after December 31, 2008, the $2,187,500 limit has been eliminated and the maximum rate of the tax credit has been increased from 48.5625% to 65% of qualified labor costs.

For giant-screen film productions and certain French-language productions, the basic rate of the tax credit is 39.375%. For other productions, the basic rate is 29.1667%, but an additional credit of 10.2083% may be granted for productions that involve computer-aided special effects and animation. For expenses incurred after December 31, 2008, the basic rates of the tax credit have been increased from 39.375% and 29.1667% to 45% and 35%. The additional rate for a production for which no expenses were incurred before January 1, 2009, has been decreased from 10.2083% to 10%.

An additional credit may also be granted for regional productions: 9.1875% for French-language and giant-screen film productions, and 19.3958% for other productions. For a taxation year ending after December 31, 2008, the rates have been increased from 9.1875% and 19.3958% to 10% and 20%.

A 10% additional tax credit also applies to certain productions for which labor expenditures were incurred after December 31, 2008, provided the productions did not receive financial assistance from certain public bodies.

Quebec Tax Credit for Film Production Services (QPSTC)
The refundable QPSTC is jointly administered by the Société de développement des entreprises culturelles (SODEC) and the ministère du Revenu du Québec (Revenu Québec).

The base of the tax credit applies to all-spend production costs, which corresponds to the total of qualified labor costs and the costs of qualified properties. The tax credit corresponds to 25 percent of the qualified

expenditures incurred by an eligible corporation for services provided in Québec for the making of an eligible production. In addition, eligible expenditures that relate to computer-aided animation and special effects including the shooting of scenes in front of a chroma-key for use in an eligible production give rise to an increase in the rate of the tax credit. This increase corresponds to an additional rate of 20 percent of the qualified labor cost

The QPSTC is available to corporations that either own the copyright for the eligible production throughout the period during which the production is carried out in Quebec; or in the case where the owner of the copyright is not an eligible corporation regarding such production, has concluded, directly with the owner of the copyright for the eligible production, a contract to supply production services in relation to such production.

Quebec Film Dubbing Tax Credit
In the Budget Speech of March 30, 2010, the Québec Minister of Finance announced an increase in the rate of the tax credit for film dubbing and the cap on consideration received for the execution of a film dubbing contract. Furthermore, three additional services are now considered eligible dubbing services for the purposes of calculating qualified expenditures. These changes apply to applications for a certificate filed with the Société de développement des entreprises culturelles after March 30, 2010.

The rate of the tax credit for film dubbing will rise from 30 percent to 35 percent. The cap on the consideration received for the execution of a film dubbing contract will rise from 40.5 percent to 45 percent.

Nova Scotia

Nova Scotia Film Industry Tax Credit (FITC)
The Film Nova Scotia administers the Nova Scotia Film Industry Tax Credit on behalf of its Department of Finance. The objective is to stimulate investment, employment and growth in the Nova Scotia Film and Video industry, while facilitating the recognition of Nova Scotia locations, skills and creativity in global markets.

This refundable tax credit is calculated as 50% of eligible Nova Scotia labor for productions that occur in the Halifax region (Metro Halifax) or 60% of eligible Nova Scotia labor for productions that occur in other regions (Eligible Geographic Areas) of the province, for productions commencing principal photography on or after December 1, 2010. For productions commencing principal photography prior to December 1, 2010, the Tax Credit is calculated as the lesser of 50% of eligible Nova Scotia labor or 25% of total production costs for productions that occur in the Halifax region (Metro Halifax) or the lesser of 60% of eligible Nova Scotia labor or 30% of total production cost for productions that occur in other regions (Eligible Geographic Areas) of the province.

Eligible Geographic Areas (EGA) of the province are considered to be those locations that are located 30km driving distance or more from Halifax City Hall. If less than 50% of the days of principal photography are shot outside Metro Halifax, the Regional bonus is prorated based on the number of days principal photography is shot outside the Halifax Region.

A frequent filming bonus of 5% of eligible Nova Scotia labor is available if a third film commences principal photography within a two-year period.

The applicant corporation should be incorporated in Canada (either federally or provincially) and have a permanent establishment in Nova Scotia. At least 25 percent of salaries and wages should be paid to Nova Scotia residents. The copyright does not have to be owned by the Nova Scotia corporation.

Nova Scotia Digital Media Tax Credit

Effective January 1, 2008, Nova Scotia enhanced its refundable Digital Media Tax Credit. The tax credit is applicable to 50 percent of eligible salaries, or up to 25 percent of total expenditures made in Nova Scotia. A 10 percent geographical area bonus on labor expenditures is available for productions developed outside the Halifax Regional Municipality.

New Brunswick

New Brunswick Film Tax Credit

As part of the budget tabled on March 22, 2011, it was announced that the New Brunswick Film Tax Credit will be phased out. Pre-production applications for the film tax credit that have received the Department's approval prior to March 22, 2011 will continue to be eligible for the film tax credit upon completion of the production. Pre-production applications for the film tax credit that have been submitted on or before April 5, 2011 will be reviewed and may receive pre-approval to be eligible for the film tax credit. Productions that have received a development loan or equity investment from Wellness, Culture and Sport prior to March 22, 2011 will continue to be eligible for the film tax credit upon completion of the production.

Newfoundland and Labrador

Newfoundland and Labrador Film and Video Tax Credit

A refundable tax credit of 40 percent of eligible local labor costs is provided, up to 25 percent of total production costs, with a corporation credit limit of $3,000,000 per 12 months. The corporation must have a permanent establishment in Newfoundland and Labrador. To be eligible, a company must

be incorporated in Canada and must have a permanent establishment in the province. The corporation must pay at least 25% of its salaries and wages to residents of the province.

Yukon

Film Location Incentive

There are three components to this incentive program: 1) Travel Rebate; 2) Yukon Spend Rebate; and 3) Training Program.

Travel Rebate – where the production company is from outside the Yukon; and where Yukon labor content equals or exceeds 15 percent of the total person days on the Yukon portion of the production, the production is eligible for a travel rebate of up to 50 percent of travel costs from Vancouver or Edmonton or Calgary to Whitehorse. The rebate is caped depending on the nature of production.

Yukon Spend Rebate – where the production company has either a broadcast or distribution arrangement with an internationally recognized entity, and where eligible Yukon labor content equals or exceeds 50 percent of the total person days on the Yukon portion of the production, the production is eligible for a rebate of up to 25 percent of Yukon below-the-line spend. Productions accessing the Yukon Spend Rebate are not eligible for the Travel Rebate.

Training Program – The production company may apply for a rebate of up to 25 percent of a trainer's wages for the period during which they are actively transferring skills to a Yukon trainee. This must be at a rate no more than that of the position next more senior to the one being trained. The training rebate will be capped based upon available resources. Trainees must be Yukon Labor who have demonstrated commitment to a career in film, who are union permittees, or have significant recent experience working on a film production or have graduated from a recognized film crew training program.

Corporate Funding

Canadian broadcasters have also set up several funds to support development, interim financing etc., primarily for Canadian production. In most cases, the criteria to qualify include meeting the certification rules as outlined by CAVCO as well as the Canadian content rules of the Canadian Radio Television and Telecommunications Commission. Also several financial institutions specifically interim finance productions.

Government Funding

In addition to the tax incentives discussed elsewhere in this chapter, various government bodies provide direct funding to the industry.

The funding levels and/or requirements of each body may change annually, in large part resulting from the implications of changes in their budgetary situations and the political party in power. From time to time there could be many changes to the currently available programs described herein. Interested parties should check more current information at the time of planning applications for funding. Also, applicants should seek out the detailed reporting requirements of each particular agency. Most of this information is posted on the respective government's website.

Provinces and localities for example, provide significant location services and infrastructure support. Reference should be made to their respective websites.

Canadian Media Fund

On April 2, 2010, The Canadian Television Fund, that was created in 1996 to support the production and broadcast of high quality, distinctively Canadian television programs, became the Canadian Media Fund (CMF).

CMF champions the creation of successful, innovative Canadian content and applications for current and emerging digital platforms through financial support and industry research. Created by Canada's cable and satellite distributors and the Government of Canada, the CMF's vision is to connect Canadians to our creative expressions, to each other, and to the world. Projects will be supported through two streams of funding, an Experimental Stream, which invests in the development of innovative content and software applications for eventual integration into mainstream Canadian media platforms; and a Convergent Stream, which supports the creation of convergent television and digital media content.

Through the Convergent Stream, the CMF will support the creation of television shows and related digital media content in four underrepresented genres: drama, documentary, children's and youth, and variety and performing arts. Eligible projects will include content produced for broadcast on television and distribution on at least one digital media platform. Projects must include high levels of Canadian elements, including Canadian creative talent.

While basic digital media components, such as basic websites and video-on-demand will be allowed for the purposes of rendering the entire convergent project eligible, the CMF will encourage the creation of rich, value added content by requiring at least 50 percent of a broadcast corporate group's

envelopes be spent on this type of content. Examples include videogames, podcasts, webisodes, mobisodes, and interactive web content. The streaming of a production on the internet at the same time as the television broadcast (i.e. simultaneous streaming) will not be considered an eligible digital media component for the purposes of rendering the entire convergent project eligible. Eligible applicants will include Canadian-controlled, taxable Canadian production corporations with their head office in Canada and Canadian broadcasters (public or private). These include television, interactive and web-based production companies; private and public broadcasters; and broadcaster-affiliated production companies.

CMF offers 12 different programs under the Convergent Stream with total funding available between $250,000 to $277 million per program.

Canada Feature Film Fund

Telefilm Canada is a crown corporation which reports to Parliament though the Federal Department of Canadian Heritage, acting as a Federal cultural agency which funds development production and marketing of film and television programs. It also funds participation in international festivals and markets. It has offices across Canada.

Telefilm administers the Canada Feature Film Fund to fund Development, Marketing and Production, including a program for English Language Productions and one for French Language Productions; these programs will be subject to updated guidelines which to date of publication of this guide, are not as yet published. Funds are provided through a Performance Envelope based on success at the Canadian box office and in which the company is provided an envelope with a floor of $750,000; and through a Selective Component primarily for producers with no box office track record, with the latter being highly competitive to access. The funds are allocated to development first as an advance against production financing through equity investment.

Applicants must be Canadian controlled companies with a head office in Canada, and the producers and key production personnel must be Canadian citizens or permanent residents; the feature film must be owned by a Canadian and meet Canadian content criteria including a Canadian performer in a lead role. A company may be eligible to access performance based envelopes for each of English and French language productions, as well as for distribution. A production company may not be allocated more than $3.5 million for English or French language films annually; and the total allocation from all Telefilm envelopes may not exceed $6 million annually.

Production financing for French language films through the Selective Component in the form of equity investment, is capped at $3.5 million per project or 49 percent of Canadian production costs.

Distribution companies may access funds for marketing and distribution if the primary business is distributing feature films in Canada. It is provided in the form of non-interest bearing recoupable advances of up to 75 percent of eligible Canadian marketing costs.

The resources of Telefilm are allocated as to one-third to French language applications and two-thirds to English language. Telefilm also operates the Screenwriting Assistance Program and the Low Budget Independent Feature Film Assistance Program, among other activities.

There are application deadlines and reporting requirements.

Ontario Media Development Corporation (OMDC)
OMDC also administers a Location Promotions and Services program to attract films to Ontario including location scouting and other logistical support.

Société De Development Des Enterprises Culturelles (SODEC)
SODEC Financière is an entity partnering with the Quebec government, National Bank of Canada, Groupe TVA (a prominent French language broadcaster), Fonds de solidarite des travailleurs du Quebec, and entertainment entrepreneurs and risk-capital managers to form Financieres Des Enterprises Culturelle (FIDEC). FIDEC offers production gap financing, loans, equity investment and debentures primarily for Quebec controlled enterprises. Gap financing for film and television productions is a maximum of $5 million per project for a maximum of 36 months for Quebec or foreign companies with Quebec alliances, which maintain a place of business in Quebec and provide economic spin-off in Quebec.

British Columbia Film Commission
Established in 1978, the B.C. Film Commission is a branch of the provincial government working to ensure that the business of film and television production thrives as a value proposition for domestic and international clientele. They offer a full range of services for film producers and production companies.

Manitoba Film and Sound Recording Development Corporation
Manitoba Film and Sound Development Corporation (MFSDC) supports Manitoba film and music through its objectives, which are to create, stimulate, employ and invest in Manitoba by developing and promoting Manitoba companies, producing and marketing film, television, video and music recording projects as well as promoting Manitoba as a film location for off-shore production companies. MFSDC provides a pitch readiness program for multi-episode productions; television and web-based development fund; market driven feature film development financing program; television and web-based production fund, market driven feature film production financing program, grant program for emerging talent and micro-budget production; feature film marketing fund program; and access to markets and access to festival programs. There is an audit requirement in respect of these expenditures. The program involves an assessment of various criteria including expenditures in Manitoba, days of shooting in Manitoba and confirmed financing. There are enhanced points in this assessment system for aboriginal and French production, as well as television series, winter filming and the use of Manitoba writers and directors.

SaskFilm and Video Development Corporation
SaskFilm provides funding in the form of Development Loans, Market Travel Assistance and Festival Travel Assistance to Saskatchewan resident producers and based on specific eligibility criteria. They will also provide equity investment for eligible documentary programs up to $25,000 for a production or $75,000 for a series; and for eligible dramatic productions up to $150,000. There are application deadlines.

Film Nova Scotia (FNS)
This corporation offers a range of production funding programs such as equity investments, development loans, new media equity investments, feature film distribution assistance, and a new pilot web drama series in partnership with the Independent Production Fund for Nova Scotia residents and Nova Scotia based and controlled companies. The FNS will support film and video development and production through the following major types of funding:

Development Loan: projects at the development stage can be supported through loans up to 50% of the development budget that is to be expended in Nova Scotia to a maximum dollar amount of $15,000. Development funding is advanced in three stages throughout the development.

Equity Investments: the FNS will support production through Equity Investment as follows:

- for production budgets under $500,000, up to 40% of that portion of the production budget that is to be expended in Nova Scotia to a maximum dollar amount of $150,000;

- for production budgets of $500,000 to $1,000,000, up to 33% of that portion of the production budget that is to be expended in Nova Scotia to a maximum dollar amount of $200,000;
- for production budgets over $1,000,000, up to 20% of that portion of the production budget that is to be expended in Nova Scotia to a maximum dollar amount of $250,000.

New Media Equity Investment: the FNS will support production through Equity Investment up to 33% of that portion of the production budget that is to be expended in Nova Scotia to a maximum dollar amount of $30,000. Equity funding is generally advanced in four stages throughout the production.

Film New Brunswick

As part of the budget tabled on March 22, 2011, it was announced that the New Brunswick Development Loan and Equity Investment programs will be eliminated. Any project received after March 22, 2011 will not receive funding for projects requesting development loan or equity investment.

Technology Prince Edward Island

Technology PEI provides non-interest bearing loans in respect of development up to the stage of completing production financing to Canadian corporations with a principal place of business in PEI. They also operate a Short Film Program to grant up to $10,000 for the production of a short film by a PEI resident.

Newfoundland and Labrador Film Development Corporation

This corporation will provide equity of 20 percent of total project costs, to projects meeting Canadian-content requirements, with Newfoundland-based producers holding a majority interest in the project, to a maximum of $250,000 for features or series, and $150,000 for a documentary or a children's series.

Other

Also of importance are the various film commissions which provide location and production assistance, including the following: Yukon Film & Sound Commission, British Columbia Film Commission, Greater Victoria Film Commission, Alberta Culture and Community Spirit, Calgary Economic Development Authority, Manitoba Film and Sound, Saskatchewan Film and Video Development Corporation, Ottawa-Gatineau Film and Television Development Corporation, Toronto Film and Television Office, Montreal Film and TV Commission, and Film Nova Scotia.

Producers

Producers may qualify for enhanced tax depreciation with respect to *certified films* (see "Amortization of Expenditure"). This tax depreciation allows the deferral of tax with respect to revenue arising from a certified film until all production costs are recovered. The system differs with respect to certified films made in 1995 or later in which a film tax credit was earned; and all other pre-1996 certified films.

In addition, equipment acquired to produce films may be eligible for enhanced tax depreciation, and taxable profits (of a corporation) may be eligible for reduced tax rates available to all manufacturers of products for sale or exploitation. The rate of tax reduction depends on the portion of capital assets and labor cost used in the manufacturing activity; and some provinces also apply a rate reduction. Accessing this rate reduction may depend on the corporate structure (tax filing by corporations is not on a consolidated basis) and other activities carried on by the corporation.

In addition, businesses are eligible to claim all reasonable business expenses pertaining to their operations, subject to restrictions with respect to meals and entertainment expenses. Generally, only 50 percent of meals and entertainment expenses as defined in the legislation are deductible in computing taxable income. These expenses are fully deductible if included in the taxable income of employees/contractors; or if the employees/contractors are working at a "remote location" as defined in the Income Tax Act.

Producers can access the government funding and private funding described above, in addition to all Federal and Provincial tax credits described above. Generally there is a very favorable climate for producers operating in Canada.

Distributors

No specific tax incentives are available for distributors acquiring film rights. In practice, many distributors follow Canadian GAAP* to amortize the investment in the production or acquisition of film rights. If a copyright in the film is acquired, the distributor may be subject to the same treatment as the producer depending on whether he is actively involved in the production business and hence may be considered an Eligible Production Company.

Royalty payments made to non-resident holders of film copyright are subject to a 25 percent withholding tax, which is reduced under most tax treaties, with 10 percent being the most common treaty rate. Under appropriate circumstances, payments for the purchase of Canadian rights in perpetuity could be construed as not a royalty and, hence, not subject to withholding. Royalties in respect of the reproduction of copyright in literary, dramatic, musical or artistic works are not subject to withholding (e.g., with respect to certain merchandising).

If film copyright royalties arise in the conduct of a business operated in Canada, the business is taxable in Canada unless exempted by treaty; the latter would be the case if activity is not sufficient to create a permanent establishment in Canada (as defined in the appropriate tax treaty article). However, see "Indirect Taxation" section below for applicable rule regarding GST Goods and Services Tax and HST Harmonized Sales Tax (HST).

*Note that certain corporations in Canada have switched to IFRS commencing January 1, 2011; however, material differences as compared to Canadian GAAP are not expected to result.

Actors and Artists

There are no specific tax or other incentives available for actors or other artists who are resident in Canada for tax purposes. Based on appropriate contractual arrangements, CRA generally treats on-camera personnel as independent contractors who are eligible for appropriate and reasonable business expense claims. Such independent contractors may, if they wish, carry out their activity through a loan-out company which may, in appropriate circumstances, reduce the total tax burden on income arising from their performances.

CRA has published a pamphlet to facilitate a determination as to whether the relationship is one of employee/employer, or a business relationship of an independent contractor; it is also possible to obtain a written determination from CRA. Generally behind the scenes personnel who are incorporated and principal actors can be considered independent contractors. This could necessitate registration and hence collection of GST/HST (see "Indirect Taxation").

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in Canada on the issue of new common or preference shares or debt instrument, nor with respect to the transfer or reorganization thereof. There are legal procedures to comply with and, in the case of public issues, significant underwriting costs and other expenses of issue (e.g., reporting documents, filing fees, etc.).

Exchange Controls and Regulatory Rules

There are no specific exchange controls or other regulatory rules in Canada, other than with respect to publicly traded securities which are the subject of regulatory, financial and other reporting requirements (e.g., insider trading activity, financial results, and significant transactions). A foreign investor, producer or artist is not prevented from repatriating income arising in Canada back to his or her home country, though nonresident withholding tax will likely apply, the rate of which would be determined based on the tax residency of the non-resident.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Canadian-Resident Company

If a special purpose company is set up in Canada to provide production services for a film without acquiring any rights in that film (i.e., a production service company), the tax authorities could query the level of net income if they believe that the level of production fee income is below an arm's-length rate. It is difficult to be specific about the percentage of the total production budget which would be an appropriate level of net income in Canada, but in past experience an accepted level could be between 1 and 2 percent of the production budget.

For example or by comparison, independent production service companies and administration companies have offered to provide their corporation for purposes of obtaining the production services tax credits, for a fee of approximately between 1 and 2 percent of the production budget. This provides arms length support for similar non-arms-length structures.

In past practice many production service companies show zero net income (e.g., if appropriate, arms-length amounts are paid out to all participants); CRA has not, to our knowledge, reassessed these companies, especially if these payments are made to a Canadian taxpayer. However, CRA has more exposure to this issue through their audits of the production services tax credit (see separate description) as well as enhanced corporate tax reporting obligations with respect to transactions with foreign corporations and disclosure requirements regarding transfer-pricing methodology, which must be filed with all corporate tax returns to access tax credits.

Non-Canadian-Resident Company

If a company is not resident in Canada but has a production office to administer location shooting in Canada, it is possible that the tax authorities may take the position that it is carrying on business in Canada and, hence, is subject to tax as a branch, unless specific exemptions are available under the appropriate tax treaty. In this case it might be possible to argue that the location is similar to a "building, construction or installation project" which does not exist for more than the treaty-defined period, assuming it is not otherwise a permanent establishment. CRA takes the administrative position that a business activity carried on in Canada for more than 120 days may constitute a permanent establishment unless different criteria apply pursuant to an applicable tax treaty. The use of equipment and site rentals by a film production may create even more doubt in this regard.

Note that non-resident corporations claiming treaty exemption are required to file Federal tax returns along with a treaty exemption claim in prescribed form.

Clearly the production of a TV series, which takes place over an extended period of time, would result in a permanent establishment.

If CRA were to attempt to tax the company on a proportion of its profits on the basis that it did have a permanent establishment in Canada, they would first seek to determine the appropriate level of profits attributable to the branch. A proper measurement of such profits may be a difficult and time-consuming analysis. It is likely that the Canadian tax authorities would measure the profit enjoyed by the company in its own resident territory and seek to attribute a proportion of this, for example, by arguing that a significant portion should accrue to Canada if the production was "controlled and managed" in Canada. The level of tax liability could ultimately be a matter for competent authority determination.

It is common to use a single purpose production services company, a separate subsidiary of the foreign company and incorporated in the foreign jurisdiction, to produce in Canada for the copyright owner in order to avoid direct reference to profits of the rights holder (parent company).

Note that corporations planning to take advantage of the Canadian film or video production tax credit (CPTC) or the film or video production services tax credit (PSTC) are required to carry on that business through a permanent establishment in Canada in order to be entitled to the credits. Therefore, in practice, we expect that most productions will be set up as a Canadian permanent establishment and will file tax returns in order to access Federal

and Provincial tax credits. In this case, it is more efficient to use a separate company to carry on this activity, to avoid the issue of allocating "parent company" profit margin to a branch. However, transfer pricing will be monitored in the audit process.

Film Production Company – Sale of Distribution Rights

If a production company sells distribution rights in a film asset to a distribution company in consideration for a lump-sum payment in advance and subsequent periodic payments based on revenues, the sale proceeds would normally be treated as income arising in the business of exploiting its film library.

If a Canadian production company transfers such assets offshore, the tax authorities would be expected to examine the price charged (and hence revenue recognized) if the transaction was struck between unrelated parties. It is often the case with Canadian production companies that such rights are in fact sold to arm's-length foreign distributors, sales agents or broadcasters, and therefore in fact represent arm's-length prices. However if film rights are sold offshore in a non arms-length transaction at less than fair market value, the sale proceeds would be adjusted to fair market value by CRA.

In the case of producers of television programming, it is often the case that they directly license the film asset for limited periods. In appropriate circumstances for tax purposes this license fee income may be recognized over the term of the license, hence deferring recognition of income.

License fees are included in income for tax purposes at the earlier of date of receipt of cash and an amount becoming receivable under the terms of the contract. A reasonable reserve is available if cash received has been included in income and goods or services have to be delivered after the year end; this reserve may not be available if the film is ready for delivery before year end but is delivered after the end of the year.

Film Distribution Company

If a company acquires distribution rights in a film from an unrelated production company, the payment for the acquisition of the rights is treated as the purchase of a film asset for accounting purposes. This would be the case whether the company exploited the rights in Canada or worldwide, and the same treatment would apply whether or not the production company was resident in a territory which had a double tax treaty with Canada.

The rights should be valued at the end of each accounting period of the distribution company in accordance with GAAP. In most cases the amortization so calculated under GAAP is used in the computation of income for tax purposes as noted above.

The income arising from exploiting such rights is normally recognized as business income. The distribution company would be taxed on the income derived from the exploitation of any of its acquired films, wherever and however these were sublicensed, provided that the parties were not related. If they were related, the tax authorities might review whether the level of income was arms length and consider an upward adjustment. For tax purposes, income is usually recognized in the year it arises, not necessarily when the contract is signed or the income received; this is generally at the commencement of the license period. For appropriate licensing agreements (mostly applicable for television programming) the income may qualify to be deferred over the term of the agreement for tax purposes; this latter treatment would affect the annual amortization accordingly. Note that the ability to defer such revenue may be challenged by the tax authorities.

Revenue from foreign sources should be converted to Canadian dollars at the appropriate rate of exchange and foreign tax credits may be available if tax is withheld at source (see discussion below).

In some distribution arrangements a sales agent earns a fee with respect to revenue collected on behalf of the owner of the film rights. In this case, the fee is recognized as it is earned pursuant to the terms of the contract, sometimes at the time of delivery of the film to the broadcaster/exhibitor or alternatively, when the contract is signed.

At the end of each accounting period, the appropriate accounting provisions are made with respect to unpaid balances; this adjustment may also change the amount of amortization of the cost of the film asset. These adjustments are generally followed for tax purposes.

Transfer of Film Rights between Related Parties

Where a worldwide group of companies holds rights to films and videos and grants sublicenses for exploitation of those rights to an affiliated Canadian company, care must be taken to ensure that the profit margin remaining in the Canadian company represents a reasonable amount, both with respect to the circumstances of the inter-company transaction and the results within the industry in Canada. Any transactions within a worldwide group of companies could be challenged by CRA since they would seek to apply an open-market, third-party value to such transactions. If income is remitted by a Canadian resident company to a lower tax jurisdiction pursuant to a sub-licensing distribution agreement, CRA may seek justification thereof. There is no specific level which they can seek to apply. They always have regard to comparable arrangements made by unrelated distributors. In this regard CRA has a great deal of experience in respect of intercompany arrangements with U.S. studios.

Contemporaneous documentation should be gathered at the time a deal is struck to provide to the tax authorities if they query the arrangement. Also a bona fide contractual arrangement should be documented.

It is possible to obtain an Advance Pricing Agreement from CRA. It requires complete disclosure of the details of all transactions with the related nonresident, as well as full disclosure of the details of the proposed transactions such as royalty agreements, distribution arrangements, etc. Though confidential, it would still form the basis of CRA's industry knowledge and it is unlikely that foreign-controlled companies would wish to give such data to CRA prospectively.

In appropriate circumstances and with appropriate tax planning it may be possible to structure the Canadian distribution company as a special purpose entity eligible for a low corporate tax rate; this may require that ownership and control not be held by the foreign entity and requires careful planning and implementation.

Amortization of Expenditure

Production Expenditure

Where a production company is engaged to produce a film under a production services agreement, the costs incurred under this contract usually relate to an arrangement under which there is a reimbursement or cost recovery out of future (known) revenues arising from that film. In many cases, these are "cost plus" arrangements and the producer is not at risk with respect to the production costs. In such circumstances, the costs are matched to the revenue, as with any other transaction involving the incurring of costs over a period of time. The recognition for tax purposes generally follows the GAAP reporting.

Where a production company also owns substantially all rights to the film including copyright, but intends to sell it on completion, the costs are accumulated and applied as costs of sale against the proceeds of sale at the time the sale occurs; this would apply to any company holding the film as inventory. The production company may also earn a profit from producer fees and overhead cost recoveries charged to the production budget.

In the case where the production company retains the completed film and holds the copyright from which it will derive distribution revenues and government incentives where applicable (see above), the film asset is considered a capital asset. Its costs are capitalized and depreciated for tax purposes.

Films other than certified films described below, are depreciated at 30 percent on a declining balance-basis, except that in the first year of ownership of a completed film, only 15 percent can be claimed. Generally, depreciation can only be claimed in any taxation year, against net income arising from the exploitation of these assets, and only in the year in which the asset is "available for use".

Similarly if the CPTC is being applied for with respect thereto, depreciation can be claimed at 15 percent in year one, and 30 percent thereafter on a declining balance basis. An additional allowance is also available with respect to the amount of net income from all film assets that qualify for this depreciation class (being all films in this category), net of that year's regular statutory depreciation claim, up to the amount of the undepreciated cost of certified films in this class.

If the film is a pre-1996 production and the CPTC is not being applied for, depreciation of 30 percent can be taken on a declining balance basis. An additional allowance is also available against net income from films falling into this class as well as pre-1988 certified film, net of that year's depreciation claim, up to the amount of the undepreciated cost of certified films in these classes.

As a result of the additional allowances available, the producer has the ability to defer income arising on certified films, until all such costs are recovered. The additional allowance with respect to the cost in the post-1995 certified film class cannot be applied to income arising from the previous film classes; therefore taxable income could result where a producer collects revenue from older films while they are investing in building a new film library.

In order to qualify for the additional allowance the film must be certified by the CAVCO of the Department of Canadian Heritage, as a production produced either pursuant to a co-production treaty (as discussed above) or in accordance with the criteria described in the CPTC section above.

The certification process involves an application to CAVCO, which includes a Statement of Production Costs prepared in a prescribed format and audited by an independent chartered accountant (for productions with a budget of $500,000 or more) and is more fully discussed earlier in this chapter.

It is important to note that regular (other than the additional allowance discussed above) tax depreciation claimed with respect to certified films may be claimed as a deduction to shelter other sources of income, where for example there is not sufficient taxable income arising from these films.

CRA has taken the position that meals and entertainment expenses including catering costs, are only allowed as to 50 percent, unless they meet the "special work site" definition or unless they are included in taxable income of the employees/contractors.

Other Expenditure

Neither a film distribution company nor a film production company has any special status under Canadian tax law. Consequently they are subject to the usual rules applicable to other companies. For example, in calculating taxable income they may deduct all reasonable outlays for administering the business, an allocation of prepaid expenses, and depreciation and amortization as described elsewhere in this chapter and further detailed in the regulations to the Income Tax Act.

Certain other expenditures cannot be deducted, for example any expenditure on capital account. However, depreciation may be claimed on buildings and equipment and amortization on purchased goodwill, as allowed by statute. For companies considered to be manufacturing goods as defined by statute, certain equipment used primarily for the manufacturing of goods for sale or lease is eligible for a more generous depreciation of 50 percent straight line rate (for eligible assets acquired after March 19, 2007 and before 2012, 30 percent otherwise) on the declining balance of undepreciated cost. The deduction of certain automobile costs is also restricted under the statute.

All expenditures must be reasonable in amount and incurred for the purpose of producing business (or investment) income.

Foreign Tax Relief

Producers

If a Canadian producer receives revenue from a non-resident, tax is generally withheld at source based on the domestic law in the payer's country and as reduced by the applicable tax treaty. In most foreign countries, written application must be made to enjoy the reduced tax rate.

For Canadian tax purposes, a foreign tax credit may be claimed on a country-by-country basis, with respect to the net income for tax purposes derived in the year from that country, however only up to the amount of tax as reduced by treaty. By virtue of generous deductions claimed for tax depreciation, etc., there may be no claim available. In this case, it is possible to use the foreign tax as a deduction, hence benefiting from a proportion of tax relief, but this is not the preferred method. If it is paid with respect to revenue arising from business carried on in the foreign country, the foreign tax may be carried forward to be applied against future net income from that country; where the income is not considered to arise from carrying on business in a foreign country, there is no carry forward of unused credits.

Alternatively there is a tax provision available whereby there is a notional recognition of foreign taxable income which results in a claim for the foreign tax credit in the current year; the notionally reported income is added to the tax loss carry forward so that it can be applied to reduce future taxable income. This provision is appropriate to apply where for example it is unclear whether the carry forward of the tax credit can be utilized; it converts a tax credit carry forward to a loss carry forward that can be applied against future sources of income.

Also, by virtue of the fact that income may be recognized before it is actually received, it is necessary to ensure that all tax withheld with respect to a particular source of income has been considered in calculating the foreign tax credit.

In situations where withholding at source is a material cost to a company, they could consider structuring their offshore distribution business in a more favorable jurisdiction.

Distributors

If a Canadian resident film distributor receives income from a non-resident with respect to film assets (rights) that it owns, any tax withheld at source is generally accounted for on a basis similar to that for a producer.

Alternatively, if the distributor is operating within a fee-based contract, such as a sales agent, the revenues and any tax withheld with respect to that revenue may be for the account of the owner of the film asset.

In some cases the distributor is carrying on business in Canada by distributing product in foreign territories on behalf of the copyright owner, who is resident in a third country. In that case the payer should withhold tax at the appropriate rate as between the payer's territory and the owner's territory.

If the distributor collects worldwide revenues on behalf of a non-resident owner, and remits a combination of revenues including Canadian-source revenues, there is a risk that CRA will assess withholding tax on the full payment. Therefore it is prudent to separate the Canadian contractual arrangement from that related to the rest of the world, to avoid Canadian withholding tax on the remittance out of Canada of revenue from "the rest of the world".

Indirect Taxation

Goods and Services Tax/Harmonized Sales Tax

Canada's Goods and Services Tax (GST) applies at a rate of 5 percent to most goods acquired and services rendered in Canada. The provinces of Ontario, British Columbia, New Brunswick, Nova Scotia and Newfoundland use a blended federal/provincial Harmonized Sales Tax (HST), which applies to the same base of goods and services as the GST. The HST rate ranges from 12% in B.C. to 15% in Nova Scotia comprises a 5 percent federal component and a provincial component.

Generally, every person who makes a taxable supply (including a zero-rated supply) in Canada in the course of a commercial activity is required to register unless the person qualifies as a small supplier (less than $30,000 annual taxable supplies), is only engaged in selling real property otherwise than in the course of business, or is a non-resident person who does not carry on business in Canada.

Businesses that are registered for GST/HST purposes are required to collect and remit GST/HST on taxable supplies made in Canada and are entitled to claim an offsetting input tax credit (ITC) for GST/HST paid on expenditures acquired for use in making those taxable supplies. The tax is ultimately borne by consumers who generally cannot recover the GST/HST incurred on their expenditures.

Zero-rated supplies (e.g. exported goods/services and basic groceries) are taxable supplies to which a 0 percent rate of GST/HST applies. Suppliers who make zero-rated supplies are generally entitled to recover all of the GST/HST paid on expenditures incurred in order to make such supplies via an ITC.

The GST/HST does not apply to certain supplies deemed to be exempt from tax such as residential rents and financial services. Unlike zero-rated supplies, suppliers who make exempt supplies are not entitled to recover GST/HST paid on expenditures incurred in order to make exempt supplies (although certain suppliers of public services are entitled to partial rebate).

Finally, certain supplies of goods/services are simply deemed not taxable, and the recovery of GST/HST depends on the particular circumstances.

Supply of Production Services

The supply of production services provided in whole or in part in Canada by a Canadian production services company to a Canadian studio will be subject to GST/HST; however, the Canadian studio should be entitled to claim an ITC for such GST/HST. Supplies of production services to a non-resident studio will generally qualify for zero-rating (i.e. taxable at 0 percent). For example, if a non-resident studio hires a Canadian production services company to produce a film in Canada where the producer has no interest in the film rights (i.e. non-resident studio is the owner of the copyright to the film) the production services rendered to the non-resident studio should qualify for zero-rating.

Supply of Distribution Rights and Other Intangible Personal Property

The application of GST to the supply of distribution rights and other intangible personal property (IPP) is based on the following rules:

- A supply of IPP is not subject to GST/HST where the IPP may not be used in Canada.
- A supply of IPP is not subject to GST/HST where the IPP is supplied by a person who is not resident in Canada, not registered for GST/HST purposes and not carrying on business in Canada.
- All other supplies of IPP are taxable except that if the supply is made to a non-resident person who is not registered for GST/HST, the supply is zero-rated provided the rights may be exercised both in and out of Canada.

Based on the above, generally the supply of distribution rights or other IPP by a person registered for GST/HST will be subject to GST/HST unless either the rights may only be used outside Canada or the purchaser is not resident in Canada and not registered for GST/HST purposes (unless the rights may only be exercised in Canada).

The supply of distribution rights or other IPP by a non-resident who is not registered for GST/HST will not be subject to GST/HST. A Canadian purchaser of such rights is not required to self assess GST/HST provided the purchaser is registered for the GST/HST and the IPP will be used in the commercial activities of the purchaser.

A number of changes to the place of supply rules were enacted on July 1, 2010 which affects the application of the GST/HST based on the location where the IPP is used. The use in a participating province (HST province) is used as a starting point to determine the application of the GST/HST. The various provincial rules are beyond the scope of this guide; therefore, the provider of IPP should consult their indirect tax service provider in order to properly determine the application of the taxes.

Peripheral Goods and Merchandising

The sale of peripheral goods connected to the distribution of a film (such as books, magazines and advertising materials) and related merchandise (such as

clothes, toys, etc.) will attract GST/HST where the goods are supplied by a GST/HST registrant and are delivered or made available to a purchaser in Canada. GST/HST does not apply where such goods are exported from Canada.

Promotional Goods and Services

GST/HST does not generally apply to promotional goods/services provided free of charge. GST/HST registrants who provide such goods are entitled to claim ITC's for the GST/HST paid or payable on expenditures made in the course of supplying such promotional goods/services.

Rebates for Non-Resident Producers

Unregistered non-resident producers are entitled to claim a rebate of GST/HST paid on property or services (other than a service of storing or shipping property) acquired to produce artistic works for export. The property/services eligible for rebate must be acquired for consumption or use exclusively (generally interpreted to mean 90 percent or more) in the production of an original literary, musical, artistic, motion picture or other work in which copyright protection exists.

A non-resident producer is entitled to assign the rights to this rebate to a Canadian supplier of property/services, effectively allowing the non-resident to purchase property or services free of GST/HST.

Importation of Goods into Canada

The GST/HST generally applies to the importation of goods into Canada at a rate of 5 percent calculated on the duty paid value (see below). GST/HST owing on goods imported into Canada is generally payable by the importer of record for the goods.

Quebec Sales Tax

The Quebec Sales Tax is a provincial tax which is levied in the same manner and on essentially the same base of goods and services as the GST/HST. QST applies at a rate of 8.5 percent (propose increase to 9.5% on January 1, 2012) and is calculated on the GST-included price of taxable goods/services supplied in Quebec.

Provincial Sales Tax

Three provinces in Canada; Saskatchewan, Manitoba, and Prince Edward Island, impose provincial sales taxes (PST) on goods and certain services acquired for use in those provinces. These provinces require vendors carrying on business in the province to register and collect PST on their sales. If the vendor does not collect the tax however the purchaser is liable to self assess it. The rates of PST range from 5 percent to 10 percent.

Some provinces offer partial relief from the payment of PST on goods used temporarily in the province. In addition, some provinces provide exemption from PST for equipment and in some cases, props, used in the manufacture of a motion picture.

Customs Duties

Goods imported into Canada may be subject to customs duties. The rate of customs duty imposed will depend on the tariff classification of the goods, the country of origin and the value for duty.

Duty rates can vary according to the country of origin of the goods, for example, many goods of U.S. or Mexican origin enter Canada duty-free or at very low rates of duty under the provisions of the North American Free Trade Agreement. Imports from developing countries are also eligible for beneficial tariff rates. Appropriate documentation certifying the origin of goods must be available for review by customs authorities in order to qualify for these beneficial rates.

The value for customs duty must be determined using one of the methods established in the Customs Act. In most cases the transaction value or the price at which the goods are sold for export to Canada, is the value that is used for customs purposes. Certain adjustments to the transaction price, for example, transportation and insurance cost from the point of direct shipment to Canada, can be deducted in arriving at an acceptable value for customs purposes. Where imported goods are leased from foreign suppliers, the transaction value method or the lease cost cannot be used as the valuation method for customs purposes; in these situations an alternative method must be applied in order to arrive at a determined fair value of the imported leased goods. persons should seek the advice of a Customs Practitioner before the importation of goods into Canada.

Temporary Importations

Goods such as film equipment imported for temporary use in Canada may qualify for duty free entry into Canada. That is, where enumerated goods are imported temporarily for a specific use, relief from customs duty may be available at the time of importation for a period of up to 18 months. Extensions can be granted in 6 month increments up to an additional 30 months.

In some cases, the importer may have to pay a deposit at the time the goods are imported. Upon subsequent export after temporary use in Canada, the deposit will be refunded in whole or in part.

Actors and directors entering Canada for a short period of time generally are allowed to bring in personal effects such as a motor vehicle without paying customs duty. However, the actors and directors may be required to show a work permit at the time of entry into Canada.

Importing of Films and Videotapes

Duty may apply to the importation of motion picture films or videotapes. The duty rates will vary depending on the country of origin and the goods themselves (e.g., the size of the videotape). Generally, motion picture film imported from the U.S. is duty free.

Personal Taxation

Non-Resident Artists

Canada taxes the income arising to a non-resident from services provided in Canada, unless reduced or relieved by a tax treaty, regardless of where the income is received.

The payer is obliged to withhold Federal tax at 15 percent of all remuneration paid to the non-resident in respect of services provided in Canada. Administratively, CRA does not levy withholding tax on per diems for travel, meals, accommodation, if receipts support these expenditures; otherwise, they are subject to tax. Most tax treaties do not provide relief, though there is nominal threshold of relief under the U.S. treaty for example.

Where the payer is a non-resident these rules may not in practice be effective. However, you should be aware that payrolls of many productions carried out in Canada, are audited by CRA; productions applying for labor-driven tax credits are under close scrutiny by CRA as discussed above. CRA is currently taking the position that the value of meals provided (catering), is a taxable benefit unless filming is at a remote location. (Note as discussed above, if taxable to the recipient of this benefit, the amount can be included in the calculation of qualifying labor for tax credit purposes.)

The withholding tax represents a tax installment but not necessarily the final liability. The individual is obliged to file a Canadian personal tax return for the year in which the income is received, using the same net income calculations available to residents. In the past, administratively CRA has not always demanded these filings unless the non-resident returns to Canada on a recurring basis, or remains here for an extended period, for example to complete a television series. CRA's position in this regard however, is that the individual is required to file a tax return. This would result in more non-residents being obliged to file tax returns, and many would owe more

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tax than the amount withheld at source. Of course their jurisdiction of residence may allow a foreign tax credit for all or part of the Canadian tax.

Quebec levies a similar withholding tax on non-residents at the rate of 9 percent.

In respect of services provided since 2001, actors are subject to a Federal withholding tax of 23 percent as a 'final tax' on Canadian income; no tax return filing is required. However, they may elect to file a tax return to be taxed at regular personal rates in respect of net income (after applicable expenses); if this calculation of tax is less than the withholding, a refund can be claimed.

An artist (or any other non-resident individual) sojourning more than 183 days in Canada in a calendar year, will be deemed resident and taxable on worldwide income for the calendar year (with foreign tax credits or exemptions allowed for income earned outside Canada). Most tax treaties provide for the application of a "tie-breaker" test, so an artist (or other sojourning individual) who has residency ties elsewhere, could be considered a non-resident. However, this possibility should be reviewed and addressed before the 183 days is met, in the event there is risk of a tax liability being assessed by CRA; this is a particular problem if the non-resident does not reside in a treaty jurisdiction. It is possible to obtain a determination of non-residency status before commencing the Canadian contract, by application in prescribed manner to the International Taxation Services Office of CRA.

If an individual, other than an artist or entertainer, subject to the Federal withholding tax is determined to have a fixed base regularly available in Canada, they could not obtain a waiver and their final tax liability would be imposed based on net income attributable to that base. In a relevant court case, an individual succeeded in his filing position that performing services at a client's location, did not create a "fixed base"; however this result will always be dependent on the particular facts and circumstances.

A waiver of withholding taxes is usually approved by CRA if the individual is present less than 180 days in the year on a non-recurring basis; but waiver procedures make it more difficult to obtain a waiver where the individual spends more days in Canada in a year or has recurring visits to Canada. As a result, we expect that fewer waivers may be given, resulting in more individuals filing Canadian tax returns in order to be assessed the appropriate actual tax. Quebec has a similar waiver procedure.

If an artist uses a loan-out company, CRA will agree to subject to withholding tax only the amount paid to the artist (net of bona fide expenses incurred by the company). However, application must be made to reduce the tax

withholding on gross revenue, which is otherwise applicable. Many tax treaties do not provide relief from tax with respect to loan-out companies in which the artist participates in profits.

Loan-out companies may be effective, however, for off-camera individuals. The company must apply to CRA to obtain a waiver from tax where the applicable treaty allows relief for a company with no permanent establishment in Canada. Otherwise revenues received for services provided in Canada are subject to the 15 percent withholding (and Quebec if applicable), and a corporate tax return must be filed. Companies seeking treaty relief are obliged to file a tax return as noted above.

HST/GST implications are discussed separately above.

Resident Artists

Canada taxes its residents on worldwide income from all sources. Artists are generally considered not to be employees unless facts and circumstances dictate otherwise; as a result, they would file as independent contractors and claim all reasonable expenses incurred to earn income and depreciation with respect to capital expenditures. They also may claim a foreign tax credit with respect to appropriate foreign tax paid with respect to net foreign income, calculated on a per country basis. Income earned as an independent contractor may also subject to social security tax.

HST/GST implications are discussed separately above.

Artists may consider the use of a corporation as part of their overall personal tax planning structure. A Canadian controlled private corporation may provide attractive tax deferral and savings opportunities with respect to income earned in Canada; expert tax advice should be sought in this regard.

Employees

Employers are obliged to withhold income and social security tax and unemployment insurance premiums from employees, and remit these amounts to the appropriate revenue authority on a regular basis, depending on the size of their payroll. Withholding is based on actual tax rates, but individuals have the right to apply for a reduction of source deductions if they expect to have significant, provable tax deductions or foreign tax credits.

Employers also remit a matching amount for social security and unemployment insurance, and bear other employment levies such as provincial employer health taxes and workers' compensation premiums.

If foreign employees are seconded to Canada there may be relief from Canadian social security pursuant to the applicable Social Security Totalization Agreement and in limited circumstances, relief from unemployment insurance premiums.

Employees may not claim job-related expenses, other than specific expenditures required by the employer and for which the employer provides documentation in prescribed form.

If the employer requires the employee to move temporarily away from his or her home, the employee may in appropriate circumstances obtain tax exempt allowances for "board and lodging" and travel, called "special work site" status.

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Chapter 06

China and Hong Kong SAR

Introduction – China

In China, the government traditionally monopolizes the film industry so that only state-owned film studios may engage in the production and distribution of films. However, with China's accession to the World Trade Organization (WTO), the restrictions over film production and distribution are being slowly relaxed.

China became a member of the WTO at the end of 2001, but it did not make any commitments to open up the film production sector to foreign investors. However, China has undertaken to import 20 films a year for release on a revenue-sharing basis immediately after its accession to the WTO. This may expose state-owned film studios to greater competition.

The film industry is regulated by the State Administration of Radio, Film, and Television (SARFT). To promote the film industry, SARFT issued the Provisional Rules on Operation Qualifications for Entry into Film Production, Distribution, and Exhibition ("Film Market Entry Rules") on October 29, 2003, which was later superseded by a revised version on November 10, 2004. According to this set of rules, effective December 1, 2003, foreign investors may incorporate a film production company in the form of an equity joint venture or cooperative joint venture with China film production companies. However, the investors are required to have controlling interests in the equity joint venture or cooperative joint venture.

Warner China Film HG Corporation, incorporated in December 2004, was the first China-foreign equity joint venture established in China for film production. However, the attempt to allow foreign investment in film production was suspended very shortly. In July of 2005, the PRC Ministry of Culture, SARFT and several other government agencies jointly issued a circular, Opinions on Foreign Investment in Culture Related Areas ("Opinions"), which prohibits foreign investors from establishing or investing in film production companies in China. The prohibition of foreign investment in the film production industry is re-emphasized under the prevailing National Foreign Investment Catalogue Guide which provides guidance on the industries that encourage, restrict, or prohibit foreign investments under the current Chinese regulatory framework. As a result, foreign investors may only participate in the co-operation of films with Chinese film production companies on a project basis, and the majority of the co-operations are in the form of Joint Production, Assisted Production or Contracted Production.

Foreign investments are also prohibited in the China film distribution industry, with the exception of Hong Kong and Macau investors which are permitted to establish wholly owned subsidiaries in China for the distribution of China-made films, owing to the Supplementary Provisions to the Film Market Entry Rules issued by the SARFT on March 7, 2005 and effective from January 1, 2005.

Currently, the production, distribution, releasing/showing, importation and exportation of films in China are subject to approval by the relevant authorities, mainly the SARFT.

Key Tax Facts

Highest effective corporate income tax rate	25%
Highest personal income tax rate	45%
Business Tax	Generally 5%
Value Added Tax	Generally 17%
Normal non-treaty withholding tax rates: Dividends	10%
Interest	10%
Royalties	10%
Tax year-end	December 31

Film Financing

Financing Structures

Foreign investors may participate in co-operation of films with Chinese film production companies. The main cooperation models include Joint Production, Assisted Production, and Contracted Production.

Co-production

Currently, film co-production projects may only be undertaken in China in one of the following manners:

- *Joint production*: The Chinese investor and foreign investor jointly participate in the funding and production of a film in China, and in the sharing of rewards and risks associated with the exploitation of the rights over the film. The production project does not constitute a separate legal person in China. Instead, it is treated as an unincorporated co-operative joint venture with the Chinese investor and the foreign investor retaining their individual identities

- *Assisted production*: The foreign investor is solely responsible for providing the capital and carrying out the production of a film in China. The Chinese participant provides assistance by way of equipment, instruments, and labor services. The foreign investor solely enjoys the rewards and bears the risks associated with the exploitation of the rights over the film while the Chinese participant is compensated by the foreign investor for the assistance provided
- *Contracted production*: The foreign investor is solely responsible for providing the capital. It engages a Chinese party to carry out certain production or filming in China. The foreign investor solely enjoys the rewards and bears the risks associated with the exploitation of the rights over the film while the Chinese contractor is compensated by the foreign investor for undertaking the production of the film

Approvals from the SARFT and the relevant permit/license should be obtained for co-production of films with Chinese partners. The Chinese partner is required to apply to the SARFT on behalf of both parties for such permit/license, which is known as the "China-Foreign Film Co-production Permit". The permit is only valid for a period of two years.

The films produced under "joint production" may be released to the public in and outside of China upon obtaining the relevant releasing permit/license issued by the SARFT. The films produced under "assisted production" and "contracted production" may be brought out of China upon approval from the SARFT.

Partnerships

Effective March 1, 2011, foreign companies and individuals are allowed to establish foreign invested partnerships ("FIPs") in China in industries which do not have restrictions on foreign investments. Accordingly, such a partnership is not a feasible form for foreign investors to produce films in China.

Limited Liabilities Companies

There are in general three types of foreign invested limited liability companies in China, namely Wholly Foreign Owned Enterprise ("WFOE"), China-Foreign Equity Joint Venture ("EJV"), and China-Foreign Cooperative Joint Venture ("CJV").

For production of films in China, foreign investors are not allowed to set up a wholly owned subsidiary, i.e., WFOE, for such activities. The Film Market Entry Rules issued in the year 2004 by the SARFT allow foreign investors to establish EJV or CJV with China film production companies which are required to have the controlling interests of at least 51% of the registered capital of the EJV or CJV. However, the Opinions subsequently issued by the SARFT and several other government authorities in 2005 and the prevailing Foreign Investment Guide Catalogue prohibit the establishment of any foreign invested film production companies in China, including EJV and CJV.

With regard to film distribution, foreign investors are prohibited from setting up or investing in film distribution companies in China, with the exception of Hong Kong and Macau investors who are allowed to establish wholly owned subsidiaries in China for distribution of China-made films.

Other Financing Considerations

Exchange Controls and Regulatory Rules

China is a foreign exchange controlled country, and any funds coming into and going out of China are subject to approval by the China State Administration of Foreign Exchange ("SAFE") and their designated banks. Companies or individuals in China are generally required to submit certain documents to the SAFE or banks to obtain such approval.

Subject to approval from the SAFE or the banks, foreign investors may be allowed to remit funds to and open bank accounts in China for co-production of films with Chinese partners. In addition, foreign investors should also be able to receive distribution or box office income from China provided the relevant China taxes have been duly settled.

Corporate Taxation

Chinese Resident Enterprises

General

A China resident enterprise is liable for Corporate Income Tax (CIT) on its worldwide income. A China resident company for CIT purposes is defined as one which is incorporated in mainland China or has its effective management in mainland China if it is incorporated outside of mainland China.

Taxable income is calculated as the excess of revenue over deductible expenses. Tax losses may be carried forward for up to five years. Taxable income/losses are generally calculated on an accrual basis.

The standard CIT rate is 25 percent. A reduced income tax rate of 15 percent is available for companies that are engaged in developing technologies that support cultural industry and are recognized as high-tech companies by the relevant government authorities.

Certain enterprises in cultural industries are allowed to claim additional deduction on the research and development expenses for developing new technology, new products and new processes.

Filing

Resident enterprises should file provisional CIT returns on a quarterly basis or in rare cases, on a monthly basis. In addition, enterprises are also required to file an annual reconciliation based on the audited financial statements.

Taxpayers with branches should calculate their taxable income and CIT liabilities on a consolidated basis, however, the head office and the branches should in general each file a separate monthly or quarterly provisional return and settle provisional CIT liabilities on a pro rata basis to their respective tax authority.

The monthly or quarterly provisional CIT returns should be filed and tax funds paid within 15 days after the end of a calendar month or quarter. Annual CIT reconciliation/return should be filed and the remaining tax funds for the year settled within five months after the end of a calendar year.

Non-Chinese Resident Enterprises

Non-resident enterprises should in principle only be liable for China CIT on China sourced income, for example royalties and dividends paid by Chinese resident enterprises. Where a foreign company carries out co-production of films in China, the foreign company may be liable for the China CIT on the relevant business profit if it is regarded as having a permanent establishment (PE) in China by virtue of the production activities carried out in China.

Amortization of Expenditure

Deduction and Amortization of Expenses

Taxpayers should be able to claim deductions on expenses provided that the expenses are incurred in the ordinary course of business of the taxpayers and the amounts are reasonable. In addition, the expenses shall be substantiated by valid official tax invoices which for the expenses incurred in China are called "Fa Piao". There are limits on the deduction of certain expenses such as, entertainment expenses, advertising, and promotion expenses, and staff welfare expenses. Provisions for expenses such as bad debts and inventory impairments are generally not deductable for CIT purposes.

Depreciation charges on fixed assets are generally based on the minimum useful life provided under the CIT regulations, which generally range from 3 to 20 years depending on the nature of the assets. Taxpayer may determine reasonable residual value of an asset. The straight-line depreciation method is generally adopted. Accelerated depreciation is allowed for certain types of fixed assets.

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Intangible assets such as patent rights, proprietary technology, trademark rights, copyright, and land use rights should be amortized using a straight-line method over their useful lives or period of use. The amortization period for an intangible asset regarded as an investment is the period of use specified in the relevant contract or agreement. Other intangible assets for which there is no set period of use or which are developed by the enterprise itself must be amortized over a period of at least 10 years. Film rights are the same as a copyright. Accordingly, costs incurred in connection with the production of a film should be capitalized as intangible assets and then be amortized when the film is exploited.

From 1 September 2009 to 31 December 2013, a publishing or distribution company may claim deductions for CIT purposes on the costs of the audio-visual products, electronic publications and transparencies (including microfilm products) which have an turnover of more than two years.

Related party transactions have to be carried out at arm's-length. Cost sharing arrangement concerning the development or transfer of intangible assets as well as shared services are permitted under the arm's length principle. It is possible to obtain an Advance Pricing Agreement from the tax bureau. The tax bureau is entitled to make any necessary transfer pricing adjustments. Taxpayers must prepare and maintain transfer pricing documentation, some portions of which must be contemporaneous, with the annual tax filing.

Losses

Tax losses may be carried forward for up to five years.

Withholding Tax

Non-resident enterprises are generally liable for the China WHT at 10 percent on certain China sourced passive income, such as dividends, loan interests, royalties, etc. Certain tax treaties provide for a reduced WHT rate on certain types of income.

Where a foreign investor transfers film exploitation rights developed in a co-production in China to a Chinese resident, the foreign investor is liable for China WHT on the proceeds received for the transfer. Where the rights are effectively connected with a PE of the foreign investor then such proceeds will have to be taken into account in computing the profits attributable to the PE.

Foreign Tax Relief

Chinese resident enterprises are generally entitled to a foreign tax credit on the foreign income tax paid related to foreign sourced income to the extent of the amount of Chinese tax that would have been paid had the income been earned in China. Any excess credit may be carried forward for up to five years.

Indirect Taxation

Business Tax

Companies and individuals, including foreign companies, that provide services (other than repair and processing services) and transfer intangible assets/immovable properties in China are liable for Business Tax (BT). BT rates range from 3 to 20 percent depending on the nature of the BT taxable activities, with 5 percent being the most applicable rate.

Transfer of rights for film distribution and television transmission in China falls within the category of transfer of intangible assets in China and will be subject to a 5 percent BT. From 1 January 2009 to 31 December 2013, qualified enterprises in film industries can enjoy BT exemption on revenue derived from the transfer of film copyrights, film distribution and box office income earned in rural areas.

BT returns are generally filed and tax funds settled either within 15 days after the end of a calendar month or 15 days after the end of a calendar quarter.

Value Added Tax (VAT)

Companies and individuals that sell goods in China, import goods into China or provide processing of services or repair services in China are liable to charge VAT. The standard VAT rate is 17 percent.

From 1 January 2009 to 31 December 2013, qualified enterprises in film industries are exempt from VAT on distribution of film copies.

Local Surcharges

Local surcharges are government charges imposed on BT and VAT taxpayers and calculated at a certain percentage of the BT or VAT liabilities. Effective from 1 December 2010, foreign invested companies and non-resident companies that are liable for BT and VAT are also liable for local surcharges.

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The general local surcharges include Urban Maintenance and Construction Tax, Education Levy, and Local Education Levy which in total is generally 12 percent of the BT or VAT liabilities. In addition, some cities also charge other types of surcharges.

Customs Duties

The importation of audiovisual products should be subject to prior approval of relevant authorities.

The importer of audiovisual products is subject to VAT at 17 percent and import duty at the applicable rate. Import VAT and duty are collected by the Chinese customs authorities at the time of importation. Import duty is based on the c.i.f value of the imported goods, while VAT is based on the aggregate of the c.i.f value and import duty. The import duty rates depend on the international tariff codes and country/territory of origin of the imports. Import duty and VAT are payable within 15 days of import declaration.

From 1 January 2009 to 31 December 2013, imports of self-used equipment, accessories and spare parts that cannot be made in China for production of key cultural products are exempted from Customs Duty.

For 2011, the following customs duty rates apply to the relevant goods imported from Most Favored Nations:

Exposed and developed cinematographic film	5% for 35 mm or wider or otherwise 4%
Exposed but not developed cinematographic film	6.5%
Undeveloped color cinematographic film	RMB9/m2 for 35mm or narrower or otherwise RMB13/m2
Blank videotapes	Zero-rated
Recorded videotapes	6% (2011 temporary rate) for reproducing sound or image, or otherwise zero-rated
Blank video discs	Zero-rated
Recorded video discs	Zero-rated

The c.i.f value basically covers all the payments incurred up to the point of landing on the customs territory of China, including royalties for intellectual properties which are contained in or connected with the imported goods. The c.i.f value should be based on the actual transaction price of the imports subject to verification of the PRC customs authorities. Where there is a "special relationship" between the overseas supplier and the importer, the customs authorities may seek to adjust the transaction price accordingly in arriving at the c.i.f value to help ensure that the correct value is used.

Effective from January 1, 2004, equipment, appliances, and materials imported for filming are eligible for VAT and customs duty exemption provided that they will be exported within six months after importation and the taxpayer makes a deposit equivalent to the VAT payable at Customs.

Personal Taxation

Effective from September 1, 2011, a new IIT Law provides various changes to the existing provisions and its main aim is to reduce the IIT burden for medium-low income earners and increase the IIT burden for high income earners. The main changes of the new IIT Law include the change of the income tax bracket for a certain tax rate, the increase of the standard monthly expense deductions for Chinese national employees, and the extension of IIT filing and payment due date.

Resident Status

An individual is a resident in China for Individual Income Tax (IIT) purposes if:

- He or she habitually resides in China because of household registration, family ties or economic reasons, or
- He or she resides in China for a full tax year

The term "habitually resides" is a legal criterion for determining whether an individual has residence or not, and it does not refer to "actually resides" or the place where he resides for a specified period of time. If an individual resides outside China for a reason such as studying, working, visiting of family, and traveling, and must return to China to reside at the conclusion of the period, China is the place where he or she habitually resides.

An individual is considered to have resided in China for a full tax year in the year concerned if his or her absence from China during the year does not exceed 30 days consecutively or 90 days in the aggregate.

IIT returns are generally filed and tax funds settled within seven days after the end of a calendar month. Under the new IIT Law, the due date is extended to fifteen days after month-end.

Artists (Self-employed)

IIT Implications

An artist's income derived from his or her professional services will be considered as "personal service income" for IIT purposes. Accordingly, the individual will be taxed at progressive rates ranging from 20 to 40 percent. If the individual's monthly income is less than RMB4,000 (US$621), RMB800 (US$124) may be deducted when calculating the taxable amount. If the individual's monthly income is RMB4,000 (US$621) or more, 20 percent of the total remuneration may be deducted in determining the taxable amount.

A payer making a payment to an artist in respect of a performance in China is obligated to withhold and pay IIT to the Chinese tax authorities, regardless of whether the artist is a Chinese resident or not. Where the payer is not a Chinese entity or individual, the authorities may have to rely on voluntary disclosure by the artist.

Non-Resident Artists

Subject to the relevant double tax treaties between China and the resident country of the artists, China may have the taxing rights on the income derived by artists for their services/performances carried out in mainland China.

Resident Artists

A China resident artist is liable for IIT on the worldwide income. The individual may claim foreign tax credit on foreign sourced income to the extent of the amount of IIT that would have been paid had the income been earned in China.

Employees

IIT Implications

An individual's income derived from employment services in China will be considered as "salaries and wages" for IIT purposes. The IIT rates operate on a progressive basis from 5 to 45 percent. Foreign nationals are entitled to a monthly deduction of RMB 4,800 (US$745) while the monthly deduction for Chinese nationals is RMB 2,000 (US$310). Under the new IIT Law, which is in effect as of September 1, 2011, the monthly expense deduction for Chinese nationals is increased to RMB 3,500 while that for foreign nationals remain unchanged. An employer in China is obliged to withhold IIT payable by individuals, whether they are Chinese or foreign nationals, to whom it makes payments, including salaries, rent, and commissions.

A foreign national may be exempt from IIT on "salaries and wages" earned in China if, among other conditions, he or she is present in China not more than 90 days or, if a tax treaty applies, 183 days in a calendar year or equivalent period. In addition, for a foreign national residing in China for a full tax year, whereby being a tax resident in China and taxed on worldwide income, the current IIT law and regulations provide tax relief on the individual's overseas paid employment income to the extent relating to the number of days of services provided in China until he or she is considered to have resided in China for a consecutive five full tax years.

Social Security Implications

From July 1, 2011, the Social Insurance Law becomes effective. Based on this law, both Chinese and foreign national employees should participate in the China social insurance schemes. However, the law does not provide details on how foreign national individuals should participate.

In general, both employers and employees are required to make contributions to the social insurance schemes which principally include pension/retirement, unemployment, medical care, industrial injuries, and maternity. The bases and rates of contributions vary from city to city. Generally, the contributions for the above principal schemes are up to 49.5 percent of the base.

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Introduction – Hong Kong SAR

There are no specific provisions contained in the Inland Revenue Ordinance (IRO) that deal with the taxation of profits derived from the film industry. As such, the general taxing provisions apply. A brief discussion of these provisions is provided below, focusing on the provisions relevant to the film industry.

Key Tax Facts

Corporate income tax rate – flat rate	
Companies	16.5%
Highest personal income tax rate	17%*/15%**
Normal non-treaty withholding tax rates:	
Dividends	
0%	
Interest	0%
Royalties	See "Withholding Tax" section of this chapter
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	March 31

* Highest progressive rate of tax

** Standard rate of tax

Tax charged shall not exceed the standard rate of tax applied to the net income without personal allowances

Film Financing

Financing Structures

Various mechanisms for film financing are feasible. These include the provision of funds by way of share capital or loan finance (or a mixture of both) to a company, the creation of joint ventures involving companies and/or individuals, and the establishment of partnerships involving companies and/or individuals. The choice of structure in any particular case normally depends on the particular circumstances of that case, and it is usually possible to create a structure that meets both the commercial and tax objectives of the parties.

Co-production
Two or more parties may enter into a joint venture agreement to co-produce a film or, alternatively, to produce and/or finance a film whereby typically the rights to exploit the film are divided amongst the parties. The existence of a joint venture agreement does not necessarily mean that a partnership or profit sharing arrangement exists. The joint venture itself is not normally taxable. Rather, each party to the joint venture must consider its role in the venture to assess its particular tax position.

Partnership
Two or more parties may come together to produce and exploit a film in partnership. Partnerships in Hong Kong can have both limited and general partners. A partnership is taxable on its profits. Restrictions are, however, placed upon the use of losses in partnerships. Neither general nor limited partners can offset losses derived from their participation in one partnership against profits derived from their participation in another partnership. However, partnership losses can be offset against other income derived by the partners in their own right. In addition, a limited partner's share of a loss in a partnership is broadly limited to the limited partner's capital contribution.

Limited Liability Company in Hong Kong/Branch of a Foreign Company
A limited liability company or a branch of a foreign company could be established in Hong Kong to produce and exploit a film. If a branch of a foreign company establishes a "place of business" in Hong Kong, the branch must register with the Registrar of Companies under Part XI of the Hong Kong Companies Ordinance.

Equity Tracking Shares
These shares (typically known as preferred or preference shares) provide for dividend returns which are dependent on the profitability of a film production company's business. The investor acquires such shares in the production company. These shares have the same rights as the production company's ordinary shares except that the dividends are profit-linked and have preferential rights to the assets in the event of the liquidation of the company.

Regardless of the place of incorporation of the production company, dividends received on equity tracking shares are exempt from Hong Kong Profits Tax in the same way as dividends earned on ordinary shares.

Yield Adjusted Debt
A film production company may issue a "debt security" to investors. Its yield may be linked to the revenue from specific films. The principal would be repaid upon maturity and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplemental (and perhaps increasing) interest payment may be paid where a predetermined target is reached or exceeded (such as revenues or net cash proceeds).

For Hong Kong Profits Tax purposes, this "debt security" would be classified as debt. The assessability and deductibility of the interest payments on the debt security would be determined based upon the rules for assessability and deductibility as outlined below.

Other Financing Considerations

Exchange Controls and Regulatory Rules
There are no specific exchange controls or regulatory rules restricting currency movements in Hong Kong. There is therefore nothing to prevent a foreign investor or artist from repatriating income arising in Hong Kong back to his or her home territory.

Corporate Taxation

Hong Kong Profits Tax

Assessable Profits
Hong Kong operates a "territorial" system of taxation. Generally, there is no distinction between resident and non-resident companies in terms of the liability to Hong Kong Profits Tax.

The law governing the imposition of Profits Tax is contained in the Inland Revenue Ordinance (IRO) and its subsidiary legislation, the Inland Revenue Rules. A "person" will be chargeable to Profits Tax in respect of his or her "assessable profits" if:

- the profit arises from a trade, profession, or business carried on by the person in Hong Kong; and
- the profit arises in or is derived from Hong Kong, unless the profit arises from the sale of a capital asset.

"Person" is defined to include a corporation, partnership, trustee, whether incorporated or unincorporated, or body of persons.

Carrying on Business in Hong Kong
The question of whether a company is carrying on business in Hong Kong is a question of fact. In practice, a company is considered to be carrying on a business in Hong Kong if it has an office, a place of business, or where part of its business activities are undertaken in Hong Kong. If a company is regarded as carrying on business in Hong Kong, the profits from that business will be subject to Profits Tax unless they are considered to be "offshore" sourced or specifically exempt from tax (e.g., dividends and capital gains).

Source of Profits
Whether profits are sourced in Hong Kong is a question of fact. Case law indicates that the broad guiding principle is that one looks to see what the taxpayer has done to earn the profits in question and where he has done it. For example, this principle was considered in the case of CIR v HK -TVB International Limited (1992) (1 HKRC 90-064) in relation to the source of profits arising from the sublicensing of rights to films. This case concerned a Hong Kong based company that acquired non-Hong Kong rights to films from its parent company that produced the films. The rights were then sublicensed to unrelated television stations and film distributors outside Hong Kong. Although the sublicensees were located outside Hong Kong, the substance of the work performed to earn the profits was undertaken in Hong Kong, and it was held that the profits were Hong Kong sourced and taxable.

The Inland Revenue Department's (IRD) current views on the source of various types of profits (e.g., trading profits, service fees and commission income) are published in a non-binding statement of practice, "Departmental Interpretation and Practice Notes No. 21 (Revised)" in December 2009.

Treatment of Dividends
Dividends received from a corporation whose profits are chargeable to Profits Tax are exempt from tax. Hong Kong does not have an imputation system.

Amortization of Expenditure

Deduction of Expenses
Subject to any specific provisions, expenses are only deductible to the extent they are incurred in the production of the taxpayer's assessable profits for any period and they are not capital in nature. However, certain types of expenses are specifically deemed to be deductible, notwithstanding that they may be of a capital nature (e.g., expenditure incurred to acquire patent rights). Deductions are allowed for the following items which are generally relevant to the film industry:

- Certain interest and related costs on money borrowed for the purpose of producing assessable profits (see further below)
- Rent paid for premises occupied for the purpose of producing assessable profits
- Bad and doubtful debts provided the debts were included in the taxpayer's assessable profits and that they can be proven to have become bad; and debts in respect of money lent in the ordinary course of the business of lending of money within Hong Kong by a person who carries on a money lending business
- Depreciation allowances
- Expenditure on plant and machinery used for specified manufacturing activities and computer hardware and software are fully deductible in the year the expenditure was incurred
- Expenditure on the renovation or refurbishment of a commercial building is allowed as a deduction on a straight-line basis over a five-year period
- Cost of repairing premises, plant, machinery, implements, utensils or articles used in the production of the taxpayer's assessable profits and the cost of the replacement of any implements, utensils or articles provided that no claims were previously made for depreciation allowances
- Subject to specific limitations, the cost of registering a patent, design, or trademark for use in Hong Kong in the production of the taxpayer's assessable profits. This would not cover the cost of acquiring film rights
- Expenditure on environmentally friendly machinery and equipment is fully deductible in the year the expenditure is incurred
- Expenditure on environmentally friendly installations ancillary to buildings is allowed as a deduction on a straight-line basis over a five-year period

There are no specific provisions in the IRO that deal with the deductibility of costs incurred to produce or acquire a film. In addition, the IRD has not published any guidelines stating how they would treat such expenditures for Hong Kong Profit Tax purposes. Therefore, there is a technical risk that the IRD may consider such expenditures to be capital in nature and non-deductible.

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Deductions for Interest and Related Borrowing Costs

A deduction for interest will be allowed where the interest is incurred on money borrowed for the purpose of producing the taxpayer's assessable profits and at least one of the six specified conditions in the IRO is met. In particular, the interest was paid on money borrowed:

1. By a financial institution
2. By specified public utility companies, at rates of interest notified from time to time
3. From a person (other than a financial institution) who is subject to Hong Kong Profits Tax on that interest
4. From a financial institution either in Hong Kong or overseas
5. Wholly and exclusively to finance:
   i. A capital expenditure incurred on the provision of machinery or plant that qualifies for depreciation allowances for profits tax purposes
   ii. The purchase of trading stock which is used in the production of profits chargeable to Profits Tax provided the lender is not associated or connected with the borrower
6. Through the issue of certain publicly quoted debentures and certain commercial paper

In relation to conditions (3), (4), and (5) mentioned above, specific anti-avoidance provisions have been introduced with effect from June 25, 2004 which preclude a deduction from being claimed for interest on a loan which is secured by either a deposit or a loan made by the taxpayer (or an associate) and the interest on the loan or deposit is not subject to Hong Kong Profits Tax. Where the loan is partly secured by "tax-free deposits or loans," the interest deduction will be apportioned on a "most reasonable and appropriate" basis, depending on the circumstances of the case.

In addition, the deduction for interest under conditions (3), (4), (5), and (6) mentioned above are also subject to what is commonly referred to as an "interest flow-back test." Under this test, interest is not deductible where there is an arrangement in place between the borrower and lender whereby the interest is ultimately paid back to the borrower or a person connected with the borrower. A connected person is defined as an associated corporation or a person who controls the borrower, or who is controlled by the borrower, or who is under the control of the same person as the borrower.

A partial deduction for interest is permitted where the interest only partially flows back to the borrower, but only in proportion to the number of days during the year in which the arrangement is in place. The test does not apply where the interest is payable to an "excepted person" which is defined to include: a person who is subject to tax in Hong Kong on the interest; a financial institution or an overseas financial institution; a retirement fund or collective investment fund in which the borrower or an associate has an interest; and a Government owned corporation.

Withholding Tax

Hong Kong does not currently impose any withholding tax. Accordingly, there is no withholding tax on interest payments or dividends paid by Hong Kong companies. While there is no withholding tax in Hong Kong per se, Hong Kong Profits Tax is imposed on amounts received by or accrued to non-resident persons:

1. From the exhibition or use in Hong Kong of any cinematography or television film, any tape or sound recording, or any advertising material connected with any of these things
2. For the use of or the right to use certain intellectual properties in Hong Kong including patents, designs, trademarks, copyright material, or secret processes or formula
3. For the imparting or undertaking to impart knowledge directly or indirectly connected with the use of any such intellectual properties in Hong Kong

Where the recipient of a royalty is not otherwise subject to Hong Kong Profits Tax, a deemed profit of 30 percent of the royalty is generally subject to Profits Tax. The normal tax rates for 2010/11 are 16.5 percent for corporations and 15 percent for other persons, which give rise to an effective withholding tax rate of 4.95 percent and 4.5 percent, respectively.

However, if the payment is made to an overseas associate and the intellectual property giving rise to the royalty payment has been wholly or partly owned by a person carrying on business in Hong Kong, 100 percent of the royalty is subject to Hong Kong Profits Tax at the rate of 16.5 percent.

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Even if the subject intellectual properties are wholly used outside of Hong Kong, the royalty payments are deemed to be subject to Hong Kong Profits Tax where the payer claims a deduction in respect of the royalty payment for Hong Kong Profits Tax purposes.

Personal Taxation

Artists

Under the IRO, sums received or profits derived directly or indirectly from performance(s) in Hong Kong by an entertainer, who is not a Hong Kong resident, are generally chargeable to Hong Kong Profits Tax.

The IRO also provides that a non-resident entertainer is chargeable to Hong Kong Profits Tax in the name of the person in Hong Kong who pays or credits sums to that entertainer or his or her agent. The Hong Kong person who made the payment is responsible for (i) withholding an appropriate amount to pay the non-resident entertainer's tax liability; (ii) completing the tax return to report the gross amount payable to the recipient; and (iii) settling the tax due with the IRD. For the above purposes, an entertainer is defined as a person who gives performances (whether alone or with other persons) in his or her character as an entertainer in any kind of entertainment including an activity in a live or recorded form which the public is or may be permitted to see or hear, whether for payment or not.

Employees

A separate tax, called Salaries Tax, is charged on an individual in respect of his or her income arising in or derived from Hong Kong from any office or employment sourced in Hong Kong and, in the case of employment sourced outside Hong Kong, on any income derived from services rendered in Hong Kong.

Double tax treaty network

Hong Kong has significantly expanded its tax treaty network with key trading partners worldwide in recent years. As of July 2011, Hong Kong has concluded 21 tax treaties and is in the process of negotiating treaties with more than 10 jurisdictions. The Hong Kong Government continues its efforts in maintaining Hong Kong as an attractive location for foreign investors. Residents of jurisdictions which have double tax treaties with Hong Kong should therefore check the relevant tax treaty agreement to assess the tax implications, if any, for their tax affairs.

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Chapter 07

Colombia

Introduction

In Colombia, the film industry is small but is growing. Between years 1997 and 2003 Colombia produced an average of 4.2 films per year. By 2004 and for the following years the number of films produced was 8, thanks to a new law issued in 2003. Nowadays, Colombia is 4th in Latin America in the number of film productions.[1]

Law 397 of 1997 (also known as "The Culture Law"), created the Ministry of Culture. Within this ministry is the Cinematography Bureau, the entity that is in charge of promoting and encouraging the Colombian film industry. Law 397 of 1997 established policies which encourage the production and co-production of Colombian films. A film production fund was created with resources from the state budget and its purpose is to encourage and grant Colombian film production.

Colombian Congress enacted Law 814 of 2003, which created a new tax benefit and a new para-tax contribution called "Quota for Cinematographic Development," and reorganized the cinematographic industry aiming to induce a progressive development of the Colombian industry and to promote film activities in Colombia. These resources go to the Fund for Film Development, the National Arts and Cinematographic Culture Counsel (the entity that will manage said Fund), and the Cinematographic Information and Registration System-SIREC (a database including producers, exhibitors, distributors and others involved in similar activities related to the cinematographic industry).

Additionally, there are some national entities, such as the Colombian Film Heritage Non-Profit Foundation (called in Spanish Fundación Patrimonio Fílmico Colombiano—FPFC) which its main purpose is to gather or recover audio and visual records that should be part of the Colombian film heritage, as well to promote the national film production.

The television industry is also still small, however many domestic TV shows (mostly soap operas) have been exported in the past few years and TV stations are coming to film in Colombia due to the low film costs, availability of technicians and good levels of technology infrastructure that allows production of high-quality series.[2]

[1] Data source: Proexport Colombia, "Film Industry in Colombia".

[2] Data source: Proexport Colombia

Currently, there are two private and three public television channels with nationwide coverage and nine regional channels. The National Television Committee (which is the governmental entity in charge of developing the policies regarding the television service) has opened a public bid in order to allow a third private channel with nationwide coverage This process has been suspended due to legal matters, since there was only one bidder.

Key Tax Facts

Highest corporate income tax rate	33% for the taxable year 2011
Highest personal income tax rate	33% for the taxable year 2011
Normal non-treaty withholding tax rates: Dividends	0%***
Interest (income tax)	33% for the taxable year 2011*
Film royalties (income tax)	19.8% for the taxable year 2011**
Tax year-end: Companies	December 31
Tax year-end: Individuals	December 31
Financial Transactions Tax – GMF	It is a debit tax at 0.4%

* If some conditions are met, interest is taxable at 14%.

** Rate = 33% over 60% of payment.

*** The portion of profits non-taxed at subsidiary level, are taxed at the 33% for taxable year 2011.

Film Financing

Financing Structures

There are several corporate structures for doing business in Colombia and such structures can be used to set up a business in the Colombia film industry because there are not restrictions regarding the kind of entity that is able to develop these activities.

Corporation (Sociedad Anónima S.A.)

An S.A. can be incorporated with five or more shareholders, none of which could have more than 94.9% of the total shares of the company. The shareholders are liable up to the amount of their capital contribution. The company is incorporated through a corporation contract that includes the articles of incorporation and the bylaws of the company. These documents must be formalized through a public deed before a local public notary, and then registered in the local Chamber of Commerce of its main domicile. The company issues nominative share certificates that are negotiable.

The social capital is divided in authorized share capital, subscribed share capital, and paid share capital. At the moment of the incorporation, at least 50 percent of the authorized capital must be subscribed, and at least 33 percent of its subscribed share capital must be paid up. If a shareholder owns 95 percent or more of the total subscribed shares, the corporation falls into a dissolution cause.

Simplified Shares Corporation (SAS)

Act 1258 of 2008 introduced a new kind of company, the simplified shares corporation "sociedad por acciones simplificada" (SAS, as its acronym is in Spanish).The SAS is a type of corporate structure which gives more flexibility to the founders in setting the basic rules of the company.

The SAS can be incorporated in Colombia with one or more shareholders and the liability of them is limited to the amount of their capital contribution; likewise, the shareholders of a SAS are not joint or severally liable for tax or labor liabilities.

The SAS can be incorporated with a private document; it is not necessary to grant a public deed before a notary public, except if the shareholders will contribute real property to the SAS.

At the moment of the incorporation, the subscription and payment of the capital does not have to fulfill a specific proportion, but the subscribed capital must be paid within the following two (2) years from the date of the registration of the founding charters with the Chamber of Commerce.

Limited Liability Company (Sociedad Limitada)

A limited liability company can be organized by 2 to 25 partners. The partners are liable up to the amount of their capital contributions, except for tax and labor liabilities, in which case partners are severally and jointly liable along with the company according to particular provisions.

Capital must be fully paid up at the time of LLC organization and is divided into equal capital quotas of equal amount, which may be assigned in accordance with the provisions in the company's bylaws and Colombian law. The limited liability company is organized through a social contract that contains the articles of organization and the bylaws of the company; such contract must be formalized through a public deed before a local notary and then registered at the Chamber of Commerce of its main domicile.

Branch of a Foreign Company

A foreign company wishing to incorporate a branch to undertake "permanent business" in Colombia must register before a notary public, notarized copies of the bylaws of the head office, a minute issued by the head office governing body deciding the incorporation of a branch in Colombia and documents evidencing the existence and legal representation of the head office. The public deed incorporating the branch must specify the business to be undertaken, the amount of assigned capital, the duration of business to be undertaken, and the reasons for their termination. The company must appoint a general attorney and a Statutory Auditor.

The income tax rate applicable to branches is 33 percent as of tax year 2011, over the income taxable base (gross income minus costs and expenses) regarding only its Colombian source income and equity.

Act of Employment Formalization Incentive

Act 1429 of 2010, Law of Employment Formalization ("LEF"), allows gradual discounts for small companies on the fees regarding the registry and renewal with the Merchants Registry.

For the registry with the Merchants Registry, during the first year of the company's activities, no payment of the fee established for the Merchants Registry. For the renewal of the Merchants Registry, during the second year of activities, the discount is 50%; 75% for the third year of activities and 100% for the fourth year.

Moreover, all companies which hire people under 28 years old, women above 40 years old who during the previous year have not been employed; people with disabilities, displaced people, the armed conflict, persons who have left the illegal armed groups and a person who earns less than 1.5 MW may obtain a tax credit for a discount in payroll taxes and other contributions of the payroll.

Additionally, this Act establishes for small companies[3] a gradual income tax payment obligation and gradual payroll taxes payment obligation from the starting of its activities, according to the following parameters:

- 0 % of the income tax rate during the first and second taxable year; 25% for the third taxable year; 50% for the forth taxable year; 75% for the fifth taxable year and 100% for the sixth taxable year.

[3] Those companies which staff does not exceed than 50 employees and assets are not greater than 5,000 Minimum Wages (USD 1,486,000 approx.)

These companies will not be levied with withholding tax and presumptive income during five (5) years from the start of their activities.

Distribution or Agency Contracts

Foreign companies are able to distribute films in Colombia signing commercial agency contracts with Colombian companies.

Depending on the nature of the contract, the law may establish the obligation of the company which products are distributed to pay some amounts to the distributor at the termination of the contract.

In these cases, the foreign company does not need to establish a branch in Colombia and thus payments received from exploiting films in Colombia are subject to income tax (as discussed below).

Tax and Financial Incentives

Quota for Cinematographic Development

Act 814 of 2003 created a tax benefit and a special contribution called "Quota for Cinematographic Development".

The tax benefit consists of a tax deduction of 125 percent of the amount invested or donated to a Colombian film project approved by the Department of Culture, regardless of the activity producing income of the investor or donor. The Department of Culture will issue a Certificate of Cinematographic Investment or Cinematographic Donation.

The tax benefit will not be applicable if the investor is a producer or co-producer of the cinematographic project.

Quota for Cinematographic Development Rate (Special Contribution)

For exhibitors: 8.5 percent on total income from the exhibition of films

For distributors: 8.5 percent on total income from the distribution of foreign films

For producers of Colombian films: 5 percent on total income

Exhibitors, distributors, and producers are responsible for the payment of the Quota for Cinematographic Development (special contribution). The withholding tax agent of the quota is the exhibitor and a tax return must be filed monthly.

Other Financing Considerations

Colombian and foreign financing can be obtained. Foreign indebtedness is subject to a prior deposit with the Colombian Central Bank. However, since the year 2008 said deposit is equivalent to 0 percent of the total foreign loan; therefore, this requirement is now moot.

Foreign investment in Colombian television is allowed. However, according to Law 680 of 2001, a limit of forty percent (40 percent) is placed on foreign investment in the capital of companies that have concessions to run channels on Colombian television.

Corporate Taxation

Corporate Tax

Colombian companies are taxed at a rate of 33 percent on the taxable income (gross income minus costs and expenses):[4]

Dividends distributed from profits that have been taxed at a corporate level, will be considered as non taxable income for a foreign shareholder or stakeholder, then withholding tax will not be applicable in order to avoid double taxation.

In the opposite sense, if dividends are distributed from profits that have not been subject to income tax at a corporate level, they will be taxable income for a foreign shareholder. In this case, the dividends paid abroad will be subject to a 33 percent withholding tax.[5]

b. Income tax on royalties paid abroad

The taxable base for the exploitation of films under any legal title, by a foreign individual or company without a domicile in Colombia is 60 percent of the total royalties paid abroad. This taxable income will be subject to a 33 percent tax withholding. Therefore, the total income tax impact will be 19.8 percent on the total amount of the royalties.

In consequence, if a Colombian subsidiary or a foreign branch makes a payment for the exploitation of a film within Colombia to a parent company or head office abroad, such a payment will be subject to the above mentioned 19.8 percent.

If the licensee is a resident of Spain, Chile or Switzerland, the withholding tax rate will be 10 percent.

[4] According to section 107 of the Colombian Tax Code, costs and expenses are deductible provided they are necessary, proportional and have a causality relationship with the income generated by the taxpayer.

[5] Sections 48 and 49 of the Colombian Tax Code. Decree 567 of 2007.

c. Property transfer of films

In the case of property transfer of films, the following rules must be considered regarding payments abroad for this concept:

- If the property transfer of films is executed while the films are inside Colombian territory, the income arising from that payment will be national source income and taxable in the country; therefore, withholding tax will apply at the 14 percent rate over the gross payment or accrual. In this case, the receiver of such payments (foreigner without residence or domicile in Colombia) will have to file an income tax return, according to the general rules of the Colombian Tax Code[6]
- If the property transfer of films is executed while the films are not within Colombian territory, the income coming from such payment will not be national source income; therefore, withholding tax will not apply over such payment or accrual

d. Property transfer over the copyrights of the film

In the case of property transfer of copyrights of the films, the following rules must be considered regarding payments abroad for this concept:

- If the property transfer of the copyrights is executed while the copyrights are registered in Colombia, the income from that payment will be national source income, taxable in the country; therefore, withholding tax will apply at the 14 percent rate over the gross payment or accrual. In this case, the receiver of such payments (foreigner without residence or domicile in Colombia) must file an income tax return according to the general rules[7]
- If the property transfer of the copyrights is executed while such copyrights are not registered in Colombia, the income from such payment will not be national source income; therefore, withholding tax will not apply over such payment or accrual

e. Special deduction of the income tax

The taxpayers in Colombia (subsidiary or branch office) may take as a deduction the amounts paid abroad for the acquisition or license for showing a film in Colombia, if such payment can be considered as a necessary investment to be amortized over more than five years, or in a shorter period of time if the nature of the business demands that the amortization has to be done in a shorter period of time.[8]

[6] Sections 415 and 592 of the Colombian Tax Code.

[7] Sections 415 and 592 of the Colombian Tax Code.

[8] Sections 142 and 143 of the Colombian Tax Code.

Municipal Industry and Commercial Tax

Colombian companies and branches of foreign companies are subject to a municipal tax called "Impuesto de Industria y Comercio (Industry and Commerce Tax), at rates from 0.3 percent to 1.4 percent on the total revenues. This tax is payable on gross revenues from film exhibition activities.

Indirect Taxation

Value Added Tax (VAT)

The general rate of Value Added Tax in Colombia is 16 percent on the sale of movable tangible goods, importations, and the rendering of services within Colombian territory.

When a foreign company without domicile in Colombia renders services of any type inside the Colombian territory to a Colombian resident, VAT will apply upon the fees or services value; however, the foreign company will not be economically affected by the application of this tax, because the Colombian resident will implement a "reverse charge mechanism" or "hypothetical withholding", in order to fulfill its tax liabilities before the tax administration (DIAN).[9]

VAT at the 16 percent rate will also apply to the provision of licenses and the authorization to exploit films, in favor of licensees located in Colombia. The VAT will be accrued by the Colombian licensee via reverse charge mechanism.

Likewise, commissions or fees charged by agents with residence in Colombia to foreign companies accrue VAT at 16 percent rate.

There is no VAT chargeable on showing films, i.e., ticket for the cinema (Section 476, subsection 11, Colombian Tax Code); however, the rental of video movies in Colombia accrues VAT at the 16 percent rate.

Tax on the Exhibition of Films

In the city of Bogota only, there is a Beneficence Tax at 10 percent of the price of a ticket to a public spectacle (among them film exhibitions).

Stamp Tax

Beginning in 2010 the stamp tax rate is 0% when an agreement is signed.

[9] When a foreign company performs services subject to VAT in Colombian territory, the Colombian company that purchases those services shall self-assess the 100 percent of the VAT accrued at a rate of 16 percent, and pay it to the Colombian Tax Authority by means of a withholding tax return. In other words, the VAT will be accrued in head of the recipient of the taxable service who will be liable to declare and pay the TAX via a withholding tax return. Given that the tax will be in head of the recipient of the service, the withholding does not affect the amount of the payments abroad.

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Chapter 08

Czech Republic

Introduction

The Czech Republic should continue to be an attractive location for film production in the 21st century.

Key Tax Facts

Corporate income tax rate	19%
Personal income tax rate	15%
VAT rates	10%, 20%
Annual VAT registration threshold	CZK 1,000,000 (approx. EUR 41,500) (no minimum threshold for foreign entities)
Normal non-treaty withholding tax rates: Dividends	15% (exemption based on parent-subsidiary directive)
Interest	15%
Royalties	15%
Tax year-end: Companies	Accounting year
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

Co-production

There are no specific legal rules in Czech legislation governing co-production in the form of joint ventures. It is possible for a Czech investor to enter into a co-production with a foreign investor without establishing a separate legal entity by concluding an Association Agreement under the Czech Civil Code.

Under Czech legislation, several investors may associate themselves for the purpose of achieving an agreed joint purpose. Such an association is not regarded as a legal entity. Therefore, all participants are treated as unrelated individuals, both legally and in terms of taxation, both direct and indirect.

All participants shall own the activity jointly, each owning a share in the ratio corresponding to the extent of his contribution. All participants shall also own any revenues derived from the activity jointly. Each participant's share in the revenues from such activity (including exploitation) may be stipulated in the Association Agreement, otherwise each participant's share shall be equal.

Czech tax legislation clearly states that even in the absence of a legal entity, any income of a non-resident participant derived from his participation in such an association is considered to be income generated by a permanent establishment. An applicable double tax treaty may modify this treatment.

Revenues from exploitation would be distributed to the participants according to the Association Agreement, or if not stipulated in the agreement, distributed equally. If no permanent establishment of a foreign participant is created, the taxation treatment of these revenues would be governed by the legislation of his country of residence. On the other hand, if a permanent establishment is created (the most likely scenario), all revenues attributable to the participant would be taxable in the Czech Republic.

It is worth considering carrying out the production through a Czech special purpose company (e.g., a "camera for hire" company) set up in the Czech Republic by the contractual parties of the Association Agreement. This company would produce the film under a production contract with the association participants, entitling it to an appropriate production fee (e.g., on a cost-plus basis) but no further rights over the film. The film rights would then be exploited by the parties to the Association Agreement from their respective locations. As there would not be any permanent establishment of the participants of the association in the Czech Republic, in this case, the resulting revenues would be taxable in the country of their residence.

Partnership

Financial investors and film producers from several countries may form a partnership with its registered office in the Czech Republic. Such a partnership may take the form of either a general (unlimited) commercial partnership ("verejna obchodni spolecnost") or a limited partnership ("komanditni spolecnost"). Both of these structures are more formal arrangements and involve the constitution of a legal entity separate from the founders of the partnership company (unlike the above described Association Agreement). Partners may be either Czech or foreign individuals, or companies. However, please note that such structures are not common in the Czech Republic.

Although a general partnership is considered to be a legal entity, it is not treated as a taxable entity. Instead, the partners are taxed on their respective shares in the partnership's profits. Any income of a foreign partner derived from the Czech general partnership is automatically considered to be income generated by his permanent establishment in the Czech Republic. Subsequently, his share in the profits of the partnership (including revenues from exploitation rights) is subject to Czech corporate or individual income tax.

In the case of the limited partnership, the respective part of the partnership's profit attributable to the general (unlimited) partners is taxed under the same rules which are applicable to the partners of a general commercial partnership. The part attributable to the limited partners is subject to corporate income tax and paid by the partnership under the general rules applicable to business companies. Any after-tax profit which is then distributed to limited partners is taxed as dividends.

An advantage for Czech partners of a general partnership and general (unlimited) partners of a limited partnership is that the profits/losses derived from their partnership are included in their particular tax base. This allows an immediate offset of losses resulting from one source of income against another positive source of income.

The liability for charging output VAT and the right to recover input VAT arises at the level of the legal entity and does not apply to the individual partners.

Other Tax-Effective Structures

The most common approach is the creation of a separate Czech legal entity – a Limited Liability Company (s.r.o.) or Joint Stock Company (a.s.). Both entities are regarded as separate legal entities.

A Limited Liability Company or Joint Stock Company is subject to standard taxation in the Czech Republic. The income of the company is subject to corporate income tax of 19 percent – for further details see below.

Tax and Financial Incentives

A new system of financial incentives for filmmakers working in the Czech Republic was launched in June 2010. This program was approved by the European Commission. The program is targeted at domestic filmmakers having domicile in the Czech Republic and at foreign filmmakers having a branch in the Czech Republic. A subsidy is granted by the Czech Ministry of Culture to applicants who meet the so called cultural and production test (e.g. director, actors having domicile in the Czech Republic or any of European Economic Area ("EEA") country; the screenplay is about person or event belonging to the Czech or European culture or history).

The subsidy can be granted up to 20 percent of a film's expenditures on goods and services, which were acquired from Czech firms or firms that are registered for taxes in the Czech Republic. Further a subsidy up to 10 percent can be granted on foreign actors' remuneration if it is taxed in the Czech Republic.

Subsidies are paid out retrospectively after the project has been accomplished.

A company or individual that is resident in the Czech Republic can further benefit from the Czech National Fund for the support and development of Czech cinematography. If foreign entities have shares in the Czech company, the company can apply for this subsidy only if the shares held by the foreign entities do not exceed 50 percent of the total. However, there is no legal entitlement to this kind of state support and the granting of support is at the discretion of the Council.

The following projects are eligible for support:

- Creation of a Czech film;
- Production of a Czech film;
- Distribution of a worthy film;
- Promotion of Czech cinematography;
- Technical development and modernization of Czech cinematography; and
- Production, distribution and promotion of the films of national and ethnic minorities that live in the Czech Republic.

The grants are provided in the form of purpose subsidy, loan or returnable grant-in-aid. Aid could also be provided in the form of a guarantee for a bank loan.

Czech resident companies can also benefit from European Union funds for the support and development of European cinematography.

Other Financing Considerations

Tax Costs of Share and Bond Issues

Generally, no form of stamp duty or capital duty is charged on the issue or the transfer of shares, partnership interests or debt instruments.

Exchange Controls and Regulatory Rules

There are no exchange controls preventing foreign investors from repatriating profits to their home territory. There is a duty to notify some operations, such as receiving a financial debt from a foreign resident, to the Czech National Bank.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Czech Resident Company

The tax rate on corporate income amounts to 19 percent in 2011.

Foreign Company

A foreign company not having its registered office in the Czech Republic shall be liable to tax on income arising only from sources in the Czech Republic. Such income shall mean, in particular, income generated by the activities of a permanent establishment. Any double tax treaty may modify the rules for constituting a permanent establishment. The permanent establishment is liable to the same tax rate as a resident company.

Film Production Company – Sale of Distribution Rights

Gain on the sale of intangibles will be recognized as regular income at the time the contract payment becomes enforceable, irrespective of when the payment is received. Should the distribution rights be granted only for a limited period of time, it would be possible to accrue the revenues over such time period.

Film Distribution Company

If a Czech resident company acquires rights in a film from an unrelated production company, the transaction is regarded as the granting of a license.

Should the license be granted for a limited time period, the costs connected with the granting of the license should be accrued over this period. Should an unlimited license be granted, the expenditures must be capitalized and depreciated (for details refer to the section "Amortization of Expenditure").

If any of the above-mentioned payments is made to a foreign entity, the Czech company is obliged to deduct withholding tax in the amount of 15 percent. This rate could be reduced by the applicable double tax treaty.

Transfer of Film Rights Between Related persons

Czech tax legislation incorporates the arm's length principle. Based on the special provision of the Income Tax Act, the prices in transactions between related parties should be at arm's length. If any of the above-mentioned transactions take place between related parties, the Czech tax authorities may apply the arm's length test to determine whether the contractually agreed price is acceptable. Otherwise, the tax authority is entitled to adjust the tax base of the Czech taxpayer. Related parties are considered to include all companies within a group, companies where the same individuals participate in the management of such companies, and companies entering into the transaction with the aim of reducing the tax base.

In particular, the transfer of rights and the granting of licenses between related parties are likely to be of interest to the tax authorities, if the other party is not subject to taxation in the Czech Republic. It is therefore advisable to document the intra-group transfer pricing policy for all such transactions and to ensure that the policy is defensible and consistently applied.

The Czech transfer pricing rules are based on the OECD transfer pricing guidelines.

Amortization of Expenditure

Production Expenditure

Where a company produces a film in order to exploit the film itself, the production costs should be capitalized as an intangible asset and depreciated. Audio visual work must be depreciated over a period of 18 months.

Where a company acquires rights to a film from another person, the rights must also be capitalized and depreciated. If the contract limits the rights to a film for a certain tax period, the right should be depreciated over that period. In other cases, the right should be depreciated over 18 months.

Where a company produces a film without the intention to exploit the film itself, i.e., the production company solely renders production services to a third party at the full risk of the third party, the costs incurred by the production company are fully deductible as business expenses.

Other Expenditure

There are no special rules applicable to film or distribution companies. Business expenses not related to the production costs of the film are deductible as incurred. Entertainment costs and gifts are non-deductible for tax purposes.

Expenditures on acquiring fixed assets, such as land and buildings, office furniture and equipment should be capitalized and depreciated in accordance with Czech tax law.

Losses

According to the Income Tax Act, a tax loss that was recorded and assessed in the preceding taxable period may be carried forward, but no more than five taxable periods immediately following the taxable period in which the tax loss was assessed.

Foreign Tax Relief

A Czech film production or distribution company, which receives income from abroad, may in many cases be subject to foreign withholding tax. The method of avoidance of double taxation depends on the particular double tax treaty.

Indirect Taxation

Value Added Tax (VAT)

As a member of the European Union, the Czech Republic applies VAT to the supply of goods and services in a way that is, generally, consistent with EU law.

Supply of a Completed Film

The supply of a film is regarded as a transfer of rights. Generally, the VAT rate applicable to the supply of a completed film is 20 percent. If the supplier of the film is a taxable person, he must account for VAT as at the day on which the license for the completed film is granted or the date of issue of the invoice or the date of payment (whichever occurs earlier).

However, the supply of a film is subject to the reverse charge mechanism if the license is granted to or by a person registered for VAT in another EU member state or to a person with a registered office outside the EU, provided the recipient does not have an establishment in the Czech Republic.

Sale of Distribution Rights, Royalty Payments

The sale of distribution rights and royalty payments are subject to the same taxation principles as the supply of a completed film.

Peripheral Goods

The VAT treatment of sales of peripheral goods (items connected to the distribution of a film) depends on the nature of the goods involved.

Thus, supplies of books and magazines (provided advertisements represent less than 50 percent of the content) are subject to the reduced rate of 10 percent, whereas supplies of clothes or recorded music are subject to 20 percent.

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Promotional Goods and Services
The VAT rate applicable to the supply of promotional goods and services depends on the nature of goods and services.

The provision of promotional goods free of charge is not regarded as a taxable supply of goods provided the acquisition value of the promotional item does not exceed CZK500 (EUR 21); the provider of promotional goods up to this value is still allowed to deduct input VAT relating to the acquisition of the goods.

If promotional goods with a value exceeding CZK500 are provided without consideration, the provision of such goods is subject to VAT provided the related input VAT was deducted.

Catering Services and Accommodation
Catering services are subject to the standard rate of 20 percent. The reduced tax rate (10 percent) is applied to accommodation services.

Purchasing of Goods
Goods imported from a non-EU country are subject to import VAT (in most cases 20 percent) and is payable by the importer. If the imported goods are used for the economic activities of the importer, he may recover input VAT. It is possible to settle import VAT by means of the regular VAT return; provided the importer is entitled to claim input VAT on the goods imported, it will be possible to claim the credit in respect of input VAT in the same period and no tax will have to be paid.

Where goods are purchased and delivered from a person registered for VAT in another EU Member state, the recipient is obliged to account for input VAT; if the general conditions for the entitlement to input VAT credit are met, the credit may be claimed in the same period as output VAT and no tax has to be paid.

If goods are purchased from local entrepreneurs, VAT will be charged by the supplier. Such VAT is in principle recoverable by claiming input VAT credit in the tax return.

Personal Taxation

Non-Resident Artists (self-employed)

Income Tax Implications
Czech tax non-residents are liable to tax only on Czech source income, i.e., remuneration for work (activities) performed in the Czech Republic. Most Czech double tax treaties stipulate that income derived by a resident of a Contracting State as an entertainer from his personal activities exercised in the other Contracting State, may be taxed in the Contracting State in which the activities of the entertainer are exercised. This means that the activities of foreign artists exercised in the Czech Republic shall be taxed in the Czech Republic. Therefore, gross income from an activity performed personally in the Czech Republic is subject to withholding tax at the rate of 15 percent. The withholding tax is collected by a Czech person paying remuneration for the artistic performance. According to Czech double tax treaties any double taxation of such income from Czech sources may be avoided in the artist's home country by using the relevant method stipulated by the treaty. Administrative or support staff (e.g. cameramen, producers, film directors, choreographers, technical staff) are subject to different rules than performing artists. If they are not employees they will be taxed in the Czech Republic only if they have a permanent establishment therein or in case that the income has a character of copyright payment it will be subject to a withholding tax of 15 percent (subject to exemption or reduction in rate according to a particular Double Tax Treaty).

Social Security Implications
EU Regulation No. 883/2004 (former No. 1408/71) must be followed to determine where social security contributions should be paid in the case of Artists resident in other EU member states.

Resident Artists (self-employed)

Income Tax Implications
Artists are not usually treated as carrying on trade. Their income is classified as income from an independent activity and the person who exercises such activity is obliged to register himself at the Tax Authority for personal income tax. Resident artists will be liable to tax in the Czech Republic on their worldwide income. The net Czech income is subject to a flat tax rate of

15 percent. The net income is calculated as the income after deduction of related expenses; however, no obligatory social security insurance may be deducted. Artists' standard business expenses are tax deductible. Provided that a taxpayer does not claim expenses, he may deduct 40 percent of his income as a lump sum expense.

Social Insurance of Czech Artists
A self-employed artist is subject to the same rules as other independent entrepreneurs.

Health Insurance of Czech Artists
A self-employed artist who exercises independent activities is obliged to pay health insurance contributions.

Employees

Income Tax Implications
The employer is obliged to withhold tax in respect of personal income tax from dependent activities. The income of individuals is subject to a flat tax rate of 15 percent. The tax on employment income is calculated on the "super-gross" salary, which is the gross salary increased by 34 percent (social security and health insurance contributions payable by the employer in the Czech Republic). Thus, the effective tax rate is not 15 percent but a higher rate depending on the income level.

A taxpayer (employee) who was receiving taxable remuneration in a taxable period from only one employer or consecutively from more than one employer, may submit a written request to the last employer for an annual settlement of tax prepayments. Such a request must be made no later than February 15 of the following year. If an employee has other income in addition to the income from the dependent activity, the Czech company should issue a standard confirmation of the employee's taxable income and tax withheld ("Potvrzeni o zdanitelne mzde a srazenych zalohach na dan ze mzdy") after the year-end. This confirmation would be filed as an enclosure to the employee's Czech personal income tax return for the year concerned.

An employee is entitled to reduce his income by tax allowances and his tax by tax reliefs. A non-resident employee is entitled to reduce his tax only by the basic tax relief. Other tax reliefs will be applicable to a non-resident only if the income from Czech sources exceeds 90 percent of his total income.

Social Security Implications
EU Regulation No. 883/2004 on Social Security (the "Regulation") came into effect on May 1, 2010. The general rule of the Regulation is that persons to whom the Regulation applies, i.e., EU nationals and non-EU nationals (third country national) who are legal residents of an EU state, should be subject to social security only in one member state, which should be the state in which they perform the work (i.e., in the Czech Republic). This follows from Article 13 of the Regulation, which states that the legislation of the state in which the employee works, will apply.

However, an employee may apply for an exemption from the liability to pay social security contributions in the Czech Republic in accordance with Article 17 of the Regulation, if the prospective period of employment by an employer residing in the Czech Republic would be limited and if the employee was paying social security contributions in another EU Member State before this employment provided it is in best interest of the employee to remain in the home country system.

In other cases, the salary of the expatriate is subject to Czech social security and health insurance contributions. A Czech employer is obliged to withhold these contributions from the employee's remuneration. The employee's contribution amounts to 11 percent and the employer's part is 34 percent of the gross remuneration. There is an annual cap on social and health insurance contributions equal to 72-times the average national salary (CZK 1,781,280 in 2011).

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Chapter 09

Fiji

Introduction

Since 1990, the Fiji government has undertaken a program of significant business tax reforms. The result is a changed Fijian tax landscape that includes the broad based Value added Tax (VAT), Gambling Turnover Tax (GTT), Hotel Turnover Tax (HTT) and introduction of Capital Gains tax (CGT) and Tax Practice Statements.[1]

On the international front, new double taxation agreements (DTA) with countries such as Australia, South Korea, Malaysia, Papua New Guinea and Singapore have come into force. Other significant changes on the international front include amendments to the taxation of dividends and branch profits of foreign companies upon repatriation.

Of more direct relevance for film projects has been the amendment of the Sixth Schedule of the Income Tax Act and the introduction of the new Film-Making and Audio-Visual Incentives as a result of a 2002 review to reform and strengthen the Fiji audio-visual industry. The shift towards producer based incentives is designed to make Fiji a more attractive location for overseas film investment by introducing tax rebates, deductions for capital expenditure and exemptions from tax in respect of the income from films as well as that of qualifying employees.

In addition, a new authority called the Fiji Islands Audio-Visual Commission was established to promote and develop the audio-visual industry in Fiji and carry out additional functions in relation to the support and promotion of Fijian films as well as the provision of tax incentives to film producers.

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[1] A re-write of the Fiji tax legislations is currently taking place. The new legislation is expected in early 2012 and may change the information provided at the date of publication.

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Key Tax Facts

Corporate income tax rate	From 2010 – 28% 2009 – 29% 2004 to 2008 – 31%
Highest personal income tax rate	31%
Value Added Tax	From 2011 – 15% 2003 to 2010 – 12.5%
Annual VAT registration turnover threshold	Services – F$50,000 Goods – F$50,000
Normal non-treaty withholding tax rates: Dividend	15%
Interest	10%
Royalties	15%
Tax year-end: Companies	Variable based on financial year end
Tax year-end: Individuals	December 31

Partnership
General partnerships are not taxed in Fiji and accordingly are one of the commonly used business structures. Limited partnerships are not used in Fiji.

Where a general partnership is formed in Fiji to make a film in Fiji, the Fijian tax treatment will be straightforward as general partnerships are not tax paying entities. However, partnerships are required to lodge tax returns in Fiji disclosing their profit sharing arrangements. All partners will be subject to full Fijian tax on their share of the partnership profits as the carrying on of a business by the partnership will cause each partner to have a permanent establishment in Fiji.

In the event that a partner is a resident of Fiji but their partnership carries on business outside Fiji under the control of a non-Fijian resident, the non-Fijian resident partner would not be liable to Fijian tax. However, the Fijian resident partner would still be liable to Fijian tax on their share of the partnership's profit.

Equity Tracking Shares
The term "equity tracking shares" is not used in Fiji. Internationally, the term can be used to refer to shares that provide dividend returns depending on the profitability of a film production company's business. These shares have

the same rights as the production company's ordinary shares except that dividends are profit-linked and have preferential rights to assets on liquidation of the company.

If the production company is resident in Fiji, such shares would be regarded as preference share capital. Normally, the dividends paid on such shares would be treated in the same way as dividends paid on ordinary shares. Dividends paid on ordinary and preference shares in Fiji are normally treated in a similar manner provided that preference shares are considered to be an equity instrument under the debt/equity rules.

If such shares are acquired by a Fijian resident investor, but the production company is not a resident of Fiji, then any dividends received would be treated in the same way as dividends received on ordinary shares. Any tax withheld in the foreign jurisdiction would be dealt with according to the dividend article of the appropriate DTA.

Sale and Leaseback
A purchase and leaseback of a film is not usually tax effective in Fiji as the purchaser is regarded as having made a capital payment and would only be able to amortize the purchase price over the life of the film's copyright. In addition, any license payments received by the purchaser/lessor of the film would be fully assessable to tax.

Tax and Financial Incentives

Investors
Fijian tax legislation has a general anti-avoidance provision whose broad impact is to allow Fijian revenue authorities to attack any transaction that has the dominant purpose of avoiding tax.

In 2002 the Government initiated a review and subsequent amendment of the Sixth Schedule of the Income Tax Act. This review resulted in the provision of various financial and tax incentives such as the Film Making Incentives and the Audio Visual Incentives. The Sixth Schedule was further reviewed and revised effective from January 2011.

Part 1 – General
Section 3 (1) – Limitation on applications for incentives

A company, production entity or any person engaged in An Audio-Visual Production (AVP) in Fiji may apply for only one incentive under Parts 2, 3, 4 or 5.

Part 2 – Film Making Incentives

The income of qualifying employees of a film company is fully exempted from income tax or taxed at reduced rates for a period determined by the Minister.

Part 3 – Audio Visual Incentives

An Audio-Visual Production (AVP) qualifies as an F1 or F2 audio-visual production if it satisfies certain minimum prerequisites including 100 percent of its production budget being deposited in an AVP bank account prior to the commencement of the production and 100 percent of its profits or revenues paid to any Fiji investors must pass through an approved Fijian bank account before any disbursement.

Division 5 – Deduction for Capital Expenditure on Audio-Visual Production

Capital expenditure expended by a taxpayer by way of contribution to the audio-visual production (AVP) costs in respect of a qualifying audio-visual production can be deducted in the year monies are expended as follows:

- F1 AVP – 150 percent of the monies expended
- F2 AVP – 125 percent of the monies expended

Division 6 – Taxation of Audio-Visual Income

If a taxpayer incurs capital expenditure by way of contribution to the AVP costs in respect of a qualifying AVP, the income derived by the taxpayer from the commercial exploitation of the copyright is exempt from tax until the taxpayer has received, from the commercial exploitation, a return as follows:

- F1 AVP – 60 percent of the monies expended
- F2 AVP – 50 percent of the monies expended

Thereafter the net income would be subject to tax.

Part 4 – Studio City Zone

Division 1 – Studio City Zone (SCZ)

A sole proprietor, partnership or company, on application to the Fiji Audio-Visual Commission (FAVC), may be granted an audio-visual operating license. Such a license exempts the licensee from the payment of income tax (except withholding tax) on any income derived by the licensee from a production activity with effect from the commencement of the audio-visual operating license.

The income from the sale of shares in a licensee or the sale of the licensee's business or part of a business would be subject to tax at the rate of:

- 20 percent – if the sale occurs within 2 years after the commencement of the business
- 15 percent – if the sale occurs within 4 years after the commencement of the business
- 10 percent – if the sale occurs within 6 years after the commencement of the business
- 2.5 percent – if the sale occurs within 8 years after the commencement of the business

Division 2 – Taxation Concessions to Residents of the SCZ

Earnings derived by an individual approved by the FAVC may be exempt from tax. The FAVC may approve an application for tax exemption from individuals provided they meet the following conditions:

Non-citizens

- The individual is resident in the SCZ for a period or periods of at least 60 days in aggregate in the year of assessment
- Maintains a permanent place of residence in the SCZ during the year of assessment
- Provides to the Commissioner a confirmation from a chartered accountant that he/she had net audio-visual earnings in excess of F$100,000 in the year of assessment and held assets during the year of assessment in the SCZ in excess of F$250,000 in real estate, tangible assets including stock, plant and equipment and tools of trade or other valuable and confirmable assets excluding cash and other liquid assets

Citizens

- The individual is resident in the SCZ for a period or periods of at least 183 days in aggregate in the year of assessment or, if he/she derives a minimum of 80 percent of audio-visual earnings from outside Fiji, is resident in the SCZ for a period or periods of at least 60 days in aggregate in the year of assessment
- Maintains a primary place of residence in the SCZ during the year of assessment

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- Provides to the Commissioner a confirmation from a chartered accountant that he/she had net audio-visual earnings in excess of F$50,000 in the year of assessment whether sourced from within or outside Fiji and held assets during the year of assessment in the SCZ in excess of F$100,000 in real estate, tangible assets including stock, plant and equipment and tools of trade or other valuable and confirmable assets excluding cash and other liquid assets

Part 5 – Film Tax Rebate

Division 2 – Tax rebate for Fiji Expenditure In Making a Film

Effective 1 January 2011, a film production company is entitled to a tax rebate of 47 percent of qualifying Fiji Islands production expenditure on a film. If the expenditure exceeds F$25 million, the tax rebate would be limited to F$11.75 million.

The tax rebate would only be granted to a film production company in an income year in which it satisfies the following requirements:

- The film was completed in that year
- The company is provided with a certificate for the film by the FAVC
- The company claims (irrevocably) the tax rebate in its income tax return
- The company is resident of Fiji and, if not resident, lodges a tax return for the purpose of claiming tax rebate
- The company is not a holder of a broadcast license in television or radio in Fiji and is not associated with any company or individual with substantial holdings in broadcast licenses in Fiji
- The company is not a theatrical exhibitor in Fiji and is not associated with any company or individual with substantial holdings in a theatre or group of theatres in Fiji

A company or any other person would not be not entitled to the tax rebate if an application has been made under Part 3 of the Sixth Schedule or has been issued with a provisional or final certificate for the film under Part 3 of the Sixth Schedule, whether or not the certificate is still in force.

FAVC may issue a certificate to a company stating that a film satisfies various requirements laid down in the Sixth Schedule including:

- The film was produced for exhibition to the public in cinemas or by way of television broadcasting or distribution to the public via internet
- The film is a large format feature film or a short film

- The film is a production intended for exhibition as an advertising program or a commercial in at least one significant international market
- The total of the company's qualifying Fiji Islands production expenditure is at least F$250,000 for large format film, short film, television program, television movies, mini-series, drama series, comedy series, documentaries, educational programs and series, animation series and current affairs series
- The total of the company's qualifying Fiji Islands production expenditure is at least F$50,000 for advertising or commercial programs.
- The film is not culturally derogative in its portrayal of the Fiji islands or its people

Division 3 – Production Expenditure and Qualifying Fiji Production Expenditure

A company's production expenditure on a film is the expenditure that is incurred in relation to the making of the film or reasonably attributable to the use of equipment or other facilities or activities undertaken in the making of the film.

The making of the film means the performance of things necessary for the production of the first copy of the film including pre-production and post-production activities in relation to the film and any other activities undertaken to bring the film to a state where it is ready to be distributed or exhibited to the general public.

The following costs are excluded in order to focus the tax offset on the expenditure that is incurred in the making of a film:

- developing the proposal for making of the film
- Arranging or obtaining finance for the film
- Distributing and promoting the film

Qualifying Fiji Islands Production Expenditure

A company's qualifying Fiji Islands production expenditure on a film is the production expenditure on the film to the extent that is incurred or reasonably attributable to:

- Goods and services provided in Fiji and paid from a Fiji bank account
- The use of land or building located in Fiji
- The use of goods located in Fiji at the time they are used in making the film

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Product Rulings

Under the product rulings system administered by the Fiji Revenue & Customs Authority (FRCA), it is possible to obtain a ruling which is legally binding on the Commissioner of Inland Revenue and which confirms the tax consequences to a class of investors contemplating an investment in a film.

No film product rulings have been issued since the amendment of the Sixth Schedule of the Income Tax Act.

Businesses

Interest payable on loans and other forms of business indebtedness can generally be deducted for tax purposes. However, the loan principal can never be deducted in calculating taxable profit.

Other general tax incentives for investment include certain beneficial rates of tax depreciation (known as "accelerated depreciation") for buildings and a 40 percent "investment allowance" for certain qualifying investments. The Fijian Government has also introduced further concession with effect from 1 January 2009, where a 100 percent income tax exemption is provided for a number of years in respect of any business established in a "Tax Free Region" subject to certain conditions.

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in Fiji on any issue of new ordinary or preference shares.

With the introduction of Capital Gains Tax (CGT) in Fiji, effective from 1 may 2011, profit on sale of shares in Fiji incorporated companies, or foreign companies with Fiji assets, are subject to 10 percent CGT.

Stamp Duties

Stamp duty is levied on certain types of transactions in Fiji and the rate of the duty varies depending on the type of transaction.

The transfer of shares is subject to stamp duty at the rate of F$1.01 for every F$100 (or part thereof) of the greater of the consideration paid and the unencumbered value of the shares. Stamp duty on the sale of real property is subject to duty at the rate of F$2.02 for every F$100 (or part thereof).

Exchange Controls and Regulatory Rules

The Reserve Bank of Fiji administers the *Exchange Control Act* in Fiji. There is therefore a very tight scrutiny of funds repatriated out of Fiji. In addition, under the financial transactions reporting legislation it is necessary to file a currency transfer report to transfer more than F$10,000 (or foreign currency equivalent) in or out of Fiji.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Fiji-resident Company

If a special purpose company is set up in Fiji to produce a film without acquiring any rights in that film, the tax authorities often query the level of income attributed to Fiji if they believe that there is flexibility in the level of production fee income that may be attributed such that it is below a proper arm's-length amount. It is difficult to be specific about the percentage of the total production budget that would be an acceptable level of income attributed to Fiji. The lower the percentage, the more likely an enquiry.

Non-Fiji Resident Company

If a company is not resident in Fiji but has a production office to administer location shooting in Fiji, it is possible that the tax authorities may try to argue that it is liable to tax in Fiji by being regarded as having a permanent establishment, subject to specific exemptions under an applicable DTA. The Fiji authorities would determine whether or not a "permanent establishment" exists by applying the appropriate article in an applicable DTA (i.e., presences such as a branch, office, factory, workshop or similar site). If no treaty exists then they could still be expected to apply a similar set of criteria.

If a company is not resident in Fiji and does not have a production office in Fiji but undertakes location shooting there, it is unlikely that it would be liable to tax in Fiji as it would not be regarded as having a permanent establishment.

If Fijian tax authorities attempt to tax a company on a proportion of its profits on the basis that it has a permanent establishment, they would first seek to attribute the appropriate level of profits that the enterprise would be expected to make if it were a distinct and separate enterprise engaged in that activity. However, as proper measurement of such profits is difficult,

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it is likely that the Fijian tax authorities would measure the profit enjoyed by the company in its own resident territory and seek to attribute a specific proportion, perhaps by comparing the different levels of expenditure incurred in each location or the periods of operation in each territory. The level of tax liability would ultimately be a matter for negotiation.

The foreign investor would have to rely on an applicable treaty and/or its home country rules to obtain relief from double taxation.

Examples of the relief provided for under Fiji's treaties are as follows:

Australia	Fiji tax on business profits creditable against Australia. tax (Article 25)
New Zealand	Fiji tax on business profits creditable against NZ tax (Article 22)
U.K.	Fiji tax on business profits creditable against U.K. tax (Article 22)
Japan	Fiji tax on business profits creditable against Japanese tax (Article XVII)
Singapore	Fiji tax on business profits creditable against Singapore tax (Article 23)
Malaysia	Fiji tax on business profits creditable against Malaysian tax (Article 24)
South Korea	Fiji tax on business profits creditable against Korea tax (Article 23)
PNG	Fiji tax on business profits creditable against PNG tax (Article 24)

Film Production Company – Sale of Distribution Rights

If a Fijian resident production company sells distribution rights (i.e., through licenses rather than an assignment of copyright) in a film to an unconnected distribution company in consideration for a lump-sum payment in advance and subsequent periodic payments based on gross revenues, the sale proceeds would normally be treated as income arising in the trade of film rights exploitation. The same rules would apply to whatever type of entity is making the sale.

If intangible assets such as distribution rights are transferred from Fiji to a connected party in a foreign territory, it is preferable to help ensure that such a transfer is carried out as part of a commercially defensible transaction, as the tax authorities may well seek to attribute an arm's-length price.

Film Distribution Company

If a Fijian resident distribution company acquires rights by way of a lump-sum payment for distribution rights from an unconnected production company, the payment for the acquisition of the rights is normally treated as an expense in earning profits. The expense is not regarded as the purchase of an intangible asset but as a royalty payment. This would be the case whether the company exploits the rights in Fiji or worldwide, and whether or not the production company is resident in a country that has a DTA with Fiji.

Where the recipient of the payments is a non-resident of Fiji and not subject to tax in Fiji, payments for distribution rights may be subject to Fijian withholding tax.

The Fijian tax regime does not discriminate between royalty payments for films or other intellectual property. In the absence of a treaty all royalties are subject to a withholding of 15 percent with the exception of South Korea and Singapore where the rate is 10 percent.

The income arising from exploiting such rights is normally recognized as trading income. The distribution company would be taxed on the income derived from the exploitation of any of its acquired films, wherever and however they are sub-licensed, provided that the parties are not connected. If they were connected, the tax authorities might question the level of income returned. For Fijian taxation purposes, income in this case is normally recognized when the right to be paid has been irrevocably determined.

Transfer of Film Rights Between Related Parties

Where a worldwide group of companies holds rights to films and videos, and grants sub-licenses for exploitation of those rights to a Fijian resident company, care needs to be taken to help ensure that the level of profit earned by the Fijian company can be justified. Any transactions within a worldwide group of companies are liable to be challenged by the Fijian tax authorities since they would seek to apply an open-market third-party value to such transactions. Indeed, if a Fijian resident company remits income to a low tax territory via a sub-licensing distribution agreement, the Fijian tax authorities can be expected to query the level of such income.

Amortization of Expenditure

Production Expenditure

At times a distributor may acquire the copyright in a film. Generally, this is done by way of an assignment of the copyright by the producer.

The distributor will obtain a deduction for the purchase price of the copyright over the period of the purchase. The tax treatment of the assignment of copyright as a true purchase of property consisting of the copyright, rather than a payment for the use of, or the right to use, the property (and therefore a royalty) will depend on all relevant facts and circumstances.

An investor in a qualifying AVP who takes the place of another investor before the film is completed may be eligible for a deduction. The replacement investor's contribution as well the expenditure incurred by the outgoing investor may still be treated as costs of producing a film.

As long as the requirements under Division 3 of Part 5 Division of the Sixth Schedule are satisfied, the replacement investor will be allowed a deduction in respect of the expenditure incurred by them as well as those incurred by the outgoing investor.

Other Expenditure

Neither a film distribution company nor a film production company has any special status under Fijian tax law. Consequently, they are subject to the normal rules to which other companies are subject. For example, in calculating taxable trading profits, they may deduct most normal day-to-day business expenditure such as the cost of film rights (as detailed above), salaries, rents, advertising, travel expenses, and legal and professional costs normally relating to the business.

Certain other expenditure cannot be deducted. For example, any expenditure on capital account, such as the purchase of land and buildings, goodwill, and investments cannot be deducted as well as the acquisition of plant and machinery (although capital allowances can be deducted at specific rates and in some circumstances these rates can be generous).

Losses

There are no special rules regarding loss recoupment. If a company has AVP expenditures, such expenditures can be offset against any class of income in the year of loss, but any unrecouped losses may only be carried forward to offset against film income derived in future years subject to Section 22 of the *Income Tax Act.*

Foreign Tax Relief

Producers and Distributors

There are no special rules for producers and distributors when it comes to foreign tax relief and so they are treated as ordinary taxpayers.

If a Fijian resident film distributor/producer receives income from unconnected, non-resident companies, but suffers overseas withholding tax, it is usually able to rely on Fiji's wide range of DTAs to obtain relief for the tax suffered. If no such treaty exists between the territories concerned, it would expect to receive credit for the tax suffered on a "unilateral" basis.

Indirect Taxation

Value Added Tax

Value Added Tax (VAT) of 15 percent is payable by an entity on the taxable supplies that it makes. An entity makes a *taxable supply* if the supply is made for consideration, in the course or furtherance of an enterprise that an entity carries on, the supply is connected with Fiji and the entity is registered for VAT or required to be so registered. A supply will be a taxable supply if it is VAT exempt.

An entity is entitled to input tax credits for the VAT component of its *creditable acquisitions*, that is, for the acquisitions incurred in carrying on its enterprise except to the extent that the acquisition relates to making supplies that are VAT exempt or the acquisition is of a private or domestic nature.

If a supply is "VAT exempt," no VAT is payable on it but the supplier cannot claim input tax credits for the VAT payable on its acquisitions that relate to that supply. VAT exempt supplies include supplies of residential accommodation and certain supplies of financial services (e.g., loans, mortgages, guarantees).

A supply is zero rated if no VAT is payable on it but the supplier is entitled to claim credits for the VAT payable on its acquisitions that relate to that supply. Zero rated supplies include exports and other supplies that are for consumption outside Fiji. With effect from 1 January 2009 "live broadcasts of films made or filming carried out in Fiji" has been specifically included in the relevant schedule detailing zero rated supplies.

There is no VAT on exported release positive prints or negatives provided that the goods are exported by the exporter. However, release positive prints or negatives imported into Fiji are subject to VAT calculated on the sum of the customs value of the goods, cost of overseas freight, and insurance and any customs duty.

Customs Duties

Blank videotapes, recorded tapes, video masters, and cinematographic films, exposed and developed, are subject to customs duty.

Customs duty is levied on an *ad valorem* basis. The valuation system is based on the WTO valuation agreement with some variations. Generally, the customs value is determined by reference to the price of the goods at the place of export (the place where the goods are place in a container, posted or placed on board a ship or aircraft). The following additions are made to the price to determine the customs value:

- Commissions other than buying commissions
- Foreign inland freight and insurance (to the extent these are not already included)
- Packing costs
- Cost of materials and services required for production of imported goods, supplied by the purchaser free of charge at reduced costs
- All or part of proceeds for resale, use, etc. that accrue to the vendor
- Certain royalties

The legislation in this area is quite complex and each case must be examined individually to help ensure that the correct value is used.

The Fiji Customs and Excise Service administers a system of strict liability/administrative penalties. Where customs duty is underpaid, the maximum administrative penalty that can be imposed is 200 percent of the short paid duty or F$1,000 whichever is greater. Penalties can also apply where incorrect information is supplied to Customs even if there is no duty underpayment.

The maximum judicial penalty for counterfeiting documents is F$20,000 or two years imprisonment or both and for fraudulent evasion is three times the value of goods or F$20,000 or two years imprisonment or both.

Personal Taxation

Non-Resident Artists (self-employed)

Income Tax Implications

Subject to its DTAs Fiji taxes the income arising to a non-resident artist from a performance in Fiji and any other activities carried on in Fiji. The authorities would also seek to tax income received outside Fiji in connection with a Fijian performance but not if it relates to services carried on outside of Fiji.

If a non-resident artist receives any payment arising from or in consequence of a Fijian activity, the Fijian payer is obliged to deduct "income tax" and account for this tax to the authorities. However, where a non-Fiji payer makes a payment to the non-resident artist in respect of a Fijian performance, the Fijian withholding tax rules are not effective and the authorities can only rely on voluntary disclosure by the artist.

Fiji's DTAs provide the following rules:

Australia	Australia resident artists (or an entity that provides the services or an artist) are taxable in Fiji to the extent to which they perform services in Fiji (Article 17)
New Zealand	NZ resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 14)
U.K.	U.K. resident artists (or an entity that provides the services or an artist) are taxable in Fiji to the extent to which they perform services in Fiji (Article 17)
Singapore	Singapore resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 17)
Malaysia	Malaysian resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 18)
Papua New Guinea	PNG resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 18)
South Korea	Korea resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 17)

It should be noted that non-resident artists are taxable only on the remuneration received in respect of the services they perform in Fiji. Provided that genuine services are performed outside Fiji and an arm's-length fee is payable for those services by the production company no tax would be levied in Fiji on those payments.

Pay As You Earn (PAYE) tax is levied at differing rates and may be as high as 31 percent of an individual's salary.

Fringe benefits are taxed in the hands of the employees in respect of benefits such as employer-provided cars, free or low interest loans, free or subsidized residential accommodation or board, goods and services sold at a discount or provided free by an employer, and expenses paid on behalf of an employee.

Resident Artists (self-employed)
Resident artists are treated identically to employees. If they perform services through a company the tax authorities will challenge the arrangement and, accordingly, most resident artists are taxable as individuals.

Employees

Income Tax Implications

Employers of employees working in Fiji are obliged to make regular, periodic payments to the Fijian tax authorities in respect of employees' personal tax liabilities arising from salaries or wages paid to them. Deductions are made under the PAYE system. Employers deduct PAYE tax based on tax tables supplied by the tax authorities which are designed to approximate the tax liabilities.

Social Security Implications

Employers are liable for superannuation contributions in respect of payments of salaries or wages. Currently the minimum superannuation contribution is 8 percent by the employer with a similar amount deducted from the employees.

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Chapter 10
France

Introduction

France has always made an effort to encourage the financing of films through tax and financial incentives. This has led to the creation of the SOFICA incentives, a special legal structure established to promote activity in the film industry. Certain regulatory bodies (e.g., the "Centre National de la Cinematography" or CNC) are in charge of promoting the production of French films and allocating these incentives.

Key Tax Facts

Highest corporate income tax rate	33.33%*
Highest personal income tax rate	41%
VAT rates	0%, 2.1%, 5.5% and 19.6%
Normal non-treaty withholding tax rates: Dividends	19, 25 or 50%%
Interest	0 to 50%
Royalties	33.33% or 50%
Tax year-end: Companies	Financial year-end
Tax year-end: Individuals	December 31

* Plus a 3.3 percent surcharge assessed on the portion of the corporate income tax exceeding EUR 763,000.

Film Financing

Financing Structures

Co-production

A French-resident investor enters into a co-production joint venture (JV) with a foreign investor to finance and produce a film. The JV is located in France, the film is produced there, but exploitation rights for all media (theatrical, television, video, etc.) are divided, with the JV members each exploiting their respective interests in the territory allocated to them under the co-production agreement.

The French investor retains exclusive media rights in the home territory; the foreign investor retains exclusive media rights in its own territory; the rights in all other territories are held by one or another of the parties or jointly. Both parties fund the production costs; the foreign investor produces the film under a production contract with the JV. Each party funds its own share of the production costs based on its anticipated proportion of the revenues to be earned by the film.

This JV would be considered a silent partnership ("société de fait" or "société en participation"), the results being taxed directly in the hands of the partners if no company subject to corporate tax is set up in France for this purpose and if the names of the partners have been disclosed to the tax authorities. The silent partnership is directly subject to corporate tax on the share of profits of the undisclosed partners.

Although this JV is located in France, the applicable tax treatment must be reviewed in the light of the position of each party.

The foreign investor would not be subject to French tax on its overseas income if exploitation can be kept separate from production.

The French investor would be taxed on the full amount of its profits arising in respect of film production and exploitation, and is subject to the application of relevant treaties.

If the foreign investor produces the film in France and has a production office in France, it would be considered to have a permanent establishment in France, and would be taxable on income arising from its French activity. However, it could rely on applicable tax treaties to obtain full or partial relief.

A cost-sharing agreement may therefore be a favorable structure, if the foreign investor exploits the film from within its own territory.

Acquisition of Distribution Rights

Distributors who do not enter into a co-production with a production company may participate in the financing of a film in an agreed proportion by advancing a certain amount of funds.

The production company must record these advances by the distributor as operating revenue when the distributor obtains the censor's certificate.

When the advance is considered as a loan and must be reimbursed to the distributor, the transaction falls outside the scope of VAT. On the contrary, when the advance is recognized by the production company, this advance is treated as a payment for the distribution rights. Consequently, the distribution company has to pay VAT on the sums received from theatre operators. When the production company obtains the exploitation certificate, the production company pays the VAT. This VAT is assessed on the advances received from the distributor.

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Partnership
Financial investors from several territories and the film producers become partners in a partnership located in France. They each contribute funds to the partnership.

The partnership would be treated as a taxable entity in France and would produce the film in France. The partnership may be either a general partnership ("société en nom collectif"), where the partners are jointly and severally liable for debts, or a limited partnership ("société en commandite"), where only the general partners have unlimited liability. In this latter case, the actual production could be undertaken by the general partners as agents of the partnership.

The partnership may then mainly receive royalties under distribution agreements, from both treaty and non-treaty countries.

The film would be distributed by independent distributors in consideration for a fee.

If a general partnership is set up, each of the partners would be taxable in France on its share of the results, and according to the system applicable to the specific partner (i.e., personal or corporate income tax), unless the partnership has elected to be subject to corporate tax.

If a limited partnership is set up, different treatment would apply to the general partners and to the limited partners.

The portion of results attributable to the limited partners would be subject to corporate income tax (paid by the partnership). Any further distribution of dividends in the hands of the limited partners is subject, for the resident partners, to income tax or corporate income tax under specific conditions. The non-resident partners are subject to a withholding tax at the domestic rate of 25 percent, reduced in general to 5, 10 or 15 percent by applicable treaties or cancelled by the EU Parent/Subsidiary Directive, whenever applicable.

The portion of the results attributable to the general partners would be directly taxable in their hands, according to either personal income tax or corporate income tax regulations.

If a partner is resident in France and receives dividends from a foreign partnership located in a treaty country, the withholding tax levied abroad may, in principle, be credited against the tax due in France.

Equity Tracking Shares
These shares provide for dividend payments based on the profitability of a film production company's business. Investors acquire such shares in the production company. These shares have the same rights as the production company's ordinary shares/common stock, except that dividends are profit-linked and their holders have a preferential right to assets upon liquidation of the company. The production company is resident in France.

These shares which are not common in France would, in all likelihood, be considered preferred shares. The dividends paid on such shares would be treated as ordinary dividends.

It should be noted that it is not possible to provide for fixed interest or yield payable in the absence of profits.

Yield Adjusted Debt
A film production company may issue "debt securities" to investors. Their yield may be linked to revenue from specific films. The principal would be repaid upon maturity and there may be a low (or even zero) rate of interest stated on the debt instrument. However, at each interest payment date, a supplemental (and perhaps increasing) interest payment would be paid should a predetermined target be reached or exceeded (such as revenues or net cash proceeds).

These "debt securities" would in all likelihood be treated as debt.

However, the supplemental interest paid might (although this is rather unlikely) eventually be regarded as a distribution of dividends given the fact that it depends on the results of the company.

The interest may not be deductible for the company in this case, and is subject to corporate or individual income tax for the investor.

This interest may be subject to withholding tax if reclassified as a dividend under the dividend article of the applicable double tax treaty.

Tax and Financial Incentives

Investors
If an individual or company subscribes for or acquires shares in another company, the related cost is, in principle, not deductible from the taxable income for the computation of the tax due by the individual or the company. There are several limited exceptions to this principle.

When an individual or company provides a loan to another person, the interest payable is deductible when calculating the taxable income of that company or individual if the loan has been contracted for business purposes. The deduction is made on an accruals basis. If the loan becomes a bad debt, it may be deducted from the profits of entrepreneurs (companies or individuals) by way of a provision, provided that the risk of loss is clearly determined.

Certain limits exist on the deductibility of interest paid on loans granted by shareholders or related parties.

Specific incentives are available for investments in films:

- Individuals who are residents in France may deduct from their taxable income 40 percent (48 percent in certain cases) of the contributions in cash to the capital of a company whose exclusive activity is film financing (SOFICA), which are approved by the Department of Arts, up to a limit of 25 percent of their income and with a limit of EUR 18,000. The tax relief is repayable to the tax authorities if the individuals sell their shares in the SOFICA within five years following the acquisition
- The same regulation applies to companies that are subject to corporate income tax and invest in the shares of a SOFICA, except that the incentive takes the form of an exceptional deductible amortization of 50 percent

Producers

The French Government provides grants and other financial incentives to encourage the production of films in France.

The "Soutien automatique à la production des oeuvres cinématographiques de long métrage" is an automatic support for the production of entertainment films running more than one hour. The producer must obtain prior approval from the general director of the CNC ("Centre National de la Cinématographie"). Several conditions must be met in order to benefit from this incentive, including the following:

- The film must be directed by enterprises whose presidents, general directors, and managers are French or EU nationals. Foreigners may also benefit from this incentive if they work in France for more than five years
- The authors, actors, and crews must also be resident in an EU Member State
- The films must be made in France (including overseas territories)
- The approval can be given to films realized under an international co-production, but only under conditions fixed by international agreements

This automatic support must be used either for the repayment of debts or for investment in a new production.

The amount of the support is based on the yield from the exploitation of the film.

The Government has also set up some selective incentives. The main one is an advance on receipts ("avance sur recettes"). Such advance may be given before or after realization, under different conditions:

- Advance on receipts before realization:

  Such an advance corresponds to an interest-free loan reimbursable by the film's receipts. The application form may be filed by the author of the script or by the director if they are French nationals or French residents. It can also be filed by the producers if the film is French, or if it is realized through an international co-production. The decision to grant this advance is taken by the Minister of Culture based upon an opinion given by a consultative commission composed of profes¬sionals. If the decision is favorable, the candidate benefits from a commitment available for 24 months. The advance must be used during this period. The payment of the advance is subject to an investment proposal. The producer will have to repay this advance in installments. After this repayment the producer will have to pay 15 percent of net receipts for two years.
- Advance on receipts after realization:

  Only the producer can file an application for this incentive. The conditions are the same as for an advance before realization. An agreement must be signed between the CNC and the producer to begin the payment of the advance. The repayment of the advance is made according to a repayment schedule.

Production entities subject to corporate tax which produce approved long running films in the French territory with the support of French or European technicians may, upon agreement of the CNC, benefit from a tax credit equal to 20 percent of the technical expenses incurred for the production. The expenses taken into account cannot exceed 80 percent of the production budget (or of the French portion of the budget for international co-productions). The tax credit is limited to EUR 1 million. The tax credit is creditable against the corporate tax due for the year where the expenses are incurred, any excess being refundable to the company.

Another credit is available, upon agreement of the CNC, to audiovisual companies subject to corporate tax which locate mainly on the French territory the production of documentaries, fictions, or animation films

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realized with French or EU authors, artists and crew. It is equal to 20 percent of the expenses incurred, limited to EUR 1,200 per minute shot and delivered and can be set off against the corporate tax (any excess being refundable).

There are also incentives to encourage the production of short films. These include:

- Financial contributions approved by the Minister of Culture and granted by the CNC
- A subsidy that may be given for short films that obtain an award or recommendation or a prize for quality

Generally, all such grants are repayable. It should be noted especially that even if a producer has benefited from an advance on receipts before the realization of a film, the commission can give another opinion after the realization of the film. If this opinion is negative, the Minister of Culture may ask for immediate repayment of the advance.

Distributors

There are some incentives available for distributors acquiring film rights. These are available under the following conditions:

- The distributing enterprises assume effective liability for the distribution operations
- The amount allowed must be invested within four years of the first day of the year following the one in which the amount was calculated
- The distributors must guarantee that they will incur a minimum level of expenses on behalf of the producer

If the distributor has not respected these conditions, he or she must repay to the financial support fund the amount already invested.

Actors and Artists

There are no specific incentives available for actors or artists except that they are allowed to deduct from their taxable income all of their actual professional expenses.

Other

Other subsidies exist to assist the modernization of movie theatres and the development of technical activities, and to promote the export of French films.

Other Financing Considerations

Tax Costs of Share or Bond Issues

Most contributions to share capital are subject to a fixed tax of EUR 375 or 500.

A transfer of stock of an SA is subject to a 3 percent tax, limited to EUR 5,000 per transaction (transfer of stock of a listed SA is not subject to this tax, except if the transfer is evidenced by a written deed). A transfer of shares of a SARL or of an SNC is, in most cases, subject to this same 3 percent tax, not limited. A transfer of shares in a non listed real estate company (whatever its legal form) is subject to a 5 percent tax, not limited.

Mergers and spin-offs are subject to a fixed tax EUR 375 or 500 if made between companies subject to corporate tax. For other companies, the tax will depend on the nature of the reorganization and on the assets contributed.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

French-resident Company

If a company is set up in France to produce a film without acquiring any rights in that film, i.e., a "camera-for-hire" company, the tax authorities may query the level of production fees attributed to it, if they consider that it is not sufficient (below an arm's-length rate).

The level of attributed income may equal the percentage of investment or should cover the costs and permit the camera-for-hire company to earn a reasonable profit.

In theory, it may be possible to negotiate in advance an acceptable production fee income with the tax authorities, but this is not a common practice at all.

Non-French-resident Company

A production office administering location shooting in France would be regarded as a permanent establishment taxable in France if it was permanent and actually participated in the production and shooting of films in France, subject to the exemptions provided by an applicable double tax treaty (for example, an installation and project set up for less than a prescribed time period).

In this situation, the French tax authorities would seek to tax an amount of profits comparable to those which would have been earned by a resident company carrying on the same business.

It is unlikely that a production office could be regarded as causing a foreign company to be resident in France for tax purposes, since the office is not the site of central management and control of the company.

The regime could be the same for a company undertaking location shooting in France without being a French resident and without having a production office in France.

The term "permanent establishment" has been interpreted by the French Tax Supreme Court (the Court). The Court has indicated that a permanent establishment exists if the following conditions are found:

- A license for a business installation
- An installation established in a definite place for a certain period of time
- An installation used for business activities

The existence of a permanent installation (e.g., an office, etc.) in France or of a dependent agent having the power to conclude contracts on behalf of his or her principal, or the performance of a complete cycle of activity in France, are also regarded as permanent establishments under French domestic law, in the absence of a treaty.

Of course, the existence of a permanent establishment will also depend on the specific definition given by the relevant article in the applicable double tax treaty.

Film Production Company – Sale of Distribution Rights

If a French-resident production company sells the distribution rights in a film or television program to a distribution company or partnership based in a treaty country, the payments received would be regarded as royalties taxable in France, with relief given in general for any withholding tax which may be levied abroad.

The distribution rights acquired by a French-resident company have to be depreciated over a defined period (see below for the depreciation rules) and the receipts would be regarded as trading receipts.

The transfer of intangible assets offshore is not governed by any special tax rules (except transfer pricing rules). The selling price and any payments should represent arm's-length prices.

Film/Television Program Distribution Company

Payments by a distribution company to a production company for distribution rights would be treated as royalties paid for the purchase of an asset.

For tax purposes, depending on the rights granted to the purchaser, the cost would have to be capitalized and depreciated or be treated as a normal expense.

The income arising from exploiting distribution rights would be recognized as ordinary trading income.

The rules above would be applicable even if:

- The production company is resident in a non-treaty country
- The distribution company exploits the rights in other countries
- The distribution company sublicenses the acquired rights locally and abroad

The income earned from the exploitation of distribution rights over a period which covers more than one financial year would be recognized during the years to which the income relates, irrespective of the date of receipt.

In principle, the tax treatment would be similar to the accounting treatment. It is normally not possible to argue for a tax treatment which would be more beneficial than the accounting treatment.

Transfer of Film Rights Between Related Parties

If a worldwide group of companies grants a sublicense for exploitation of film rights in France to a resident group company, the French tax authorities may query the level of profit arising locally and examine the level of the royalties paid abroad.

The acceptable level of attributed income would depend on the level of the investment of the French company. There are no specific regulations applicable in this respect.

If the income is remitted by the resident company to a low-tax country by virtue of a sub-licensing distribution agreement, the tax authorities would very likely examine the level of such attributed income in order to prevent tax avoidance. The French company would, based upon Article 238.A of the French Tax Code, have to demonstrate that the payment is arm's-length and paid in consideration of a real service. In addition, in the absence of a treaty, a 33.33 percent (50 percent if payment is made to a so-called-non cooperative State) withholding tax would be levied.

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The Television Broadcaster
The television broadcaster, the cable chain provider and the satellite chain operator are like the cinema exhibitor, the last link in the production chain. They provide an essential resource in the financing process, whether they are providing funding for films or programming.

The income of the French public broadcaster comes from a statutory license fee payable by each French home owning a TV. In addition, a substantial amount of its income comes from advertising, sales of programs overseas, participation in co-productions and advances to producers to help financing and programming in return for first transmission rights, and a share of any subsequent profits.

The principal source of income of the private sector broadcasters in France is fees paid by the customer and advertising income.

The cable chain operator and certain private chains derive their income from a mixture of subscriptions and advertising.

Amortization of Expenditure

Production Expenditure
When a production company owns the rights in a film, the expenditure can be amortized as follows (subject to changes deriving from the introduction in France of the IFRS principles):

- At the end of each financial year, the amortization of expenditure is based on the income generated by the film

In principle, the depreciation coefficient is based upon the period having elapsed since the first day of the month following the last day of shooting and determined according to the following rates:

Period	Monthly rate
First month	30%
Second month	25%
Third month	20%
Fourth month	15%
Next two months	2%
Last six months	1%

- If at the end of any year the total amount of depreciation connected with the income of the film is lower than a theoretical amount (cost of the film multiplied by the above depreciation coefficient), the depreciation can be completed up to this last amount by deducting it from the net available income of the other films produced by the company

Television Broadcasters, etc.: film and program acquisition expenditures
There are no specific tax rules for television broadcasters acquiring film rights. The depreciation of the acquisition cost of the rights is not specifically covered by the French General Tax Code but is recognized by a decision of the French Highest Tax Court.

It could be possible to depreciate the rights either over the period for which the rights have been granted or based on the number of showings.

Other Expenditures
Either a film distribution company or a "camera-for-hire" company can deduct or amortize the sums paid for acquiring the rights of the film and its overhead. There is no specific expenditure. The rules for deduction or depreciation are the usual rules applicable to other companies. Certain expenditures are immediately deductible (salaries, rent, advertising). Other expenditures are not immediately deductible and must be depreciated (building, fixed assets).

Losses
In principle, when a company has no income from a specific film in a given year, its expenditure may be offset against any other income received by the company from other films in that year.

In practice, many companies produce no more than one film during a certain period of time and it could be difficult to apply the above principle.

Foreign Tax Relief
A resident film producer, who receives income from non-resident companies, may claim relief by way of a tax credit for the withholding taxes levied abroad if a tax treaty exists between France and the other country.

Indirect Taxation

Value Added Tax

General
Under the EU harmonized VAT system, France charges VAT on the sale and supply of goods and services.

The tax paid on expenses may be offset against the tax on sales, except for certain items on which the tax is not recoverable and must be expensed (e.g., on cars).

In addition, the French system denies a credit for tax suffered at an earlier stage when the goods or services are not used for the purpose of the company and its business activities.

Supply of a Completed Film

When a resident company delivers a completed film to another resident company, this supply of rights is generally charged at the rate of 5.5 percent.

If the second company is resident in an European Union (EU) country, the supply of rights would be VAT exempt in France. To receive this treatment, the buyer would have to give its VAT identification number to the French supplier.

If the second company is resident outside the EU, the supply of rights is VAT free.

In both cases, there would be no specific reporting rules but the amount of the sales would have to be reported on the VAT return as an exempt supply.

When a company delivers a film, it would, in principle, account for VAT at the date of the payment since the delivery of a film is regarded as a supply of a service (although the company may also elect to account for VAT at the date the invoice is issued).

Royalties

When a resident company pays a royalty to another resident company, the rate of VAT is 5.5 percent.

VAT is payable on a royalty paid to a non-resident company (EU or not). The rate of the VAT is five point five percent. The French resident company would have to account for the VAT due thereon and to recover it in the same month using the "reverse charge" procedure.

Peripheral Goods and Merchandising

As a general rule, the rate of VAT depends on the nature of the goods involved, whether or not they are connected with the distribution of the film.

For instance, books, magazines, and music publishing are subject to a 5.5 percent rate, but CDs, DVDs, toys, or clothes are subject to the normal 19.6 percent rate.

Promotional Goods or Services

Unless otherwise provided, the tax rate applicable to the provision of promotional goods and services would be 19.6 percent. The free provision of promotional goods and services would not be subject to VAT. On the other hand, and unless specific conditions apply, the VAT borne on such goods and services is not recoverable.

Film Crews and Artists

The supply of catering on location, paid by the crew and actors, is taxable at 19.6 percent if there is a supply of services in addition to the supply of goods.

Imports of Goods

If a resident company imports goods from a foreign country, VAT, and eventually Customs duty, would be due.

Customs Duties

No tax or Customs duty would be due on goods temporarily imported into France and re-exported without alteration (under the processing-relief or duty-suspension regime).

Otherwise, France levies Customs duties on the imported goods based upon the EU unified tariff.

Personal Taxation

The French definition of an "artist" (which is not given by the General Tax Code, but by administrative instructions or by precedents) includes actors, entertainers, sportsmen, and pop stars.

Non-Resident Artists (self-employed)

Income Tax Implications

A non-resident artist is subject to tax on his or her French-source income only. The income tax is initially collected by way of a withholding tax levied at the rate of 15 percent.

Even if withholding tax is deducted at source, levied by the employer or by the artist himself, the artist is obliged to file a return showing his or her French income. The tax is then computed according to the normal progressive scale and the withholding tax deducted from the tax due.

It is not possible to negotiate a different rate of withholding with the tax authorities. Any expense incurred can only be utilized as a deduction when calculating taxable income for income purposes.

Payments made to other parties (personal-service companies) are also subject to French tax (under Article 155.A of the French Tax Code) if one of the following conditions is met:

- The party is controlled by the artist
- The party's main activity is to receive payments on behalf of the artist, or
- The party is established in a tax-haven country

VAT Implications
Self-employed artists are obliged to register for indirect tax purposes if the services they render are liable to French VAT. In practice, this does not occur very often.

Resident Artists
An individual, i.e., an artist, is regarded as a resident in France and therefore liable to French income tax on his or her worldwide income if he or she meets one of the following conditions:

- He or she maintains his or her household in France
- He or she has his or her usual residence in France and is physically present for 183 days in a calendar year
- He or she carries on the major part of his or her professional activities in France
- The center of his or her economic interest is in France

These rules are subject to the provisions of the relevant tax treaties concluded by France.

Income Tax Implications
The tax is assessed at progressive rates between 0 percent (net taxable income of not more than EUR5,963 after all deductions) and 41 percent (net income of more than EUR70,830) for a single person.The progressive scale of tax is revalued normally each year. Certain capital gains on shares and bonds are taxable at a reduced rate of +/– 25 percent. The tax year corresponds to the calendar year.

Taxable income includes all the various categories of income received by the taxpayer, (i.e., salary after a flat 10 limited deduction capped at EUR 14,157, industrial or commercial profits, non-commercial income, agricultural

income, real estate income, interest, dividends, and capital gains). Losses or deductions may, in certain cases, be deducted directly from the total income of the taxpayer. The global income (including earnings made by family members) is divided into a number of parts or "shares" (a single person: one share, a married couple: two shares, one dependent child: one-half share, each child after the third: one share) and the progressive scale is applied separately to the individual amounts of these share units. The final tax liability equals the total of the tax liabilities applicable to each share. The result, therefore, is to limit significantly the effect of the progressive rate of tax (even if the tax reduction resulting from the shares for children is substantially limited).

VAT Implications
Self-employed artists are obliged to register for indirect tax purposes if the services they render are liable to French VAT.

Employees
Income Tax Implications
Employees are liable to personal income tax in respect of payments of salaries or wages (non-cash benefits are considered to be salary).

Resident companies are not obliged to make regular and periodic payments to the tax authorities in respect of salaries and wages paid to the resident employees (i.e., there is no automatic withholding system for French resident employees). On the other hand, employers paying salaries to non-resident employees have, in general, to levy and to pay to the tax authorities, on a monthly basis, a withholding tax at the rate of 0, 15, or 25 percent depending on the level of the salaries.

Social Security Implications
Employees are liable for personal Social Security contributions in respect of payments of salaries or wages (including non-cash benefits). The overall rate is around 22 percent of the gross salary. The contributions are directly withheld by the employer and paid by him or her to the local Social Security bodies.

Employers are also liable to pay their own contributions assessed on the gross salary paid, at a rate ranging between 35 and 45 percent, depending on the level of the salary.

The same income tax and Social Security rules apply to a non-resident company as soon as it hires employees in France, regardless of the structure used.

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Chapter 11
Germany

Introduction

The past years have been significantly influenced by a number of changes in tax rules. The 2008 Business Tax Reform Act was followed by the 2009 and 2010 Tax Act which altered the tax landscape.

With respect to the film production and film financing business, irrespective of the tax amendments in the past years, two issues are still very important for the film business: the "media decree" and the "tax deferral schemes" as provided for in § 15b German Income Tax Act (*EStG*).

The media decree was issued by the German Federal Ministry of Finance on February 23, 2001 and amended on August 5, 2003. Besides some provisions that are (due to their nature) only applicable to the taxation of film funds and their investors, the vast majority of provisions deals with general taxation principles in connection with the production, distribution, and financing of films. Their interpretation may affect every person engaged in this business, whether a film fund or not.

§ 15b EStG provides that losses arising out of "tax deferral schemes" may neither be used to offset income nor deducted pursuant to the general loss carry back and carryforward rules. Instead, pursuant to § 15b EStG, such losses can only be used to offset income of the taxpayer arising from the same source as such losses. Pursuant to § 15b EStG, the use of such losses is only restricted in cases where projected losses were expected to exceed 10% of invested capital (exemption amount). According to this legislation, if a scheme or structure gives rise to tax benefits in the form of losses, then it is a "tax deferral scheme." This legislation was made especially to apply to media investment funds and has more or less eliminated the private investor market for film funds.

The central feature of the 2008 Business Tax Reform Act was the reduction of the tax burden for corporations to less than 30% (combined rate of corporation tax and trade tax). However, the 2008 Business Tax Reform Act made changes that also broadened the tax base, such as a limitation on the deductibility of interest, rental, lease, and license payments. This legislation therefore significantly changed financing structures that have been used in the past. The 2009 and 2010 Tax Acts clarified the provisions introduced in 2008, addressed the issue of evasion, and conformed German law to various EU developments.

Key Tax Facts

Distributed/undistributed profits	15%* (for corporations) For partnerships: personal income tax rate of the partner
Branch profits of non-residents	15%* (if maintained by a corporation) Personal income tax rate (if maintained by an individual) or of the partner (if maintained by a partnership)
Trade tax	Between 7% and 17.15% depending on the municipality
VAT rates	7%, 19%
Normal non-treaty withholding tax rate: Dividends	25%*
Interest to residents/non residents	Generally 25%*/0%
Royalties	15%*
Tax year-end: Companies	December 31
Tax year-end: Individuals	December 31
Highest personal income tax rate	42/45%*,** (with credit system for trade tax)

* Plus 5.5% solidarity surcharge on tax due

** 45% for income above EUR 250,730

Film Financing

Financing Structures

Co-production

It is possible for a German investor to enter into a co-production joint venture with other investors to finance and produce a film wholly or partly in Germany. Each participant in the joint venture is entitled to the film rights and, consequently, to the revenues generated in the respective countries or regions. However, a co-production does not necessarily involve sharing of revenues.

Following the provisions of the media decree, there are two alternative scenarios of how to co-produce a film:

- The co-producers enter into a co-entrepreneurship and, therefore, a partnership relationship for civil law purposes (accordingly, see comments under "Partnership")
- The co-producers produce the film within the framework of a co-production community, thus, not entering into a partnership relationship for civil law purposes

For purposes ofthe media decree, even the second scenario (i.e., where there is no partnership relationship for civil law purposes) will be treated as a partnership or co-entrepreneurship unless the co-production community merely renders cost-covering services to the participating co-producers (i.e., if the co-production community, upon completion of the production, does not have any exploitation or distribution rights). However, if the co-producers by virtue of supplemental arrangements (in whole or in part) jointly exploit the picture, the transaction will be treated as a partnership for purposes of the media decree.

If the co-production community is deemed not to create a partnership/co-entrepreneurship, it will be disregarded as an entity, but its services will be treated as supporting services of the participating co-producers.

If, on the other hand, the co-production is deemed to create a domestic partnership/co-entrepreneurship, it is treated as transparent for tax purposes in Germany, with the result that tax is imposed at the level of the partners. A non-resident partner would, in principle, be subject to limited taxation in Germany on his income share in the partnership. Special rules might apply on the basis of a Double Tax Treaty (*DTT*).

In certain cases, a co-production is deemed to be a foreign partnership. However, if such partnership maintains a permanent establishment in Germany, all the partners would be considered to have a permanent establishment in Germany.

A permanent establishment is defined as a fixed place of business or facility that serves the business of an enterprise and over which the entrepreneur (here: the co-production) exercises control.

If a film production site exists for longer than the applicable "*de minimis*" period (which is likely, if several consecutive film productions are carried out in Germany), it is probable that it would be regarded as a permanent establishment of the foreign participants in the co-production. Moreover, if a permanent production office exists in Germany, it will automatically be regarded as a permanent establishment. Additionally, the tax authorities may assert a permanent establishment by virtue of the place of the management or an independent agency relationship.

If the foreign participants are treated as having a permanent establishment in Germany, they will be taxable in Germany on the income attributable to the permanent establishment. If the film rights are deemed to be created through a permanent establishment in Germany, there is the risk that worldwide revenues derived from the exploitation will be taxable in Germany.

In the past, consideration was made to carrying out film productions through a German special purpose company (e.g., a "camera-for-hire" company) set up in Germany by the parties to the agreement ("participating parties"). Such production company would produce the film (or the German part of the film) on a "work-made-for-hire" basis. (See comments under "Amortization of Expenditures.") For example, a production contract with the participating parties confer on the production company to an appropriate production fee (e.g., on a cost-plus basis) but does not give the production company ownership of any rights in and to the film (including without limitation the copyright in the film). In such a case, the film rights would then be exploited by the participating parties from their respective locations. Because there would be no permanent establishment of the participating parties in Germany in this case, the resulting revenues should be taxable only in the country of residence of the participating parties. However, following the provisions of the media decree (see above), such an arrangement could be deemed to create a partnership/co-entrepreneurship, and be treated as having a place of business in Germany (and therefore subject to German tax).

Partnership

In principle, a partnership is a more formal arrangement than a co-production described above. German law provides for several kinds of partnerships, all of which are treated as "transparent" for income tax purposes (i.e., the partnership is not treated as a taxable entity and partners are taxed on their respective shares of the partnership profits). This transparent tax treatment applies not only to partnerships created under German law but also to comparable entities created under foreign law.

German Company

If a foreign film production company intends to maintain an ongoing film production activity in Germany in which German resident investors receive a return, it may be advisable to establish a German subsidiary, in order to avoid

any foreign withholding taxes on what would otherwise be a cross-border income stream. German investors generally prefer to receive dividends directly from a German company rather than through a foreign parent. In appropriate cases it is therefore worth considering some form of income access arrangement whereby German investors receive dividends directly from a German subsidiary of the foreign parent. If the German investor is a company subject to German corporate tax, such dividends would be tax-exempt, but 5% of such dividend income would be treated as non-deductible expenditures for corporate tax purposes and fully creditable and reimbursable German withholding tax would fall due. For trade tax purposes more specific rules apply, which vary depending on the German investor's relative interest in the company's share capital. If the German investor is an individual, such dividends distributed from 2009 onwards are, if they constitute "business-related" dividends (e.g. upon application for individuals with a participation of more than 25% or participation held as business assets), subject to (i) the "part-income" rule (60% of the dividend income would be taxed) and to fully creditable and reimbursable withholding tax, or (ii) in all other cases, a flat tax at a rate of 25% (plus 5.5% solidarity surcharge on the tax due).

Sale and Leaseback

The sale of a film by the production company to another company is unattractive in Germany since a production company (i) is able to immediately write off the expenses it incurs in producing a film as ordinary expenses (see "Amortization of Expenditures" section below), and (ii) is not required (or allowed) to carry them forward as an asset in the balance sheet. A sale and leaseback would therefore generally give rise to a tax disadvantage: instead of deducting the production expenses immediately against income generated by the film, the production company would have to set them off against the proceeds of disposal, leaving the income generated by the film to be sheltered only by the periodic lease payments.

Tax and Financial Incentives

Investors

There are no specific incentives for investors.

Producers

Federal Incentives

The main incentive at the federal level is the "*Filmförderungsgesetz*" (FFG), which is intended to promote the production and marketing of German films. The incentives are funded by a film levy ("*Filmabgabe*"), which is payable by theatres, by the video industry and by broadcasting companies. In addition, the "*Deutscher Filmförderfonds*" (DFFF) funds German film productions.

Regional Incentives

Furthermore, there are a number of incentives provided at the state and municipal level. All German states offer different kinds of programs to promote the cinematographic infrastructure of the respective region.

Other Incentives

A production company may be able to benefit from the general incentives for investments in Germany.

Actors and Artists

No particular incentives are available for actors and artists engaged in a film production in Germany.

Cinemas and Film Supporting Industry

There are also incentives for cinemas and the film supporting industry in Germany.

Other Financing Considerations

Tax Costs of Shares or Bond Issues

Generally, no form of stamp duty or capital duty is charged on the issue or the transfer of shares, partnership interests or debt instruments.

Exchange Controls and Regulatory Rules

There are no exchange controls or other regulations preventing foreign investors from repatriating profits to their home territory.

Corporate Taxation

Taxation in General

Corporations are taxable entities subject to corporation tax plus solidarity surcharge and trade tax. The tax burden for corporations amounts to 29.825%, assuming an average trade tax multiplier of 400%. The effective overall tax rate depends to a great extent on the trade tax, which varies among the municipalities.

Partnerships are not taxable entities for corporate or income tax purposes. The income determined at the level of the partnership is allocated to the partners and subject to tax at the level of the partners on the basis of the distinct tax rate (individual or corporation). The partnership itself is subject merely to trade tax.

Corporation tax, income tax, and trade tax are non-deductible expenses when calculating the taxable income. In contrast, expenses for gifts and entertainment expenses are only partly deductible.

Recognition of Income

Film Production Company – Production Fee Income

German-resident Company

If a special purpose company related to other foreign group companies is set up in Germany to produce a film without acquiring rights in that film (i.e., a "camera-for-hire" company) in return for a production fee, the tax authorities might wish to consider whether the production fee is an adequate return for the company's work. Such evaluation might normally take place during a routine tax audit.

It is not possible to provide general guidance as to what might be regarded as an adequate return. This might depend entirely on the facts, i.e., functions performed and risks assumed by the special purpose company.

Foreign Company

A foreign company that enters into a co-production is subject to the same rules set forth above, if their only presence in Germany is a production site.

However, if the foreign company is treated as having a permanent establishment in Germany, the German tax authorities might seek to attribute to it a share of the total profits of the company by establishing an arm's-length consideration for the activities performed by the German branch for the benefit of the home office or, more likely, by assessing the value of the activities performed in Germany compared to the company's overall business activities.

Film Production Company – Sale of Distribution Rights

If a German resident company transfers exploitation rights in a film to an unrelated distribution company in consideration for a lump-sum payment and subsequent periodic payments based on gross revenues, such a transaction can classified either as a sale or a license, depending on the facts and circumstances. This might depend on whether or not the transfer is restricted (i) with respect to the scope of the exploitation right granted (e.g., only theatrical but not video and other distribution rights), or (ii) in terms of time or geographic coverage. In the absence of any restriction, the transaction will likely be classified as a sale. On the contrary, a transaction with substantial restrictions will likely be classified as a license, unless the retained exploitation rights of the transferor are of economic irrelevance.

A sales transaction generates an immediate capital gain for the production company, which will equal the total sales proceeds if the production company has already expensed its total production costs. This presumes that the sale is effected after production (as opposed to a commission production, discussed below). In the case of a license, the production company will only realize income when earned. Lump-sum advances, therefore, must be regularly treated as deferred income to be realized over the period to which such payment relates, i.e., over the term of the license. Likewise, fixed back-end payments would be accrued periodically as income on the same basis.

If the transaction takes place between connected parties, the German authorities may attribute an arm's-length price, i.e., the lump-sum payment and revenue share should reflect the future earning capacity of the film.

Film Distribution Company

If a German resident company "acquires" rights in a film from an unconnected production company, the transaction may be deemed to be a purchase acquisition or a license transaction (see above "Film Production Company – sale of distribution rights") depending on the facts and circumstances. In the case of a rental transaction, no acquisition costs have to be capitalized, but all payments to the producer/licensor or accruals made for such payments would constitute tax deductible expenses in the appropriate period. In this respect, payments made as advances for future periods have to be treated as prepaid expenses, i.e., they may only be expensed over the agreed exploitation term.

Rental payments to a licensor in a treaty country can in most cases be paid without deduction of the German domestic withholding tax rate of 15% applicable to royalties if the recipient's entitlement to treaty benefits is certified by the Federal Tax Office ("Bundeszentralamt für Steuern"). Treaty shopping rules might be applied if the recipient is not deemed to be the beneficial owner of the royalties. This would be the case, for example, if an entity is interposed in the legal structure and is only entitled to a marginal share in the royalties received and has to remit the surplus to a tax haven jurisdiction or if there are no economic reasons for the interposition of such company and it does not pursue its own active business.

Transfer of Film Rights between Related Persons

If a foreign holder of rights in films or videos grants a sublicense for the exploitation of those rights to a German-resident company are like to be of interest to a German tax auditor, particularly if the transfer is between related parties, and if the other party is not taxable in Germany. In such

case, German tax authorities may apply the arm's-length test to determine whether the contractually agreed price is acceptable. It is therefore necessary to document and defend the intra-group transfer pricing policy under the applicable German tax law.

Under the German intercompany pricing guidelines, prices are not considered to be arm's-length if a related film distribution entity incurs losses over several consecutive years. Therefore, if no comparable third-party transaction is available, the German distributor must render evidence that it has analyzed its potential earnings and expenses in connection with film distribution prior to the entering into of the terms and conditions of the royalty agreement with the related licensor. This evidence must prove that a reasonable profit can be expected when engaging in the distribution business.

In principle it is possible to negotiate acceptable operating margins in so-called advance pricing agreements (APAs). However, in practice, such procedures may take years until final agreements are reached.

Expenditures

Amortization

However, where a company acquires rights to a film from another person, the acquisition cost must be capitalized and amortized. The normal depreciation method is on a straight-line basis. According to the opinion of the tax authorities, the useful life of film rights in principle is 50 years, but the specifically applicable useful life will depend on whether all or only one specific exploitation right has been granted. For example, if only the theatrical distribution has been acquired, the useful life may not exceed 2 years. In practice, parties often choose a shorter useful life, and the issue is often resolved in a later tax audit.

Where a company produces a film without the intention to exploit the film itself, it has to be determined whether the contractual relationship between the two parties involved has the nature of a genuine commission production ("*echte AuftragsprodU.K.tion*") or a modified commission production ("*unechte AuftragsprodU.K.tion*"). Under a genuine commission production relationship, where a production company produces a film at its own risk for a third party and is obliged to assign all rights in the produced film to such a third party, the production costs incurred, as well as intangible rights created, have to be capitalized as current assets, without the possibility of being amortized over their useful period of life at the level of the production company. On the other hand, where the parties have entered into a modified commission production relationship where the production company solely renders services to the third party in connection with the film production and

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the full risk of such third party, costs incurred at the level of the production (service) company are fully deductible as business expenses at the level of the third party. The media decree provides for specific prerequisites that have to be met in order to have a commissioned production qualify as a modified commission production.

Earnings Stripping Rules

New earnings stripping rules replaced existing thin capitalization rules with general effect as of January 1, 2008. For a non-calendar fiscal year 2007/2008 earnings stripping rules are first applicable for business years beginning after May 25, 2007 and not ending before January 1, 2008.

Due to the earnings stripping rules that apply in general to all types of debt financing of sole proprietorships, partnerships and corporations, interest expense is completely deductible from the tax base to the extent the taxpayer earns positive interest income in the same financial year. Interest expense in excess of interest income is deductible only up to 30% of tax EBITDA (interest deduction ceiling). Tax EBITDA is defined as taxable profit before application of the interest deduction ceiling, increased by interest expenses and by fiscal depreciation and reduced by interest earnings. The interest deduction ceiling does not apply where one of the following exceptions is met:

- Interest expense exceeds positive interest income by less than EUR 3 million (de minimis threshold).
- The businesses are not part of a controlled group (non-group businesses). An enterprise is regarded as part of a controlled group if it is or could be included in consolidated financial statements in accordance with IFRS, German GAAP or U.S. GAAP.
- The exemption for non-controlled corporations applies only if the corporation establishes that the remuneration on shareholder debt financing accounts not more than 10% of net interest expense. Shareholder debt financing is defined as debt capital received from a substantial shareholder (more than 25%), an affiliated person, or a third party having recourse against a substantial shareholder or an affiliated person.
- The business forms part of a controlled group, but the so-called escape clause applies. If the equity ratio of the entity in question is equal to or greater than the equity ratio of the controlled group, the interest deduction ceiling will not apply. There is a 2% safety cushion for the equity ratio of the business in question. The escape clause applies only if the corporation establishes that the remuneration on shareholder debt financing accounts

not more than 10% of net interest expense. Shareholder debt is defined as mentioned above (see non-group businesses).

Interest expense that is not deductible in the period in which it arose may be carried forward. It increases interest expense in the following year, but is not taken into account to determine tax EBITDA.

As far as the tax EBITDA exceeds the interest income reduced by the interest expenses of the business, it is carried forward into the following 5 financial years. Tax EBITDA and interest expense carried forward will be erased in reorganizations. The change-of-control rules, however, apply only to the interest expense carry forward.

For tax groups ("*Organschaft*"), the controlling and the controlled companies are treated as one single entity. The interest expense and interest income of the controlled company are considered at the level of the controlling company for purposes of the interest deduction ceiling.

Losses

General Rule

Losses of the current year may only be carried back to the preceding year at a maximum amount of EUR 511,500. Losses that are neither offset in the year in which they occur nor carried back to the preceding year qualify for a loss carryforward. Up to an amount of EUR 1 million losses carried forward may compensate current taxable income without limitation. Only 60% of the positive income exceeding EUR 1 million can be compensated by further tax losses carried forward.

The tax law permits the losses arising in EU (European Union) or EEA (European Economic Area) countries to be netted against German-source income where the applicable tax treaty avoids double taxation under the credit method. Foreign losses are disregarded in Germany where the exemption method applies. Exceptions apply in cases where losses may definitely not be made use of in the foreign country. This could be given in case of a foreign branch as well as a foreign daughter company.

Change-in-Ownership Rules

Changes in the ownership of corporations can cause forfeiture of losses for tax purposes – so-called change-in-ownership rules (§ 8c KStG, Corporate Income Tax Act). The restriction proceeds in two steps. Acquisitions of more than 25% and less than 50% of a corporation's shares or voting rights within a five year period by a person or parties related thereto triggers pro rata forfeiture of losses. Losses fully forfeit where more than 50% of the

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shares or voting rights are transferred. The statute covers both direct and indirect transfers. The rules also operate where shares are transferred to a group of purchasers with convergent interests. The change-in-ownership rules apply to transfers of shares on or after January 1, 2008. The same applies to trade tax losses and interest carry forwards within the meaning of the earnings stripping rules.

In contrast to the above mentioned rules, the utilization of tax losses and tax loss carry forwards remains nonetheless possible in the amount of the hidden reserves of the company acquired.

Tax losses and tax loss carry forwards will not be forfeited provided that, in the event of a harmful acquisition of more than 25%, but less than 50% of the shares, they do not exceed the hidden reserves on a pro-rata basis, or, in the event of a harmful acquisition of more than 50% of the shares, the entire hidden reserves of the company are not exceeded. Tax losses and tax loss carry forwards that exceed the hidden reserves will be forfeited. However, this applies only for those hidden reserves that are included in operation assets and are taxable in Germany. This also applies for foreign business assets that are subject to German taxation.

In general, the amount of hidden reserves corresponds to the difference between the fair market value of the acquired shares and the taxable equity capital that relates to the acquired share. In the case of a purchase, the fair market value of the shares corresponds to the remuneration.

If the taxable equity is negative, the amount of hidden reserves corresponds to the difference between the fair market value of the business assets and the (negative) taxable equity capital that relates to the acquired shares.

Another exception to the forfeiture of loss carry forwards is the so-called reorganization-clause. Thereafter, any transfer of shares which serves the purpose of a financial restructuring of the corporation does not trigger a forfeiture of loss carry forwards.

In this context, a transfer serves a financial restructuring if the restructuring aims to prevent or eliminate a situation of imminent illiquidity or over-indebtedness and the main structural characteristics of the business remain unchanged.

However, the application of the reorganization-clause is excluded if the corporate body has fundamentally ceased its business operations at the time

of the harmful acquisition or the corporate body alters its line of business within a period of 5 years from the acquisition.

Different loss limitation rules existed in the past (§ 8 (4) KStG): no use could be made of existing loss carry forwards if a corporation's economic identity had changed. A change of economic identity was assumed if more than 50% of the shares in the corporation were transferred and the corporation recommenced or continued its trade or business with predominantly new assets. The old loss limitation provisions are last applicable where more than 50% of the shares in a corporation are transferred within a five-year period beginning prior to January 1, 2008 and predominantly new business assets are injected prior to January 1, 2013. There is thus a period during which the old and new rules overlap and apply cumulatively.

Dividends and Capital Gains

Corporation

Ninety five percent of the dividend income received by a corporation is tax-exempt, whereas 5% of the dividend income is treated as a non-deductible business expense. Costs actually incurred are deductible without limit. This rule applies to dividends which are paid by both domestic and foreign corporations.

Capital gains arising on the sale of shares held by a corporation are also exempt from corporation tax. Similar to the treatment of dividends, 5% of the capital gain is a non-deductible business expense. Costs incurred in connection with the sale reduce the net amount of the capital gain and lower the base on which the 5% non-deductible business expenses are calculated. Losses on the sale of shares and write-downs due to impaired value are not tax-deductible.

Partnership

If the shareholder of a corporation is a partnership, the dividends and capital gains are taxed at the level of the partners and not at the level of the partnership (unless for trade tax purposes).

If the partner is not a corporation and the partnership is earning business income the partial-income system applies to the respective dividends allocated to that partner; 40% of the received dividend income or capital gain is tax-exempt and 60% of the related expenses are deductible as business expenses.

Taxation of Non-Resident Taxpayers

Only income derived from German-source income as provided for in the income tax law (§ 49 EStG) is subject to limited taxation in Germany – irrespective of whether the non-resident is an individual or a legal entity.

Under specific assumptions according to § 49 EStG income from licensing of rights to licensees in Germany constitutes German-source income even in the absence of a domestic permanent establishment. Royalty payments are taxed at a withholding tax rate of 15%. Under the provisions of an applicable DTT, the tax rate might be reduced to zero provided that the recipient meets the respective requirements.

A permanent establishment is defined as a fixed place of business or facility that serves the business of an enterprise and over which the entrepreneur (non-resident) exercises control. A permanent representative is defined as an individual that transacts business for an enterprise on an ongoing basis, subject to the instructions of the enterprise. Both, a permanent establishment and a permanent representative expose the non-resident to German taxation (subject to the general taxation rules) unless a DTT provides for an exception. If a corporation maintains the taxable presence a corporation tax rate of 15% (plus solidarity surcharge of 5.5%) applies and the respective income generated by the German permanent establishment is subject to trade tax. In case of an individual the personal income tax rate plus solidarity surcharge and trade tax apply. Trade tax does not fall due in case of a German permanent representative.

Indirect Taxation

Value Added Tax

VAT is levied at each stage of the production and distribution chain. In general, German VAT regime covers taxable supplies of goods or services within the German territory that are carried out by a VAT entrepreneur, as well as intra-community acquisitions and imports of goods.

With regard to the supply of goods and services, VAT generally arises when the supply is carried out. Businesses with less than EUR 500,000 turnover in

the previous calendar year and self-employed individuals may pay VAT on the basis of cash receipts.

The standard VAT rate for supplies is 19%, with a reduced rate of 7% applying to certain services and goods e.g. newspapers, books and transfer of rights, which arise from the copyright law.

Certain goods and services are exempt from VAT if corresponding formal documentation is provided. The most common examples are intra-EC deliveries of goods and exports of goods to a non-EU destination and services related to these deliveries.

VAT entrepreneurs that are registered for VAT purposes in Germany must calculate their VAT liability and file preliminary VAT returns with the German tax authorities on a quarterly basis (on a monthly basis for VAT entrepreneurs with a total annual VAT of more than EUR 7,500 in the previous calendar year). VAT returns must be filed electronically. In addition to the preliminary VAT return filing procedure, VAT entrepreneurs must file an annual VAT return. In the case of cross-border transactions, further reporting obligations may apply for taxpayers.

Micro businesses that fulfill certain criteria are not liable for VAT in Germany pursuant to the so-called "*Kleinunternehmerregelung*", but these provisions are generally only applicable to businesses established in Germany.

For certain services or supplies which are carried out by a non-resident VAT entrepreneur and that are taxable in Germany, the "reverse charge mechanism" applies, meaning that the recipient of the service (rather than the supplier) will be liable for VAT. If a foreign entrepreneur is not registered for VAT purposes in Germany, the Federal Tax Office will reimburse any input VAT paid in Germany upon application (if the respective formal requirements apply).

Other Indirect Taxes

Aside from VAT there are other taxes in Germany designated as "indirect taxes". Such taxes comprise any other excise duties and transactions taxes.

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They are levied on the following products: mineral oil, coal, natural gas, gasoline and certain bio-fuels, alcohol, tobacco, coffee, beer and electricity.

Personal Taxation

Taxation of Resident Individuals

Resident individuals are subject to income tax on their aggregated worldwide income. The tax year for income tax purposes is the calendar year. An individual's income is subject to income tax plus solidarity surcharge. Church tax is collected if the individual belongs to one of the recognized churches.

Net income from employment is determined by deducting any expenses incurred to produce, maintain, and safeguard that income from gross receipts. Tax on employment income is withheld at source.

In the case of income from self-employment, the taxpayer can choose between the equity comparison method and the cash basis accounting method. Under the equity comparison method the relevant gross income is the difference between the net worth of the assets pertaining to each category of income at the end of the preceding assessment period compared to the current assessment period. Therefore, under the cash basis accounting method taxable income is computed by reducing gross income by income-related expenses in accordance with cash receipts and disbursements. Business-related expenses are generally deductible under both methods. In addition special expenses and extraordinary expenses are deductable.

In most cases individuals have to file a tax return. On the basis of the tax return the individual income tax is calculated according to progressive tax rates. As from 2010 onwards the zero-bracket amount is EUR 8,004. For married taxpayers the zero-bracket amount is doubled. The tax rate increases with the income amount from 14% to 42% (marginal tax rate). The rate of 42% is applied starting with an income of EUR 52,882 (EUR 105,763 in case of joint assessment). The highest personal income tax rate is 45% for income of EUR 250,730 or more (resp. EUR 501,462 in case of joint assessment).

Taxation of Non-Resident Individuals in General

Non-resident individuals are subject to income tax on certain categories of income from German sources (§ 49 EStG, see above). To trigger German income tax, the income of the non-resident must have specific connection

with Germany. Depending on the type of income, the German source income of non-residents may be subject to tax either through withholding at source or by assessment upon filing of a tax return.

Taxation of Artists

Foreign artists, who are neither resident nor ordinarily resident in Germany, are liable to limited tax liability with their income from their German source artistic activities. Business income, income from self-employment or income from employment could be given.

Film authors, film composers and expert adviser, are in general not integrated into the company/body they are working for and, therefore, generally self-employed. Actors, directors, cameramen, assistant directors and other staff are normally integrated into the production organism and therefore not self-employed. Dubbing actors and dubbing directors are self-employed in general.

For self-employed artists (or artists with business income), who are subject to limited tax liability, the income tax is levied by withholding tax at source. The withholding tax rate amounts 15% plus 5.5% solidarity surcharge if the receipts exceed EUR 250. Receipts of less than EUR 250 are tax free and can be paid without withholding tax. It may only be refrained from withholding tax if a tax exemption certificate issued by the Federal Tax Office is presented (subject to the regulations of the respective DTT).

In case of EU/EEA residents, expenses caused by the taxable activity may reduce the receipt if the expenses are proved. Under these circumstances the tax is calculated on the basis of the receipt minus expenses, but subject to a tax rate of 30%.

For non-resident artists who are integrated in the production organism and therefore not self-employed the German employer has to withhold wage tax at source unless the applicable DTT provides for an exemption. The respective exemption certificate is issued by the competent tax office of the employer upon application. Subject to certain conditions and employee category wage tax may be withheld on a lump-sum basis.

Foreign Tax Relief

A German film production or distribution company which receives income from abroad may in many cases be able to avoid deduction of foreign withholding taxes, or to obtain a refund of such taxes, under a DTT between Germany and the country concerned.

Where a foreign withholding tax is suffered and is not refundable, it is in principle creditable against German tax on the same income. If such tax relates to an earlier period (e.g., if royalty income of the German company is earned in a given year, but actual receipt and deduction of withholding tax is in a later year) or a later period (e.g., if a foreign licensee pays a down payment under deduction of withholding tax which is deemed to be deferred income in Germany to be realized by the German company in later years) credit can be obtained against the tax of the year in which the income is effectively realized in Germany. However, the German creditable tax is calculated based on the income after deducting an appropriate allowable proportion of expenses. This is particularly relevant if a production company has incurred substantial financing expenses or if a distribution company has to pay substantial royalties to its licensor. The German tax computed in this way is often less than the withholding tax actually paid. The limitation is applied on a country-by-country basis and unrelieved foreign tax credits cannot be utilized by being carried back or forward.

A further difficulty arises if there is no German tax liability because of losses being brought forward. In all such cases, as an alternative, the foreign tax may be deducted as a business expense, in which case relief amounting to the percentage of the German statutory corporation tax and trade tax rate can be achieved.

For these reasons, foreign withholding taxes suffered by a German company may be a real tax cost.

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Chapter 12

Greece

Introduction

The protection of cinematographic art is the responsibility of the State, which should provide for its development. According to Greek legislation, the State is obliged to take necessary measures for the moral and material support of all types of art, including the production, distribution, and promotion of Greek cinematographic films. This has led to the establishment of the Greek Film Centre (GFC) in 1998, a corporation whose goals are the protection, reinforcement, support, and development of cinematographic art in Greece, as well as the projection, dissemination, and promotion of Greek cinematographic production inside and outside Greece. This corporation belongs to the broader public sector, is supervised by the Ministry of Culture, and is subsidized by the State.

Key Tax Facts

Highest corporate income tax rate	20%[1]
Highest personal income tax rate	40%
VAT rates	6.5%, 13% and 23%[2]
Normal non-treaty withholding tax rates: Dividends	25%[3]
Interest	40%[4] for loans to entities and 10% or 20% for loans to individuals

[1] The corporate income tax rate currently applicable to Greek companies is 20%, except for accounting years ending on or before July 31, 2011, in which case the rate is 24%. Partnerships are taxed at 25% for the portion of profits corresponding to legal entities and 20% for the portion corresponding to individuals who are general partners. Profits of Joint Ventures are taxed at 25%, with each participant being jointly and severally liable for any tax liability.

[2] Reduced rates by 30 percent apply if goods or services are supplied to or by taxpayers established in the Dodecanese islands and other Aegean islands. Certain goods/services are subject to the normal instead of the reduced VAT rate effective from September 1, 2011, while the Greek Government examines further changes in the future.

[3] Dividends are distributed from after-taxed profits and are subject to 25% withholding tax, unless the distribution is approved by the Annual General Assembly of Shareholders in 2011, in which case tax is withheld at the rate of 21%. If the beneficiary of dividends is established in a country which has a signed treaty with Greece for the avoidance of double taxation, the withholding tax rate provided therein will apply, subject to the fulfillment of certain conditions. No tax is withheld when the beneficiary of dividends is a parent company established in another EU country provided that the latter is eligible for exemption on the basis of the provisions of the Parent-Subsidiary EU Directive.

[4] If the beneficiary of the interest is established in a country which has signed a treaty with Greece for the avoidance of double taxation is in force, the withholding tax rate provided therein will apply, subject to the fulfillment of certain conditions.

Royalties	25%[6]
Tax year-end: Companies:	December 31 or June 30
Tax year-end: Individuals:	December 31

Film Financing

Financing Structures

According to Greek law, there is no specific type of company for the production of films; and therefore, all legal forms under which a foreign company can operate in Greece can be used to establish and operate a film production business in Greece such as forming a local company or partnership. In general, an entity with its registered place of business in Greece is normally considered to be a Greek enterprise despite the fact that all of its members may be foreigners.

Co-Production

Greece has signed the European Convention on Cinematographic Co-Production (the Convention), which was ratified by Greek Law No. 3004/2002. This convention regulates co-productions where at least three co-producers established in three different countries that are party to the Convention are involved, whether or not additional co-producers established in countries that are not party to the Convention are involved.

The aggregate participation in the production costs of co-producers who are not established in a country party to the Convention may not, however, exceed 30 percent of the total cost of the production. In case of such

[5] Interest paid by a Greek corporation or a Greek permanent establishment of an EU company to an associated company or a permanent establishment resident in another EU Member State, pursuant to directive 2003/49, is not subject to withholding tax (after the lapse of a transition period set out below) provided certain conditions are met. The full abolition of withholding income tax will apply after the expiration of a transitional period of eight years, starting from July 1, 2005. During the transitional period the tax withholding rate will be 10 percent for the first four years, and 5 percent for the following four years, unless the relevant treaty for the avoidance of double taxation provides for a more advantageous tax treatment.

[6] Royalties paid to companies or individuals with no permanent establishment in Greece are subject to a withholding tax of 25%. However, if a treaty for the avoidance of double taxation is in force, its provisions will apply subject to the fulfillment of certain conditions. There is no withholding tax on payments made to Greek residents. Royalties paid by a Greek corporation or a Greek permanent establishment of an EU company to an associated company or a permanent establishment resident in another EU Member State, pursuant to directive 2003/49, is not subject to withholding tax (after the lapse of a transition period set out below) provided certain conditions are met. The full abolition of withholding income tax will apply after the expiration of a transitional period of eight years, starting from July 1, 2005. During the transitional period the tax withholding rate will be 10 percent for the first four years, and 5 percent for the following four years, unless the relevant treaty for the avoidance of double taxation provides for a more advantageous tax treatment.

multilateral co-productions (involving non-parties to the Convention) the minimum participation by each co-producer may not be less than 10 percent and the maximum contribution may not exceed 70 percent of the total production cost of the cinematographic work.

European cinematographic works made as multilateral co-productions and falling within the scope of the Convention shall be entitled to the benefits granted to national films by the legislation of the parties to the Convention participating in the co-production concerned. Any co-production of cinematographic work is subject to the approval of the competent authorities of the parties in which the co-producers are established, after consultation between the competent authorities.

Each party to the Convention should facilitate the entry and residence as well as the granting of work permits in its territory of technical and artistic personnel from other parties participating in the co-production.

Partnership

Under Greek law there are two types of partnerships, general partnerships (OE) and limited partnerships (EE).

General Partnership – Omorythmos Eteria (OE)

A general partnership ("Omorythmos Eteria") is an entity in which the partners are jointly and severally liable for the debts of the partnership without limitation in liability. The Articles of Association of a partnership need not be signed before a Notary Public and can take the form of a private agreement. There is no minimum capital requirement. The capital may be contributed in cash or in kind, or in the form of personal services to the firm.

Limited Partnership – Eterorythmos Eteria (EE)

In all respects, a limited partnership ("Eterorythmos Eteria") is similar to a general partnership, except that the liability of certain (limited) partners is limited to the capital that they have contributed. At least one partner, generally the managing partner, must have unlimited liability. If a limited liability partner is engaged in the management of the partnership and more specifically for film producing limited partnerships, in the actual production of the film, he loses his or her limited liability status.

Although, in theory, the profits of the EE are distributed equally between the general and the limited partner, the law allows the Articles of Association to provide otherwise; however, in practice it is common for the profits to be distributed to the partners according to their participation in the company's capital.

Corporation – Anonymous Eteria

A film production company can also be established in the form of an Anonymous Eteria (AE), which is a legal entity in which the liability of a shareholder is limited to his or her contribution to the share capital. An AE is the equivalent of the French "Société Anonyme," the German "Aktiengesellschaft," or the U.S. corporation.

The minimum capital of an AE is generally EUR 60,000 and full payment must be certified by its Directors within two months from the date of incorporation. There are special laws that prescribe higher minimum capital requirements for AEs with particular business activities (e.g., banking institutions and insurance companies). Capital may be contributed in cash or in kind. Partial payment of the company's capital through contributions in kind is not permitted. Contribution in kind can be valued either by a special committee appointed by the Ministry of Regional Development and Competitiveness or by two Certified Auditors – Accountants or two appraisers of the Body of Certified Appraisers.

The capital of a film production AE company is divided into registered shares with a minimum nominal value per share of at least EUR 0.30 and a maximum of EUR 100. The liability of shareholders is restricted to their capital contribution.

In addition to common shares, an AE may issue preferred shares (with or without voting rights) and founders' shares. Dividends to preferred shareholders are normally computed as a fixed percentage of the par value of the preferred shares, are paid before any dividends to common shareholders and may be paid even if the AE does not distribute any dividends to common shareholders in any one year. Founders' shares cannot exceed 10 percent of the total number of shares issued, may be redeemed by the AE ten years after issuance and do not confer any right of participation in the administration of the company.

An AE may under certain circumstances, acquire its own shares or the shares of its parent (for example the nominal value of the shares acquired cannot exceed 10 percent of the paid up capital unless the shared acquired will be distributed to employees etc.).

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For Greek tax purposes, the accounting period consists of 12 months. However, on the commencement of operations, the first accounting period may be shorter or longer than 12 months but cannot exceed 24 months. The accounting year must end on June 30 or December 31. A foreign controlled AE may have the same year-end as its parent company, provided that the parent company has a holding of at least 50 percent of the AE's capital or the foreign parent has at least 50 percent participation in another Greek AE, which in its turn has a holding of at least 50 percent in the second Greek AE.

Corporations are required by the Greek Code of Books and Records to maintain double entry accounting books. The accounts and account structure must by law be that prescribed by the Greek General Chart of Accounts (the Chart of Accounts). Both company law and the Chart of Accounts prescribe the form of presentation of financial statements, which is in line with the EU Fourth Company Law Directive.

A minimum amount equal to 5 percent of the annual profits must be transferred to a statutory reserve until it reaches one-third of the share capital. This reserve is not available for distribution, except in the case of liquidation, but can be used to offset a deficit.

After deduction for the statutory reserve, a minimum amount equal to 35 percent of the annual net profits must be distributed to the shareholders as a first dividend, unless waived by the General Meeting of Shareholders by the majority of votes prescribed by law (currently 65%).

An interim dividend may be distributed, provided an interim balance sheet and a profit and loss account are published in a daily newspaper and in the Government Gazette at least 20 days before distribution and filed with the Ministry of Regional Development and Competitiveness. The interim profits distributed should not be more than half of the net profits appearing in the interim profit and loss account.

The administration of the AE is carried out by the board of directors and by the shareholders at general meetings. All foreign members of the board of directors must have a Greek tax registration number. Additionally, legal representatives of the AE who are non-EU citizens must also acquire a Greek residence permit.

Limited Liability Company – Eteria Periorismenis Efthynis (EPE)

An EPE resembles an AE in that it is regarded as a legal entity separate from its partners and that it has limited liability. An EPE resembles a partnership in the manner in which decisions are made; in particular, the majority of both the number of partners and of the capital are required. The profits of an EPE are taxed in a manner similar to that of an AE.

An EPE must have a minimum capital of EUR4,500 divided into equal parts or units ("meridia"), which must be fully paid-up at the time of incorporation. At least 50 percent of the minimum capital must be paid in cash. The par value of the parts must be at least EUR30 or multiples thereof. The owners of the company are known as participants, unit holders, or partners and are liable only to the extent of their invested capital.

The accounting period and requirements for accounting books are the same as that previously described for corporations (AEs).

A minimum amount equal to 5 percent of annual profits must be transferred to a statutory reserve until it reaches one-third of the paid-up capital. The distribution of profits is compulsory unless otherwise provided in the Articles of Association.

The Articles of Association may provide for the sharing of the profits by the partners to be different from their participation in the capital.

Greek Branch of a Foreign Entity

A foreign film production company can also establish a branch in Greece through registration with the Ministry of Regional Development and Competitiveness. The branch is administered by an individual (representative) appointed by the head office by virtue of a Power of Attorney. (If the individual appointed as the legal representative of the branch is not an EU national, he must secure a residence permit before arrival to Greece).

A branch may be registered as an AE or an EPE, in which case the foreign company is normally required to meet the minimum capital requirements set by Greek law for similar legal entities (i.e. EUR 60,000 for an AE and EUR 4,500 for an EPE).

In general, the accounting period of a branch is the same as that of an AE. Normally, the accounting year of the branch would be co-terminus with that adopted in the country in which the company is incorporated.

Private Office
Greek law provides for the establishment of private offices, which can provide services to foreign companies in order to help them produce cinematographic films in Greece. These offices are under the control of the Ministry of National Economy and the Ministry of Culture. Tax registration and accounting requirements, including obligations to withhold and remit certain tax withholdings, apply to such offices. Depending on their activity, income tax obligations may also apply to them as well as the obligation to register a Greek branch with the Ministry of Regional Development and Competitiveness.

European Company – Société Européenne (SE)
Another legal form is the European Company (SE). Greek Law 3412/2005, which incorporated EU Regulation 2157/2001, and Presidential Decree 91/2006, which incorporated EU Directive 2001/86/EC, supplemented by Greek legislation on AEs, constitutes the legal framework for the establishment of SEs in Greece, the minimum share capital of which cannot be less than EUR 120,000 subject to provisions of Greek law requiring a higher subscribed capital for legal entities engaged in certain business activities. The SE is a very useful vehicle for doing business in more than one EU Member State.

Joint Venture
According to the Greek Code of Books and Records, members of a Greek joint venture ("koinopraxia") may be a Greek or foreign entrepreneur (individual or legal entity).This also applies to joint ventures for the co-production of cinematographic films.

Foreign members of a kinopraxia must acquire a Greek tax identification number and be represented by a Greek individual or entity.

The joint venture must aim at the carrying out of a specific project in Greece, such as the production of a film in Greece. The object of the joint venture cannot be extended or amended at a later stage.

The joint venture, for which no minimum capital requirements apply, must be established by a written agreement to be concluded between its members and must have a specific business address in Greece (city, street, number). This agreement must be filed with the competent tax office where the joint venture has its business address prior to the commencement of any business activity. As a result of the tax registration, the joint venture acquires

its own tax (VAT) registration number and maintain its own accounting books and records, which should be separate from those of its members (under certain conditions the joint venture may record its results in the accounting books of one of its members).

Participants in the joint venture are jointly and severally liable for any liability arising from the joint venture's activity and the extent of their liability depends on the provisions governing the joint venture depending on its activity i.e., whereas if the provisions of the civil code for partnerships apply, the parties are liable according to their percentage participation. If the provisions of the commercial code apply (like in the case of a joint venture created for the production of a film), the parties are jointly and severally liable.

As soon as the joint venture finishes the production of the film for which it was created, it should be dissolved since a joint venture is established to carry out a specific project (i.e., production of a film). In view of the above it is difficult in practice once a joint venture is dissolved to award the exploitation rights of the film following dissolution.

Although the joint venture is recognized as a separate entity for tax purposes under the above mentioned conditions, Greek legislation generally does not explicitly recognize a joint venture as a separate legal entity. As an alternative most co-productions of cinematographic films where Greek entities and foreign entities participate, are usually carried out on the basis of a simple co-production agreement, where all relevant issues are explicitly agreed upon.

Acquisition of Distribution Rights
Distributors may participate in the financing of the production of a film by making an advance payment for the future distribution rights of the film, which is called an "advance guarantee" and normally exceeds EUR 3,000.

Tax and Financial Incentives

Producers
There are no specific incentives available for producers of cinematographic films in Greece.

Distributors
There are no specific incentives available for distributors of cinematographic films in Greece.

Actors and Artists
There are no specific incentives available for actors and artists in Greece.

Incentives Offered by the Greek Film Centre (GFC)
As mentioned above, the GFC is a corporation that belongs to the State, has autonomy, and operates for the public interest. Its objectives are the protection and development of the art of cinematography in Greece and the promotion and distribution of Greek cinematographic production within Greece and abroad. In order to achieve its objectives it sponsors, awards grants, participates in the production, and collaborates in the production of cinematographic films of all types which are of particular cultural value.

The largest part of the budget of the GFC is invested in film production. Particular emphasis is given to supporting the attempts of new filmmakers but a special place is reserved for the films of more mature directors who already have a distinguished reputation.

In order for the GFC to implement its policies and especially to support cinematographic productions, it has funding programs available for producers who meet the criteria of independent production of audiovisual works. Funding programs are not addressed to completed films (i.e., after the end of the production), and funding of a completed film is provided only in special cases when the financial condition permits it.

"Horizons II"
The objective of this funding program is the development of Greek film art and the creation of motion pictures with notable artistic, technical and financial specifications. The basic selection criteria applied in assessing projects submitted within the framework of this program will be: the artistic quality of the project, the sound dramaturgy of the project, the potential prospects of the film work in international festivals as well as its prospective appeal to Greek and international audiences, the appeal the previous films of the director, scriptwriter and producer had for festivals and audiences and the professional experience, theoretical background and previous work of the creators (scriptwriter, director) and the producer.

It is estimated that the program's annual budget can finance six feature films. At least one of the funded films should be shot by a new director making his or her first feature film. The amount of the funding is set at: a) up to €250,000 for projects submitted by debut film directors and b) up to €350,000 for projects submitted by directors who a previous feature film to their credit, depending on the production needs of each project. In order for a film production project that can be produced solely and exclusively with Greek funds to be approved by the program, its producer must have already covered 30 percent of its budget. In order for a film production that has been planned as an international co-production to be approved by the program, its producer must have already covered 30 percent of the budget of the Greek participation in the production.

As regards international co-productions pre-approval is valid for a period of 18 months. For projects involving exclusively Greek funding sources, pre-approval is valid for a period of 12 months. If after the passage of 12 months (or 18 months for international co-production projects) from the date of the initial approval of the production no complete production file has been submitted then the initial approval is revoked. "Incentive".

Incentive is a development program for the support of Greek independent cinema for the production of films that have already secured funding by financiers with realistic prospects of recouping their investment, with a satisfactory production level, that are artistically adept and have increased possibilities of attracting a broad audience. The basic funding criteria for projects submitted within the framework of this program are: the validity of the funding data, the credibility and type of funding sources, the amount of the funding obtained from the distributor and the extent of the theatrical distribution, the commercial and artistic dynamic that the names of the artistic team that participates in the film (director, scriptwriter, cast, etc.) are expected to give the work, the sound dramaturgy of the script and its potential appeal for Greek and international audiences, the financial/artistic background of any previous work by the director and producer.

It is estimated that the annual budget assigned to this program should potentially cover the production costs for eight feature films. GFC funding of a film submitted to this program is affected through the assignment to the GFC of a percentage of the revenues from the exploitation through any possible means except from the release in Greek cinemas.

The maximum funding of a film submitted within this program is EUR200,000. In order for a film production project to fall under this program its producer must have already covered 60 percent of its budget.

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"Scriptwriting"
The Scriptwriting program is designed for two categories of applicants and constitutes two different ways, as well as methods, of working that are applied to scriptwriting. It has therefore, two different forms and is correspondingly divided into the following two sub-Programs:

- SCRIPTWRITING 1 (designed for teams)
- SCRIPTWRITING 2 (designed for new scriptwriters)

Scriptwriting 1 (designed for teams)
In this sub-Program, the GFC funds the writing of scripts in the hope of achieving a close collaboration between the scriptwriter, the director and the producer from the stage of the initial idea to the completion of the production of the work.

Scriptwriting projects that will be approved in this category may be submitted as candidates for production funding, exclusively and solely by the same team of three basic contributors, under the following conditions for each member of the team:

For the Producer
- The producer and basic shareholder in the production company must be someone other than the scriptwriter and the director;
- The production company must have no ties to any radio-television broadcasters;
- The production company must have pre-acquired the option to the script and paid the scriptwriter on the basis of a legal receipt, an advance of at least €3,000 at the time the application is submitted; and
- The production company cannot submit to the GFC more than two projects period in this Program.

For the Scriptwriter
- He must have worked with the producer and the director from the stage of the initial idea for the writing of a script. At the stage when the project is submitted to the GFC, he must have written a treatment of about 15 pages, with a synopsis of up to one page and a scene of the work, fully developed, with dialogue;
- He must have written a script for a feature film or three shorts that were produced; and
- He cannot appear in more than one project per period in this Program.

For the Director
- He cannot appear in more than one project per period in this Program; and
- Of the projects that fulfill the above requirements and are selected for examination by the GFC up to five per year are funded with the amount of €12,000 each. The file submitted for evaluation of the project must contain:
  - Application form (special GFC form);
  - Biography of the scriptwriter, director and producer;
  - Synopsis of the subject (up to one page);
  - Treatment of up to 15 pages;
  - Sample scene, fully developed (with dialogue);
  - Notarized deed of submission of the synopsis of the script and the treatment;
  - Three-party agreement between producer-scriptwriter-director for the development of the project;
  - Invoice covering the amount of €3,000 paid to the scriptwriter to secure the rights; and
  - Certification that the producer is registered in the relative chamber of commerce.

In return for funding the writing of these scripts, the GFC is granted priority over their production rights for a period of two years from the date of their completion.

After the decision to fund the writing of a script is issued, an agreement is signed between the GFC and the scriptwriter. The completed script has to be delivered after at least ten months but not later than one year following the conclusion of the above agreement. In exceptional, fully justifiable instances, the GFC Board of Directors may give an extension of up to six months.

Scriptwriting 2 (designed for new scriptwriters)
The GFC provides new scriptwriters with the opportunity to test their abilities to write scripts by providing them with financial assistance allowing them to participate with their project in recognized Script Workshops in Greece and abroad and thus to enrich both their project and their personal artistic experience.

Participation Requirements

- The scriptwriter must not have written a script that was made into a feature film in the past;
- The scriptwriter must be a citizen of Greece or the European Union or have a residence permit; and
- The script must be written in the Greek language;

Up to three projects per year are funded within the framework of this Program. They are assessed by the Evaluations Committee and the Board of Directors of the GFC, once a year.

The amount of the funding per project is set by the Board of Directors of the GFC with a maximum amount of €5,000, and covers exclusively expenses incurred in connection with the participation of the scriptwriter in Script Workshops with a specific project, as well as possible fees of script advisors.

Script projects which have been approved by another agency may not participate in this Program.

The file submitted for evaluation of the project must contain:

- biography of the applicant;
- one-page synopsis;
- treatment (up to 15 pages);
- same scene, fully developed (with dialogue); and
- any other material considered necessary for an enhanced presentation of the project.

Projects that were examined but not approved may not be re-submitted.

After receiving notification of the results, the scriptwriters of the projects approved have at their disposal six months in which to find and make a final choice regarding the Script Workshop they will attend. Upon presentation to the GFC of list of expenses involved in their participation in the specific workshop, they request from the GFC that the relative funding agreement be signed.

The length of time allotted for the scriptwriting is stipulated in the funding agreement, due consideration being given to the time frames and stages required by the specific Script Workshop. Other funding programs offered by the GFC for specific type of film productions are also available:

- "ShortCuts," which is applicable only to fiction, animation and documentary film projects with a running time of no longer than 20 minutes, targeted chiefly for theatrical release (maximum funding EUR 40,000);
- "New perception," which is applicable only to long films the producer of which engage in such activities for first or second time (maximum funding EUR 225,000); and
- "Documentary," which is applicable only to documentaries for the TV or the cinema (maximum funding EUR105,000 for long films and EUR 65,000 for medium-time films).

Other Financing Considerations

Exchange Controls and Regulatory Rules

In general, the importation/exportation of foreign currency into/from Greece is unrestricted. However, exportations of foreign exchange must still be effected through the commercial banks which will review the authenticity of the transactions and request supporting documentation.

Tax Costs on Transfer of Shares or Units

The profit or gain from the transfer of units of limited liability companies (EPE) is subject to an advance tax at the rate of 20 percent. The above gain is included in the income of the entity for the determination of taxable profits with credit being granted for the 20 percent advance tax paid.

The sale of shares of companies not listed on the Athens Stock Exchange is subject to a special tax at the rate of 5 percent calculated on the higher of the contractual sale price or the deemed sale price, the latter being determined on the basis of a specific formula based primarily on previous year's earnings. Subject to the fulfillment of certain conditions, this tax does not apply if the seller of the shares is resident in a country which has signed a treaty with Greece for the avoidance of double taxation and does not have a permanent establishment in Greece (in case it has a permanent establishment the 5 percent tax will be imposed if the shares are an asset of the permanent establishment). The above 5 percent tax is also applicable to the sale of shares of foreign S.A. companies which are not listed on a foreign stock exchange by Greek individuals or legal entities. Such tax is imposed on the contractual sale price. When the seller is a Greek legal entity the above 5 percent tax is an advance tax since the gain on the sale the unlisted shares is subject to the general income tax provisions for legal entities with the right to set off the advance tax.

The sale of shares of companies listed on the Athens Stock Exchange or any other foreign recognized stock exchange is subject to a tax of 0.20% on the transfer price, without any credit being available for such tax where such shares are acquired on or before December 31, 2011. Entities maintaining double entry accounting books are required to record gains realized from the sale of such shares in a tax free reserve in order to be offset against possible future losses from the sale of the listed shares. Upon distribution or capitalization of the reserve, income tax at the applicable corporate income tax rate is imposed and a tax credit is available for any tax withheld based on previous tax provisions. For listed shares acquired on or after January 1, 2012, by individuals or legal entities, any gains arising from disposals will be taxed according to the general provisions of law, while any losses will be tax deductible.

Interest Rate on Bank Loans

During the granting of a loan or any form of credit supplied through a bank, for the production of a Greek film or for the foundation or operation of workshops for the production and processing of Greek cinematographic films, as well as for the creation of new or renovation of old cinemas, the interest rate cannot be higher than that which is currently provided for industrial loans. This type of loan can be secured with a special pledge on the future film.

Interest Payments on Loans

When a loan is provided by a Greek resident entity to a non-resident entity, the payments of interest to the resident company are subject to an advance tax at the rate of 20 percent which is offset against the beneficiary's final tax liability arising on the total income.

When a loan is granted by a non-resident entity to a Greek resident entity, the interest payments are subject to withholding tax at the rate of 40 percent or at the lower rate provided in the relevant treaty for the avoidance of double

taxation. Notwithstanding the domestic rates, the Greek Income Tax Code has incorporated the provisions of Council Directive 2003/49/EC (Interest and Royalties Directive), which provides for the full abolition of withholding income tax after the expiration of a transitional period of eight years, starting from July 1, 2005. During the transitional period the tax withholding rate was 10 percent for the first four years (from 7.1.2005 to 6.30.2009), and will be 5 percent for the following four years (from 7.1.2009 to 6.30.2013), unless the relevant treaty for the avoidance of double taxation provides for a more advantageous tax treatment.

Loans concluded in Greece (except for bank loans from Greek banks or branches of foreign banks operating in Greece) are subject to stamp duty at a rate of 2.4 percent. In addition to written loan agreements, stamp duty also applies to loans concluded orally and where the loan is evident from bookkeeping entries. By exception, loans concluded and executed abroad, which satisfy certain conditions, are exempt from stamp duty in Greece.

Regarding intercompany loans and taking into account the existence of the special relationship between group entities, the text of the loan agreement should not raise any doubts to the Greek tax authorities over the authenticity of the transaction in order to permit interest to be deductible. Therefore, the loan agreement must be concluded on arm's-length conditions and its form must meet certain requirements; however, it is possible to have a non-interest bearing loan granted to a Greek entity. Furthermore and based on the provisions of Law 3775/2009 and the relevant amendments of Law 3842/2010, accrued interest of loans paid or credited to affiliated enterprises is deductible from a corporate income tax perspective, provided that the proportion of these loans to the net assets of the enterprise does not exceed the ratio of 3:1, on average, per fiscal year (a.k.a. "thin capitalization rule"); otherwise, the proportion of the interest expense (i.e. interest payments) corresponding to the amount of the loan exceeding the 3:1 ratio shall not be recognized as a tax deduction.

Export of Films

The export of Greek cinematographic films is freely permitted and can be carried out without the payment of any duty or Customs charges, on any number of copies. This provision also applies to the export of films that have been produced in Greece by enterprises, which are based abroad or in collaboration with such enterprises. During the export of Greek films, the duties and other taxes on the raw materials (the film) are refundable. In general, Entrepreneurs who wish to export goods from Greece to non-EU countries need to qualify as exporters and must register with the Special Exporters Registry in Greece. If a potential exporter is a foreign enterprise, it must first register for VAT purposes in Greece through the appointment of a Greek representative, who will be responsible to effect the registration with the Special Exporters Registry in Greece on behalf of the foreign entity.

Other Financial Support

A special tax of 12 percent is imposed on cinema tickets for cinemas in Athens and Salonica, and 8 percent on cinema tickets in towns with a population over 10,000. These percentages are reduced by 50 percent for outdoor cinemas, as well as cinemas located in border areas. An amount equal to 50 percent of the above tax on public entertainment, which is collected each year from the screening of cinematographic films, is reserved for the development of cinematographic art and the support of Greek cinema.

Corporate Taxation

General Tax Provisions

Irrespective of their legal form, all businesses must register for tax purposes in Greece before they commence operations and authenticate books and records immediately thereafter.

Corporations (AE) and Branches

Greek AEs are taxed on their profits before distribution at the rate of 20%. Dividends are distributed from after tax profits. Dividends distributed by Greek corporations to Greek or foreign individuals or legal entities as well as dividends distributed by foreign entities to individuals who are residents of Greece, are subject to a withholding tax of 25 percent, which is the final tax liability of the beneficiaries of that income. This taxation applies on dividend distributions decided by general meetings of shareholders that will be held on or after January 1, 2012, while dividends distributed during 2011 are, by exception, subject to 21% withholding tax (the corporate tax rate for years ending up to July 31, 2011 is 24%). If the beneficiary of dividends is established in a country which has signed a treaty with Greece for the application of double taxation, the withholding tax rates provided therein shall apply accordingly. Notwithstanding the existence of a treaty, no tax is withheld when the beneficiary of dividends is a parent company established in another EU country provided that the latter is eligible for exemption on the basis of the provisions of the Parent-Subsidiary EU Directive.

The taxable profits (or losses) of each year are the profits (losses) shown in the financial statements, derived from the official books kept in accordance with the Greek Code of Books and Records after adjusting for non-deductible expenses and non-taxable income.

Branches of foreign companies are similarly taxed on their profits. Any profit remittances to their head offices are also subject to the dividend tax withholding.

Furthermore, there is an exemption from corporate income tax on profits received by Greek AE companies from their EU subsidiaries provided that such profits are transferred to a tax free reserve account and the Greek company has a participation of 10% in the foreign company for at least two consecutive years. Note that this provision does not include dividends received from affiliates outside the EU located in third countries.

If such tax-free income is distributed, it becomes subject to corporate tax. Transfers from the tax free reserve account of branches to the account of the head office are deemed to be distributions and are taxed.

For fiscal year 2007 onwards, income earned by companies from the sale of shares not listed on the Athens Stock Exchange, on a Foreign Stock Exchange, or on any other internationally recognized stock exchange, is no longer subject to taxation at source, but subject to the general income tax provisions with the right to offset the 5 percent tax paid on the transaction. As of April 1, 2011, the sale of listed shares in the Athens stock exchange or in foreign exchanges is subject to a duty of 0.2%. The duty is calculated on the value of the shares sold and must be paid by the seller.

When the company has gains or losses from the disposal of shares or units, see the relevant section above for the tax treatment.

When the company earns income from real estate, the gross income therefrom is subject to a three percent supplementary tax, but such tax cannot exceed the corporate tax.

The tax is payable in eight equal monthly installments, the first installment is paid with the filing of the tax return.

Legal entities subject to corporate tax are also required to pay an amount equal to 80 percent (100 percent in the case of Greek banks and branches of foreign banks) of the current year's income tax as an advance against the following year's tax liability. Credit is given for the advance tax paid in the previous year.

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The above mentioned advance tax rates are decreased by 50 percent for the first three accounting years for AEs or EPEs incorporated from January 1, 2005 onwards, on condition that they have not resulted from a transformation or merger of any other entities.

Limited Liability Companies (EPE)

The tax treatment of the EPE is, in general, the same as the tax treatment of the AE. The taxable profits (or losses) of each year, which are calculated in the same way as for AE companies, are the profits (losses) shown in the financial statements, derived from the official books kept in accordance with the Greek Code of Books and Records after adjusting for non-deductible expenses and non-taxable income. The taxable profits of each year are currently taxed at the rate of20 percent (by exception, the rate is 24% for accounting years ending on or before July 31, 2011). Distributed profits are taxed in the same way as profits distributed by AEs (25% except for accounting years ending on or before 31 July 2011 where the rate is 21%).

Partnerships

The tax rate applicable to the profits of an OE or an EE is 20 percent and distributed profits are only taxable at the level of the OE or the EE. Unlimited liability partners of OEs and EEs who are individuals must have a share of the profits equal to 50 percent of the total profit multiplied by their percentage of participation, taxed in their hands at their personal tax rate. This amount is considered business remuneration and is deducted from the OEs and EEs profits in arriving at taxable profits.

Branches of foreign partnerships are taxed at a rate of 20 percent on their net revenues, after the deduction of business remuneration calculated as above for up to three unlimited liability (individuals) partners of the foreign entity with the highest participation percentage. The above apply to income of financial year 2010 which arises from 1 January 2009 onwards, provided that the partners are unconditionally and fully liable according to the legislation of the member-state where the partnership is established.

If all the partners are legal entities, the tax rate applicable to the profits of the OE, EE or branch of partnership is 25%.

Joint Ventures

Provided that the joint venture qualifies as a joint venture pursuant to the Greek Code of Books and Records, it will be considered as a separate Greek entity for tax purposes and it will be subject to Greek income tax in the same way as the corporation as stated above (currently at the rate of 25 percent) on profits before distribution, each participant being jointly and severally liable for tax liabilities of the joint venture. No further Greek income tax will be imposed in the hands of the parties of the joint venture when the profits will be distributed to them.

Filing of Tax Return

AEs and EPEs are obliged to file their income tax returns by the tenth day of the fifth month following their accounting year end, whereas OEs and EEs and joint ventures maintaining double entry books are required to file within three and one-half months following the end of their accounting year. The tax is paid in eight equal installments, the first installment being paid with the filing of the tax return. If a company files its tax return without making the appropriate tax payment, it is considered as not having filed the tax return, and therefore, it is subject to all the consequences pertaining to non-filing. Other filing obligations, such as for withholding taxes, also exist.

Greek AEs and EPEs which are audited by registered Certified Auditors and audit firms can finalize their tax obligations towards the Greek State without waiting for a tax audit to be carried out by the tax authorities. To this end, Certified Auditors and audit firms perform an audit and issue an Annual Tax Audit Certificate, which consists of a Tax Compliance Report and a Detailed Information Appendix. The former report is submitted by the audited company within 10 days from the date of the submission of the corporate income tax return, while respective auditors are further required to submit such report electronically to the General Secretariat Information Systems (GSIS) on the Ministry of Finance no later than 10 days following the deadline for approval of the audited company's accounts by the General Assembly of the Shareholders.

Recognition of Income

There are no special rules regarding the recognition of income of film production companies and therefore, taxation arises in accordance with the general rules applicable to all types of firms irrespective of their activities.

Greek Resident Entities

Entities established in Greece are resident in Greece for tax purposes and are taxable on their worldwide income. A foreign entity is subject to Greek corporate tax on income arising in Greece if it has, or is deemed to have, a permanent establishment (PE) in Greece.

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Foreign Enterprises

A foreign enterprise operating in Greece through a branch or a subsidiary company, or indeed having acquired a PE in Greece, is subject to corporate tax.

In accordance with Greek tax law foreign enterprises are generally regarded as having a permanent establishment in Greece if they maintain one or more branches, agencies, offices, warehouses, plants, laboratories, or other processing facilities in Greece for the purpose of exploiting natural resources; they engage in manufacturing activities or the processing of agricultural products, they have a representative in Greece; they render services of a technical or scientific nature in Greece, even without a representative, they keep inventories of merchandise for their own account out of which they fill orders; or they participate in a personal or limited liability company (i.e., partnership or EPE).

The above criteria are superseded by the provisions of the double taxation treaties concluded by Greece with other countries, which include a narrower definition of a permanent establishment.

By virtue of provisions in the Greek Code of Books and Records, any foreign enterprise that has an actual professional presence in Greece must register for tax purposes and authenticate accounting books and records irrespective of whether it has acquired a PE or not. If no PE is acquired, in principle, the foreign enterprise is not subject to income tax but it has to register with the Greek tax authorities and maintain accounting books and records in order for it to be able to fulfill tax withholding and other administrative obligations.

Sale of Distribution Rights

In general, payments by a distribution company to a production company for distribution rights would be treated as royalties. Royalties are added to the other revenues of a Greek company and are taxed at the applicable income tax rate.

If a Greek resident company pays royalties for the distribution rights in a film or television program to a production company based in another country without a PE in Greece, the payments would be regarded as royalties taxable in Greece at the rate of 25 percent (or at a lower rate if provided for in a treaty for the avoidance of double taxation). The tax so charged is withheld at the time of payment and is accounted for to the tax authorities within the first ten days of the following month.

Double tax treaties may provide for lower rates. Moreover, the Greek Income Tax Code has incorporated the provisions of Council Directive 2003/49/EC (Interest and Royalties Directive). The full abolition of withholding income tax will apply after the expiration of the transitional period. During the transitional period of eight years, starting from July 1, 2005, the tax withholding rate will be 10 percent for the first four years (from 1.7.2005 to 30.6.2009), and five percent for the following four years (from 1.7.2009 to 30.6.2013), unless the relevant treaty for the avoidance of double taxation provides for a more advantageous tax treatment.

The Television Broadcaster

The television broadcasters in Greece are the State broadcaster, the cable TV broadcasters and the private TV broadcasters.

With the enactment of Law 3905/2010, the State broadcaster and cable TV broadcasters are required to apply 1.5 percent of their annual gross revenues for the production or the co-production of cinematographic films, which will be released in the cinemas. The contribution of private TV broadcasters in the above respect is limited to 1.5 percent of the annual gross revenues derived solely from advertisements. Up to ½ of the amount contributed by the State broadcaster and private TV broadcasters can be given to the Greek Film Center as advertisement time for the promotion of cinematographic films through TV advertisement. The resources of the State TV broadcaster are:

- The duty paid by all Greek resident legal entities or individuals, which is levied through their electricity bill;
- Advertising; and
- Subsidizing by the State budget.

Advertising is also the main resource for private and cable television whereas cable television also collects fees from its subscribers.

Amortization of Expenditures

There are no specific rules for film production companies and TV broadcasters; thus, the general rules are applicable.

Deductibility of Expenses

Expenses raised during the production of a film qualify for tax deductibility only if:

- They are stipulated in Greek income tax law and other special tax provisions;
- They are properly recorded in the official books and records;

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- They are properly supported by adequate documentation as specified in the Greek Code of Books and Records;
- They are incurred for the purpose of earning income (this is the concept of "productive" expenses);
- They have been recorded in the period to which they relate;
- The price agreed to between the related parties has been set at arm's length, i.e. at the amount that would have been agreed to, if the services were provided by a third party supplier; and/or
- Transfer pricing rules apply for intragroup transactions.

Deductibility of payments to residents of non-co-operating countries or of countries with preferential tax treatment

Payments for the following made or to be made to an individual or an entity which is a tax resident or has its statutory or actual seat or is established in a country which is considered as non cooperating or a country with a preferential tax regime are not deductible for tax purposes:

- purchase of goods or receipt of services;
- interest arising from any kind of claim, bond, deposit or guarantee;
- royalties for the use of or the right to use any literary, artistic or scientific works (including cinematographic films, films, tapes or discs for radio or television broadcasting), patents, trademarks, secret industrial methods or formulas, production procedures, or for the use of or the right to use industrial, commercial or scientific equipment or for information regarding industrial, commercial or scientific experience and any other relevant right;
- lease payments, or lease payments to leasing companies;
- remuneration to executives and members of the board of directors; or
- any other payment of any kind as well as expenses of any other category.

By exception, the above expenses are deductible where the taxpayers can prove that the respective expense relates to actual and usual transactions and did not result in the transfer of revenues or income or capital outside of Greece for the purpose of tax evasion. The burden of proof rests with the taxpayer.

Non-cooperative countries are those which on and after 1 January 2010 are not members of the European Union, their situation as far as clarity and exchange of information on taxation matters has been examined by the OECD and which by 1 January 2011 cumulatively satisfied the following conditions:

- had not concluded with Greece any mutual assistance agreement on tax matters; and
- had not concluded any such agreement with at least twelve other countries.

Non-cooperating countries are determined by virtue of a decision issued by the Minister of Economy, after the above conditions are examined and which is published within January of each year.

For income tax purposes, an individual or an entity is considered to enjoy a preferential tax treatment in a country outside Greece, if they are not subject to any tax in that country or although subject to tax, are not actually taxed, or are subject to tax at a rate which is less than 60% of the rate which would be applicable to their income in case they were resident in or had their registered address or a permanent establishment in Greece. The preferential tax regime criterion applies even in cases where such individual or entity has their residence or statutory or actual seat or are established in an EU member state.

Depreciation of Fixed Assets

The regular depreciation of fixed assets applies to all types of companies, including film production companies, and is compulsory for years ending on or after December 31, 1997. Fixed assets falling within the same category can be depreciated by using either the higher or the lower rate of the category, on condition that the rate to be chosen will be used consistently. If a business in any accounting period does not charge depreciation at the allowable rate, it waives its right to deduct the corresponding amount in the future.

Assets whose cost of acquisition is up to EUR 1,200 may be expensed in the year they were purchased or were first put into use. Depreciation is taken on a straight-line basis on the acquisition cost of the asset plus any expenses incurred for improvement or extensions.

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Depreciation of Start-up or Pre-operating Expenses
Start up or pre-operating expenses or expenses for the acquisition of real estate may be deducted in one year or in equal installments over a period not to exceed five years. Leasehold improvements must be deducted in equal amounts over the life of the lease unless Presidential Decree 299/2003 provides for higher rates.

Deductibility of Royalties and Other Relevant Fees
Royalties and other relevant fees are normally deductible in the year in which they are paid or credited to the beneficiary as long as the payment or credit is effected before the deadline for the preparation of the statutory financial statements, the obligation is evidenced by a written contract and relevant invoice (special conditions apply for the deductibility of royalties paid within a group). If the beneficiary of the royalties is a non-resident foreign entity or Individual, the relevant fees may be deducted only if the royalty withholding tax has been paid.

A ministerial decision is issued every year listing the deductible and non-deductible expenses. The list of deductible expenses is binding on the tax auditors but it is not treated as an exhaustive list.

Losses
Tax losses of companies and branches of foreign companies that maintain double entry accounting books and tax losses of entities maintaining income and expense books may be carried forward and be offset against taxable income of the five years following the accounting year in which they were incurred. Losses cannot be carried back. Greek companies having a business interest (i.e., branch) abroad, may offset losses incurred by their foreign interest only from profits arising from a similar business interest abroad and not from profits arising from their business activity in Greece.

Group Tax Relief
The concept of group tax relief does not exist in Greece. Companies cannot transfer losses to other companies of the same group.

Foreign Tax Relief
In the absence of a treaty for the avoidance of double taxation, a Greek corporation or permanent establishment is entitled to claim credit for the foreign tax charged on income from any overseas source against the Greek corporate tax payable on that income. The amount of the credit is limited

to the amount of Greek tax attributable to such income. Treaties for the avoidance of double taxation have been signed and entered into force with Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, India, Ireland, Israel, Italy, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malta, Mexico, Moldavia, Morocco, the Netherlands, Norway, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, U.K.raine, United Kingdom, the United States of America, and Uzbekistan. Other tax treaties have been signed or even ratified but are not yet in force or they are under negotiation. The tax treaties cover, inter alia, the withholding tax treatment on payments of dividends, interest, and royalties from Greece to residents of the treaty countries.

In addition to the above treaties, Greece has incorporated the provisions of the Parent-Subsidiary Directive (Council Directive 2003/123/EC) and the Interest-Royalties Directive (Council Directive 2003/49/EC). By virtue of the Parent-Subsidiary Directive, dividends distributed by Greek subsidiaries to EU parent companies are exempt from the domestic 25 percent dividend withholding tax. According to the Interest-Royalties directive, interest and royalty payments are subject to withholding tax at the rate of 10 percent from July 1, 2005 until June 30, 2009, 5 percent from July 1, 2009 until June 30, 2013, while an exemption from such withholding tax shall apply on or after July 1, 2013. The above provisions of the above directives apply provided that certain conditions are duly fulfilled. As regards the Interest-Royalties Directive, if a treaty for the avoidance of double taxation provides for a more beneficial withholding tax rate during the aforementioned eight-year transitional period (i.e. from July 1, 2005 until June 30, 2013), such reduced rate can be applied.

Indirect Taxation

Value Added Tax (VAT)

General
As a member of the EU, Greece applies a system of Value Added Tax on the sale and supply of goods and services. Generally, all businesses must register for VAT before they start operations (this registration is carried out simultaneously with the tax registration). As of January 1, 2006, companies

subject to VAT which are not situated in Greece, but are situated in another EU Member State, do not have the obligation to appoint a tax representative in order to comply with their Greek VAT obligations. Furthermore, such companies do not have the obligation to maintain books and records according to Greek law. In any case, they are obliged to obtain a Greek tax (different from VAT) registration number as they are VATable in Greece. The tax registration number issued to a specific taxable person remains the same even if a tax representative is appointed, changed, or terminated.

Notwithstanding the above, it should be noted that a Ministerial Decision is required to be issued, which will stipulate the procedural aspects and provide guidance on the implementation of the new VAT registration and compliance process following the abolishment of the VAT agent requirement. At the date of this publication the respective Ministerial Decision had not yet been issued.

Companies established in another EU Member State (with no establishment in Greece) may choose in any case to appoint a tax representative in order to carry out their obligation for the payment of VAT in Greece.

Amendments in VAT Legislation Regarding the Place of Supply of Services
Law 3763/2009, introduced amendments in line with Directive 2008/8/EC, and was incorporated into the Greek VAT Code (Law 2859/2000). Such changes, which are effective from January 1, 2010, concern the place of supply of services from a VAT perspective and significantly impact business activities, since they affect almost every enterprise which carries out transactions on a cross-border basis. More specifically, the place of supply of services to a taxable person is the place where the recipient has his business establishment, while in most cases the recipient of the services is responsible to account for the Greek VAT. On the other hand, the place of supply of services to a non-taxable person is the place where the supplier's business is established.

As a result of the above, the implementation of the reverse charge mechanism has expanded, while the obligation to acquire a VAT registration number in another Member State is significantly limited. This is due to the fact that the majority of services rendered between persons subject to VAT is now deemed to be supplied where the recipient is established, who is responsible to account for VAT by offsetting an equal amount of input against output VAT.

Nevertheless and irrespective of the above, in case the place of supply of certain services is outside the EU, if the effective use and enjoyment of such services is accomplished in Greece, the place of supply is considered to be Greece.

Generally, the tax is levied on the following:

- The value of goods and related invoiced costs (transport, insurance, duties etc.) supplied within Greece by entrepreneurs acting within the scope of their business objects;
- The invoiced price and related costs (transport, insurance, duties etc.) of goods imported into Greece from non-EU countries;
- The invoiced price of goods acquired from EU countries by entrepreneurs whose activities are subject to VAT and the invoiced price of goods acquired by natural persons and VAT exempt entrepreneurs, if the supplier's sales in Greece exceed a certain threshold;
- The value of services supplied by Greek resident entrepreneurs acting within the scope of their business. (By exception the supply of certain services by Greek residents to non-residents is exempt and the supply of certain services by foreign residents to Greek residents, is subject to VAT);
- The value of goods taken from the business, or value of the business' services used by a taxpayer for personal use or the personal use of employees; or
- The value of certain goods allocated to the business by the taxpayer (e.g., alcohol, tobacco, passenger cars) produced by the business.

Exports to residents of non-EU countries and the supplies of goods to residents of EU countries who are subject to VAT are exempt from Greek VAT.

The general principle is that VAT incurred by an entrepreneur on its purchases can be offset against VAT charged by this entrepreneur on its sales and the difference is payable to or recoverable from the tax authorities. The basic rate of VAT applicable to all goods and services is 23 percent (standard rate). Certain goods and services, including access to cinemas, are subject to a reduced rate of 13 percent, while a super reduced rate of 6.5 percent applies to certain newspapers and magazines.

VAT is further reduced by 30 percent if goods or services are supplied to or by taxpayers established in the Dodecanese Islands and other Aegean Islands.

Certain deliveries of goods and services, although falling within the scope of the VAT principles mentioned above, are exempt.

Taxpayers must file monthly or quarterly VAT returns depending on the type of books they are required to keep for accounting purposes and INTRASTAT returns and monthly listings for intracommunity supplies and acquisitions of goods and/or services, as the case may be (i.e., depending, inter alia, on the type of business activities conducted by the taxable person). An annual return must be filed within five months and ten days from the end of the financial year or two months and 25 days from their year-end, again depending on the type of books kept.

Supply of Completed Film

When a resident company delivers a completed film to another resident company this supply is subject to VAT at the rate of 23 percent.

Royalties

Royalties paid by a Greek resident company to a non-resident company (EU or non-EU) are subject to VAT at the rate of 23 percent, which is accounted for through the reverse charge mechanism (i.e. an equal amount of input against output VAT is offset on the same periodic VAT return so that the taxpayer does not encounter any cash outflow from a Greek VAT perspective).

Peripheral Goods and Merchandising

The rate of VAT depends on the nature of the goods. Books, periodicals, newspapers, and theatre tickets are subject to VAT at the rate of 6.5 percent whereas goods and products deemed as necessities such as fresh food products, and certain professional services (such as those which are provided by writers, composers, artists, etc.) are subject to VAT at the rate of 13 percent. As of September 1, 2011, certain products deemed as necessities are subject to the standard rate of 23 percent instead of the reduced rate, if they are sold in the context of supplies of restaurant and catering services. The increase in the VAT rate shall also apply to, inter alia, soda drinks, coffee and tea.

Promotional Services

Promotional services have the same treatment for VAT purposes as royalties.

Catering Services

As of September 1, 2011, the supply of catering services is subject to VAT at the rate of 23 percent.

Customs Duties

No tax or customs duty would be due on goods temporarily imported into Greece and re-exported without alteration under the conditions set out by EU law.

Cross-border transactions between EU residents have ceased being considered imports/exports since 1993 and, therefore, no import or export duties are levied on transactions between EU countries. On imports from non-EU countries, the Common External Customs Tariff of the EU and the Greek Customs Code apply.

The following rates of Customs duty are payable:

35mm positive release prints	0 up to 3.5%
Negative (including intermediate positive)	
• Plates and film	0%
• Other	0%
Video masters	0 up to 13%
Prints consisting only of soundtracks	0%
Importation of publicity material, trade advertising, etc.	0 up to 3.65%

All these items are subject to the standard VAT on the value including Customs duty.

Personal Taxation

Non-Resident Artists (self-employed)

Income Tax Implications

Non-residents are taxed only on Greek source income including income from services rendered in Greece. Self-employed (freelance professionals) have the obligation to register with the Greek tax authorities and authenticate and maintain accounting books and records. Fees paid to freelance professionals are subject to a withholding tax of 20 percent (which is deducted at source and which is treated as an advance tax against their final income tax liability) on condition that such fee exceeds the amount of EUR 300. The taxable income of freelance professionals is generally calculated by deduction of expenses (deriving from their accounting books and records) from the gross profits (gross income from fees recorded in the accounting books and records). The tax is then computed according to the normal progressive scale and the withholding tax is deducted from tax due.

The above rules are subject to the provisions of the relevant tax treaties concluded by Greece.

Generally, in order for a self-employed foreigner to be able to work in Greece, he or she is required to obtain the appropriate type of Certificate of Registration of an EU citizen if he or she is an EU citizen. In the case of a non-EU citizen there is a special procedure for the issuance before his or her arrival in Greece of an entry permit allowing the provision of independent financial activity and an issuance of a residence permit following his or her arrival in Greece. More simplified provisions apply in cases of certain categories of artists (non EU citizens) and depending on the particular circumstances.

VAT Implications

Self-employed non-resident artists are obliged to register for VAT purposes if the services they render are subject to Greek VAT.

Resident Artists

Income Tax Implications

Persons residing (domiciled) in Greece are liable to income tax on their worldwide income, whether remitted to Greece or not. Where tax has already been paid outside Greece on non-Greek source income, it may be deducted up to the amount of tax payable in Greece on the same income.

The residence of an individual for tax purposes is Greece, if respective individual has his residence or habitual residence in Greece. Greece is considered to be the habitual residence of an individual if he/she resides in Greece for more than 183 days in total within the same calendar year. It is also provided that residence is assumed to exist, unless the taxpayer proves the opposite.

Depending on their working relationship, resident artists may provide services either as freelance professionals or under an employment relationship.

Fees paid to freelance professionals follow the tax treatment described above (under non-resident artists).

Taxable income is classified into six categories (rental, investment, employment, agricultural, business, and professional). Income from each source is separately computed and individuals are subject to tax on the aggregate of income from all categories.

Certain personal deductions and tax credits are available to residents in computing their taxable income. These deductions and credits are not available to persons who are non-residents.

Individuals are subject to income tax at progressive rates. Income tax rates applicable on income arising as of January 1, 2011 are as follows:

Income tax table for 2011

Taxable income bracket		Tax Rate	Total tax on total income
From EUR	To EUR	Percent	Percent
0	8 000	0	0
8 001	12 000	10	400
12 001	16 000	18	1,120
16 001	22 000	24	2,560
22 001	26 000	26	3,600
26 001	32 000	32	5,520
32 001	40 000	36	8,400
40 001	60 000	38	16,000
60 001	100 000	40	32,000
Exceeding		45	

The tax year for individuals ends on December 31, and individuals are generally required to file an income tax return by March 1 of the following year. The exact filing date depends also on the last digit of the individual's tax registration number.

However, there are many exceptions depending on the nature of the individual's taxable income, where filing takes place later.

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VAT Implications
Self-employed resident artists are obliged to register for VAT purposes if the services they render are liable to Greek VAT.

Employees

Income Tax Implications
Employers are required to withhold income tax from salaries, wages, and other remuneration paid to their employees. The amounts withheld are determined in accordance with the scale of ordinary income tax rates applicable to individuals. At the end of the year the employer is obliged to prepare an annual return of amounts paid and taxes withheld.

Amounts withheld are accounted for by the employer to the tax authorities on a bimonthly basis except for businesses which have employed over 50 persons during the previous financial year, where the tax withheld must be accounted for monthly.

Foreign nationals employed in Greece who remain non-residents are subject to tax only on income from a Greek source, including income from services rendered in Greece. Unless otherwise specified in a tax treaty with the country of which the individual is a resident, such income will be taxed in the same manner as that of a person resident in Greece.

Income from employment includes all receipts of cash as well as benefits in kind received in connection with services rendered to the employer. However, in accordance with jurisprudence, where the benefit received by an employee is in effect a reimbursement of an expense incurred by the employee for the purpose of enabling him to carry on his or her work, it does not constitute income of the employee as long as the appropriate tax records for the expenses have been obtained.

According to a recently enacted law, income arising from the use of company cars used by the chairmen, members of the Board of Directors, or managers is considered employment income. The taxable income considered to be

employment income is calculated as a percentage of the manufacturer's purchase price (MMP) of the first year of circulation for company cars (lease or owned) as follows:

MPP (in EUR)		Value percentage as income
From	To	
0	14,999	0
15,000	22,000	15
22,001	30,000	25
30,001	Over	30

Social Security Implications
The employer must withhold the appropriate amount of Social Security contributions from the salary of an employee. The employer must also make additional payments in respect of each employee. The total amount of the Social Security contributions (IKA) is payable monthly by the employer. The overall rate for the employee's contribution is 16.50 percent whereas for the employer the rate is 28.56 percent. This rate is applied to the gross salary or salary ceiling.

The maximum monthly salary for social security purposes is EUR 5,543.55 for employees having been insured with IKA (the main social security fund for regular employees) on or after 1 January 1993 and EUR 2,432.25 for employees having been insured for the first time on or before 31 December 1992.

Foreign employees of EU or non-EU countries may, in certain circumstances, be exempt from registering with the Greek Social Security system. In particular only foreign nationals who are residents of the EU or of non-EU countries having bilateral Social Security Agreements with Greece may be temporarily exempt from being insured by a Greek Social Security fund under the condition that they have been seconded to Greece by their employers and they continue to be insured in the country of their origin.

The same income and Social Security rules apply to a non-resident company as soon as it hires employees in Greece, regardless of the structure used.

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Chapter 13

Hungary

Introduction

In the past few years, the Hungarian film industry has experienced dynamic development. There have been many Hungarian films in production, some of which were high budget co-production films. Hungary has also hosted a *number of international productions, such as The Rite, Bel Ami, The Eagle, and The Debt, Monte-Carlo, The Raven and 47 Ronin.*

Due to favorable legislative changes in Hungary, significant investment in the infrastructure was made. For example, the Stern Studio at Pomáz and the Korda Studio at Etyek, organized by producer Andrew Vajna and the Hungarian entrepreneur, Sándor Demján. In addition to the financial incentives available, Hungary also offers a sophisticated film production workforce, including many talented and acknowledged production personnel (e.g., István Szabó, who was awarded an Oscar™, Lajos Koltay, Vilmos Zsigmond, Miklós Jancsó, and Béla Tarr).

Unfortunately, the financial crisis had its impact on the Hungarian film industry; however, as this segment is of high significance for the government, steps were taken to improve the financial situation of Hungarian film-producers. In the Spring of 2011, the Government ordered that a new motion picture company would be established and a national strategy would be created in order to rejuvenate the Hungarian film industry and to settle any outstanding debts. As a result, a new organization was established called the Hungarian National Film Fund, which received almost HUF 6 billion from the budget to purchase existing debts and to renew the national film industry. Based on the number of domestic and international productions in progress, the Government's policy may be successful in achieving its plan.

Key Tax Facts

Corporate income tax rate	10 % CIT up to a CIT base of HUF 500 million and 19% above HUF 500 million. This has been in place since 1 July, 2010 (no surtax from 1 January, 2010)
Highest personal income tax rate	Progressive taxation was abolished and a flat rate of 16% was introduced from 1 January, 2011
VAT rates	5%, 18% and 25% from 2010
Normal non-treaty withholding tax rates: Dividends	0%
Interest	30% in 2010 for non-DTT countries and 0% from 1 January, 2011
Royalties	30% in 2010 for non-DTT countries and 0% from 1 January, 2011
Certain services	30% from 2010 for non-DTT countries and 0% from 1 January, 2011
Tax year-end: Individuals	December 31
Tax year-end: Companies	December 31 or any chosen date of 12 months to comply with the international group's financial year

Film Financing

Tax and Financial Incentives

The most significant developments in the Hungarian film industry are the Corporate Income Tax (CIT) legislative changes as of April 1, 2004 and the release of Act II of 2004 on Motion Pictures by the Ministry of Culture, which was amended in 2008 to be compliant with the regulations of the EU by implementing cultural test regulations.

The Hungarian Government's aim was to create the financial support system for the Hungarian film industry on two pillars: indirect state support (new tax incentives for films and related projects adopted in the CIT law) and direct state support (based on Act II of 2004 on Motion Pictures).

The cap approved by the European Commission for Hungary's film financing support is EUR 231 million for 2008-2013.

Indirect State Support

The indirect state support consists of the following corporate income tax regulations:

- Corporate tax allowance is a deduction from the tax base and also from the tax liability. The deduction from the tax base is up to a maximum of 20 percent of the direct production costs incurred in Hungary, and the decrease of the CIT liability is up to a maximum of 70% of the total tax liability
- Corporate tax allowance relating to any investment for motion picture and video production of at least HUF100 million (approx. EUR400,000) at its present value
- Accelerated depreciation allowed for equipment, machinery, and buildings used solely for motion picture production purposes

The base of the indirect state support is 100 percent of the direct cost of the related film production if the direct cost of the related film production is at least 80 percent Hungarian. In the case where the production does not reach this ratio, the base of the indirect state support is the total amount of domestic direct cost of the related film multiplied by 1.25 (Subsection (9)-(10) of Section 12 of Motion Picture law).

Corporate Tax Allowance

As of April 1, 2004, the Hungarian CIT law implemented favorable rules applicable to such film products that are:

- Made under contract manufacturing (produced to order)
- Made in co-production (not produced to order)

In both cases, the National Film Office would issue a so-called "sponsorship certificate" to the person who sponsors a motion picture production, indicating the amount that qualifies for the corporate tax allowance. The total certified amount contained in the sponsorship certificates cannot be greater than 20 percent of the total domestic direct cost of the related film production *(Point 36 of Section 4 and Subsection (3) of Section 22)*.

As of November 23, 2004, the taxpayer supporting a motion picture is entitled to two types of favorable tax allowance:

- The taxpayer can obtain a corporate tax base allowance for support of the motion picture up to the amount indicated in the sponsorship certificate, provided that the film can be entitled to indirect support *(Point 15 of Annex 3/B)*
- The taxpayer can also reduce its corporate tax liability by the certified amount in the year of investment or in the subsequent three years *(Subsection (1) of Section 22).* The amount of tax allowance allowed each year cannot exceed 70 percent of the corporate tax liability. *(Subsection (3) of Section 23)*

Corporate Tax Allowance Related to Any Investment for Motion Picture and Video Production (Section 22/B of CIT law)
Hungarian corporate taxpayers are entitled to enjoy a tax allowance for a maximum 10-year period for motion picture and video production investments of at least HUF 100 million at their present value, which are executed within the framework of the development program published by the Government.

The taxpayer cannot use the tangible assets capitalized by the investment for making any motion picture films, which contain pornographic or violent scenes in the first five years of operation.

For the tax allowance for investments with a value above EUR 100 million, the Ministry for National Economy is required to grant authorization in a decree. The decision must be adopted within 30 days from the date when the application was submitted. This deadline may be extended once by a maximum of 30 days. If the Ministry for National Economy does not reject the application within the prescribed time limit, it shall be regarded as if it had been approved, in which case the taxpayer shall be entitled to the tax allowance. Investments below EUR 100 million are only required to be reported to the Ministry for National Economy.

As a result of Hungary's EU accession, a new tax incentive and subsidy system has been introduced, aimed at complying with the EU requirements. Based on the new rules, governmental subsidies and incentives (including cash subsidies, tax allowances, interest subsidies, etc.) have to be added up and their present value should be compared to the value of eligible investments made.

Based on the above, the total amount of tax incentives and other subsidies (almost all kinds of state aid including tax allowances) granted by the government shall not exceed, at current value, the amount computed by the "intensity ratios," stipulated in Government Decree No. 206/2006, on the investment amounts actually invested at current prices.

The intensity ratios vary (between 10 to 50 percent of the value of investment) depending on various factors, mainly the location of the invested assets, the number of new jobs created, and the line of business.

The amount of tax allowance allowed each year cannot exceed 80 percent of the corporate tax liability *(Subsection (2) of Section 23).*

The concept of "de minimis" subsidies has also been introduced. Based on the current legislation, subsidies (allowances) qualify as "de minimis" if the amount of the subsidies (allowances) does not exceed EUR 200,000 for three years at current prices. Such "de minimis" subsidies should not be accumulated in the amount of state aid subject to limitation on the basis of intensity ratios *(Subsection (2) of Section 29/E).*

Accelerated Depreciation
Hungarian taxpayers owning equipment, machinery, or buildings used solely for motion picture production purposes are entitled to apply for accelerated depreciation rates, which are:

- Fifty percent as opposed to the general 14.5 to 33 percent in case of equipment and machinery (Point 8/a of Annex 1 of CIT law)
- Fifteen percent as opposed to the general two to six percent in case of buildings (Annex 2 of CIT law)

Direct State Support
Direct support is set out in the Motion Picture Act and combines normative, selective, and structural subsidies. Normative subsidies aim to encourage producers of so-called "success films" to produce new films that are popular with the public. Selective subsidies are granted for productions that are viewed less by the public, but contain major artistic value. It is also possible to obtain individual structural subsidies to finance outstanding productions.

The Motion Picture Public Foundation of Hungary (http://english.mmka.hu/) (The Foundation) has been established by the government and organizations of the motion picture industry to be responsible for allocating the resources defined in the state budget. The Foundation is entitled to grant refundable or non-refundable subsidies on selective, normative, or structural bases, in line with the conditions and application procedures set for the allocation of funds published by February 28 of each year.

The above subsidies are available only for Hungarian film productions or co-production films with Hungarian participation based on the proportion of the Hungarian participation (the classification of activities related to film production is determined based on a scoring system that attaches certain weight to each of the film production activities). As of April 1, 2006, not only Hungarian resident individuals and corporations, but also those residents in one of the Member States of the European Economic Community can be registered by the Hungarian Film Office to be entitled for direct or indirect subsidies.

The maximum degree of Hungarian support intensity is set at 50 or 100 percent if artistic and financing factors justify it. Individual support ratios may be defined at lower levels. The support percentages are to be based on the production budget of Hungarian films or on the Hungarian share of the production budget of a co-production film *(Section 13 of Motion Picture Act)*.

However, in cases when a Hungarian film producer may only participate in a production by way of a financial contribution, thereby disqualifying it as a co-production, direct support still may be granted for such films if they can be qualified as co-productions within the given international treaties. (The European Convention on Cinematographic Co-Production permits such films to be recognized as financial co-productions).

Eurimages

Hungary became a member of Eurimages on January 1, 1990. Eurimages is a pan-European film funding agency which aims to promote the European film industry by encouraging the production and distribution of films and fostering co-operation between professionals. Eurimages funding is available for co-productions where there are at least three co-production partners from 35 Member States. If the film is to be shot in English, an "English speaking" partner is required.

Detailed rules of Eurimages support policy can be found at http://www.coe.int/t/dg4/eurimages/About/default_en.asp.

Corporate Taxation

Corporate Income Tax (CIT)

The basic principles for the taxation of business profits are detailed in the Corporate Tax Act. Effective January 1, 2010, a tax rate of 19 percent was introduced instead of the 16 percent CIT rate and 4 percent solidarity tax that

was in effect before this date. The new rate is in line with the prior rate when considering the abolishment of the 4 percent solidarity tax. As of July 1, 2010, a 10 percent tax rate was introduced up to a CIT base of HUF 500 million, and above this threshold the general rate of 19 percent is applicable.

Generally, the CIT law follows the Accounting law (the basis of assessment of CIT tax is the profit shown in the financial statements). However, the CIT law prescribes some adjusting (increasing and decreasing) items in relation to the tax base in order to: protect the tax base; promote certain kinds of activities; and support the taxable entity for different social reasons. For these reasons, the CIT law provides special rules, amongst others, for the handling of:

- Depreciation
- Thin capitalization
- Transfer pricing
- Loss carry forward
- Capital gains participation exemption

Depreciation

The Act on Accounting relates depreciation rates to the expected useful life of the assets, but the CIT law applies different rates for the reasons described above. Below are several of the current maximum rates, for corporate tax purposes:

Machinery and equipment	14.5%
Computers	33%
Vehicles	20%
Buildings	2%/3%/6%
Intangibles	Accounting life
Leased assets:	
Leased buildings	5%
Leased tangible assets	30%

Some incentives were introduced into the CIT law as of January 1, 2003, which allow faster tax depreciation regarding the following assets:

- Fifty percent depreciation rate can be claimed on general IT machinery and on equipment exclusively serving motion picture and video production *(Point 8/a of Annex 1 of CIT law)*

- Taxpayers can claim 50 percent tax depreciation in connection with brand new tangible assets that are acquired or produced in 2003 or later and which would otherwise be subject to a 33 or 14.5 percent rate. The same rules apply to intangible properties purchased or produced in 2003 or later and to the capitalized value of experimental development *(Point 9 of Annex 1 of CIT law)*

As of January 1, 2003, the principle of a development reserve was introduced. This means that the taxpayer can decrease its pre-tax profits by up to 50 percent (with an upper limit of HUF500 million in each year), provided that it capitalizes investments equaling or exceeding the amount of the development reserve within four years of recognizing such a reserve. This effectively is an accelerated form of depreciation.

(Point (f) of Subsection (1) of Section 7 of CIT law)

Thin Capitalization

If the liabilities of a company exceed three times the company's equity capital, the company's profit before taxation should be increased by the interest on liabilities (excluding loans provided by financial institutions) which exceed the 3:1 limit (the calculation is done on a pro-rata basis) *(Point (j) of Subsection (1) of Section 8 of CIT law)*.

Transfer Pricing

Related parties should adjust their taxable profits if the transactions between them are not at arm's-length. The current legislation prescribes both the methods applicable for determining a fair market price and the way in which these methods must be applied. The taxpayer may calculate the fair market price using any alternative method provided they can prove that the market price cannot be determined by the methods included in the CIT law and the alternative method better suits the purpose. OECD transfer pricing principles are generally accepted in Hungary *(Section 18 of CIT law)*.

Loss Carry forward

Under the new legislation effective from January 1, 2004, losses can be carried forward without time limitation. Beginning January1, 2009, taxpayers are no longer required to obtain permission from the Tax Authorities to carry forward tax losses under any circumstances *(Section 17 of CIT law)*.

The above deductions are collectively limited to a maximum of 100 percent of profit before tax *(Section 7 of CIT law)*.

Capital Gains Participation Exemption

As an incentive for the establishment of holding companies in Hungary (except those with significant real estate property as from 2010), domestic or foreign participations of over 30 percent acquired on or after January 1, 2007 are considered "announced participations" when this is reported to the Tax Authority within 30 days following the acquisition. Any loss on write offs, foreign exchange, or loss suffered during cancellation from the books (except during transformations) should be added back to the corporate income tax base. The capital gains on such participations held for at least one year will be exempted from corporate taxation. An investment cannot be treated as an announced participation and take advantage of the special rules if the investment is in a controlled foreign company *(Section 7 of CIT law)*.

Withholding Tax

As of January 1, 2011 no withholding tax is levied in Hungary.

Local Business Tax

Enterprises pay local business tax on all business performed on a permanent or temporary basis in municipal areas. This tax is based on net income and is therefore payable any time a corporation has revenue. The base of this tax is an enterprise's net sales revenue less cost of goods acquired for resale, value of mediated services, subcontractors' fees and as from January 1, 2010 direct costs of basic research, industrial or applied research and experimental (pre-competitive) development. Material costs are also fully deductible.

The maximum rate of tax is 2 percent, which can be lower depending on the particular municipal area where the company is undertaking its business.

Since the national law provides no minimum levy, it is up to each municipality to determine whether it will impose this tax or not and the rate it will charge. Therefore, some businesses may seek to operate in municipalities that offer the lowest rates.

Under the rules effective January 1, 2006, companies could decrease their CIT base (i.e., a tax loss cannot be created or augmented) by 100 percent of the amount of local business tax payable in addition to the ordinary 100 percent deduction which is already reflected in the pre-tax profits *(Section 7 of CIT law)*. This double-deduction was abolished on January 1, 2010.

Indirect Taxation

Value Added Tax (VAT)

Hungary charges VAT on the supply of goods and services as well as on the import and intra Community acquisition of goods in the course or furtherance of business under the harmonized system of VAT found in the EU. In Hungary, no input VAT credits are available with respect to food and drink, entertainment, the purchase and operation of cars, gasoline, and other goods and services not purchased for business purposes.

Supply of a Completed Film

In Hungary, the supply of cinematographic and video films to final customers is treated as a supply of goods subject to VAT at a standard rate of 25 percent. The transfer of the right to project or utilize films qualifies as provision of services subject to 25 percent VAT, if taxable in Hungary. Projection of film, video, and DVD is also subject to a 25 percent VAT rate. In general, VAT is due at the time of the supply of goods or upon completion of the service. However, if a payment is received in advance of delivery of a completed film, VAT becomes due at the time of the prepayment. A VAT registered person must submit his or her VAT return and account for any VAT payable to the tax authorities monthly, quarterly, or annually by the twentieth of the month following the end of the accounting period in which the VAT became due. The annual return, however, is due on February 25 of the following year.

When a company established in Hungary delivers a completed film to a company not established in Hungary, but established in another EU Member State, the transaction would be exempt from VAT, provided the customer is not registered for VAT in Hungary. If the transaction qualifies as a supply of goods, the customer is deemed to be performing an intra-Community acquisition of goods and is required to account for local VAT in the EU Member State to which the goods are delivered. If the transaction qualifies as a supply of services, it will be subject to VAT in the country where the customer has its seat or fixed establishment. The Hungarian supplier of the film would, of course, be entitled to full recovery with respect to VAT, which was incurred in relation to the supply of the film.

When a Hungarian company delivers completed films to EU VAT registered companies and the transaction is treated as a supply of goods, it is required to include this transaction on a quarterly EC Sales List which discloses the value of sales per quarter to each VAT registered customer. In addition, where the value of sales to other EU countries exceeds at least HUF 100 million (approx. EUR 400,000), the Hungarian company will be required to prepare the monthly INTRASTAT declaration.

The VAT exemption will apply for a company established in Hungary that delivers a completed film to a company outside of the EU. Again, the supplier of the film would be able to recover all the VAT incurred during making the film. There are no special reporting requirements other than the requirement to complete a Customs export declaration on a Single Administrative Document if the transaction qualifies as supply of goods.

Pre-Sale of Distribution Rights

VAT is charged at the standard rate of 25 percent on a pre-sale of distribution rights to a person established in Hungary. A pre-sale of distribution rights to a business established in another EU Member State, or to any purchaser outside of the EU, is exempt from Hungarian VAT. However, any VAT incurred by the supplier on expenses incurred in relation to making the film and selling the rights is fully recoverable.

Royalties

When a company established in Hungary pays a royalty to another company established in Hungary, VAT is chargeable at the rate of 25 percent.

When a company established in Hungary pays a royalty to a company which is established outside of Hungary, VAT at the rate of 25 percent must be accounted for by the Hungarian company on the so-called reverse charge basis. When the Hungarian company is fully VAT taxable, it is entitled to recover in full the VAT, which it must account for under the reverse charge rules.

When a company established in Hungary receives a royalty from a business established in another EU Member State or from any person outside the EU, no Hungarian VAT is chargeable. However, if the payer is located in the EU, the payer will be required to account for VAT in its own Member State under the reverse charge rules. Royalty charged by a Hungarian established company to a non-VAT registered person in the EU would be liable to Hungarian VAT at 25 percent.

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Peripheral Goods and Merchandising

The sale of peripheral goods connected to the distribution of a film (such as books, magazines, published music, and clothing) will be chargeable to VAT at the rate applicable to the goods in question. For example, printed books, magazines, periodicals, daily newspapers and sheet music are subject to VAT at the 5 percent VAT rate, while audio cassettes are subject to VAT at the 25 percent rate (except audio books). If the peripheral goods qualify as auxiliary goods, the VAT treatment would follow that of the distribution of the film.

Promotional Goods or Services

The supply of promotional goods or services does not qualify as a supply of goods or services if the value of those goods does not exceed HUF 5,000 or if the goods qualify as a product sample, as specified in the Act on VAT.

Catering Services to Film Crew and Artists

In general, the supply of goods as part of catering services is chargeable to VAT at 25 percent and reduced 18 percent in the case of dairy and bakery products as from July 1, 2009 irrespective of whether or not the meals are paid for by the crew and artists. Drinks are also chargeable to VAT at the 25 percent standard rate. However, VAT on meals, drinks, and catering services are not recoverable.

Import of Goods

Goods imported into Hungary from outside the EU will be subject to VAT on importation (VAT rate depends on the type of goods). The VAT on import is payable and deductible in the same VAT return. However, a film company established outside the EU generally would be entitled to import professional equipment for use in the making of a film under the customs procedure of temporary importation without paying import duties and VAT.

Customs Duties

Depending on the nature of the goods imported, Customs and/or excise duty may be payable on importation. The Customs/excise duty paid is not recoverable. However, a film company established outside the EU generally would be entitled to import professional equipment for use in the making of a film under the Customs procedure of temporary importation without paying import duties and VAT. Equipment is normally imported under the cover of an ATA Carnet.

Personal Taxation

The individual Hungarian income tax liability is largely governed by whether or not the individual is regarded as a resident in Hungary for tax purposes. Under the Hungarian domestic law, individuals with Hungarian citizenship (with the exception of dual citizens without a permanent or habitual residence in Hungary), foreign nationals with a valid permanent residency permit, and stateless persons are treated as residents. In the case of other natural persons, residency status can be determined first by permanent residence, second by the center of vital interests, and third by the habitual abode *(Point 2 of Section 3 of Personal Income Tax (PIT) law)*. Individuals are considered to have a habitual abode in Hungary if they stay in the country for more than 183 days (including the date of arrival and the date of departure) during a calendar year. There is no codified test for the application of the 183 days, but in practice, it is understood to be a physical presence test. In the case of doubt, an individual is responsible for proving that his or her stay did not exceed 183 days.

Hungarian resident individuals are subject to individual income tax on their worldwide income. Non-resident individuals are subject to income tax on their Hungarian source income under the same rules as residents. Income from a foreign employment exercised in Hungary would normally be treated as Hungarian source income *(Subsection (4) of Section 2 of PIT law).*

According to most double tax treaties concluded with Hungary, income from the activities of artists (theatre, motion pictures, radio, or television artists who are residents of the Contracting State) exercised in Hungary may be taxed in Hungary.

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Chapter 14

Iceland

Introduction

Iceland offers film producers a cost-effective film production environment with an international competitive tax environment including low tax on business and investment income as well as specific tax incentives, along with the possibility to apply for financial support for film production. The strong devaluation of the Icelandic currency (Króna – ISK) following the global financial crisis in 2008 has made Iceland even more interesting for foreign investors.

The country offers an amazing spectrum of scenery including blue glaciers, glacial lakes, roaring waterfalls and rivers, high mountains and volcanoes, deep emerald-green and black stone valleys, miles wide pitch-dark deserts and white smoking geothermal areas, dramatic black coast lines and old villages, and there is still much to add.

Many films and television programs filmed entirely or partly in Iceland have been released internationally, such as: *LazyTown, Journey to the Center of the Earth, Batman Begins, Hostel, Letters from Iwo Jima, Die Another Day, Falcons, It's Worth Living, Lara Croft: Tomb Raider, No Such Thing, Noi the Albino, Vikings, Virus in Paradise and Flags of our Fathers*.

Key Tax Facts

Corporate income tax rate	20%
Highest personal income tax rate	46.28%
Value Added Tax (VAT)	25,5%
Annual VAT registration turnover threshold	ISK 1,000,000 ($8,680)
Normal non-treaty withholding tax rates:	
– Dividends	18%
– Interest	18%
– Royalties	20%
Tax year-end: Companies	Calender Year
Tax year-end: Individuals	Calender Year

New South Wales	Film and Television Office	*www. fto.nsw.gov.au*
Victoria	Film Victoria	*www. Film.Vic.gov.au*
South Australia	South Australian Film Corporation	*www.safilm.com.au*
Queensland	Pacific Film and Television Commission	*www.pftc.com.au*

Film Financing

Financing Structures

Co-production

An Icelandic resident may enter into a joint venture with one or more foreign investors to finance and produce a film in Iceland. This arrangement does not trigger tax liability in Iceland for foreign investors.

A foreign investor is subject to corporate income tax in Iceland only in the case that the investor carries on business in Iceland or is considered to have a permanent establishment here.

The term 'permanent establishment' is not defined in Icelandic law, but is in general understood as a fixed place of business through which the business of an enterprise is wholly or partly carried on and interpreted in accordance with the OECD Model Convention and its Commentaries. It is likely that if the film production lasts for some months that a permanent establishment has been established. Tax liability in Iceland normally results in double taxation, unless tax treaty protection or tax credit in the investor's home country is available.

If the investor carries out his activity through a subsidiary in Iceland, the investor would most likely receive his return in the form of dividends. The withholding tax rate under domestic law is 18% to companies or 20% to individuals but may be reduced by a relevant tax treaty. Also, according to domestic law, foreign companies domiciled in the EEA may get the withholding tax reimbursed in connection with the ordinary assessment in November the year following the distributing year by filing an Icelandic tax return.

Partnership

There are two types of partnerships in Iceland; a dependent tax entity and an independent tax entity.

The income and assets of a dependent partnership are divided between the partners and taxed with other income and assets of the partners at their respective tax rates. In other words, a dependent tax entity functions as a pass-through entity for tax purposes.

A partnership that is an independent tax entity is subject to a 36% tax on its income and assets; however, the partners are liable *in solidum* for the partnership's taxes. Allocations to partners can be made without any further taxation in Iceland.

Yield Adjusted Debt

A film production company may sometimes issue a debt security to investors where the yield may be linked to revenues from specific films. The principal may be repaid on maturity and there may be a low rate of interest stated on the debt instrument. However, at each interest payment date a supplemental payment may be paid if a predetermined target is reached or exceeded. For Icelandic tax purposes, this predetermined amount would likely be classified as debt. The terms and conditions of the debt instrument should fulfill the arm's-length principle.

Sale and Lease Back

In order to avoid cash flow problems and match investment expenses with future income receipts, a film production company may sell the film rights to a company or a partnership, which then licenses the film rights back to the production company. With respect to contracts for cross-border leasing, hiring out, loan arrangements and purchases on credit, the tax assessment and tax base may vary according to the facts and circumstances of the contract in question. The Icelandic legal and tax system applies substance over form interpretation when deciding upon the legal content of documents and agreements.

Tax and Financial Insensitive

Investors

There are no special tax incentives in this field in Iceland.

Public Information

Film in Iceland is run by Invest in Iceland Agency, an agency of the Trade Council of Iceland and the Ministry of Industry and Commerce. The main focus is to introduce Iceland to foreign film producers and for providing general information on various issues in relation to movie making.

For further information on Film in Iceland you can visit its web page *http://film-in-iceland.org* or contact its staff at *info@filminiceland.com*.

Producers

Reimbursement of Production Cost

A special legislation has been passed in Iceland which aims "to enhance domestic culture and promote the history and nature of Iceland" by temporarily supporting motion pictures and television programs produced in Iceland. Act. No. 43/1999 on Temporary Reimbursement in Respect to Film Making in Iceland provides up to a 20% reimbursement for all film and TV production costs incurred in Iceland and Europe if the production meets certain criteria during 2001–2011.

Producers can apply to the Ministry of Industry for the reimbursement. When more than 80% of the total production cost of a motion picture or television program is incurred in Iceland, the reimbursement is calculated on the basis of the total production cost incurred within the European Economic Area. The reimbursement scheme does not cover the production of commercials or music videos.

Public Support

Icelandic authorities have introduced financial incentives to increase international interest in filming in Iceland. In the beginning of the 2003 Act No. 137/2001 on Movies entered into effect, allowing the government to offer assistance in the matters of filmmaking in Iceland. The purpose is to support the progress of filmmaking and to encourage further growth in the field in Iceland, both as an art and a business. Support to Icelandic film industry is provided by two entities, The Icelandic Film Centre (Ice: "Kvikmyndamiðstöð Íslands") and The Film Archive (Ice: "Kvikmyndasafn Íslands"). The Icelandic Film Centre's role is to promote Icelandic filmmaking by providing financial support. The Film Archive compiles, records, and retains films and printed material regarding the films. An Icelandic film is a film which is produced and sponsored by Icelandic parties or is a co-production by Icelandic and foreign parties. A project supported by the fund must have connections with Icelandic culture unless special cultural grounds exist for deciding otherwise.

According to the law, only production companies registered in Iceland can officially apply for a financial support from the Icelandic Film Centre.

For further information on the activities of the Icelandic Film Centre, visit its Web page *http://www.icelandicfilmcentre.is* or contact its staff at *info@icelandicfilmcentre.is*.

Eurimages

As Iceland is a member of the European Economic Area, films and television programs made in Iceland can receive grants for film production offered by the European Union and its member countries. Eurimages is the Council of Europe fund for the co-production, distribution and exhibition of European cinematographic works. Eurimages was set up in 1988 as a Partial Agreement. Currently it has 35 Member States. Eurimages has the aim to promote the European film industry by encouraging the production and distribution of films and fostering co-operation between professionals.

For further information about Eurimages, visit its Web page http://www.coe.int/t/dg4/eurimages/default_en.asp.

Distributors

No special tax incentives exist regarding distributors. Royalties paid from Iceland are subject to 20% withholding tax, but the rate is reduced to 5 or 0% in most of the relevant tax treaties.

Actors and Artists

Non-resident actors and artists, whether they perform independently or as employees, are subject to the special income tax on artists and other non-residents. The tax rate is 18% and is levied on salaries, wages, and/or remuneration. Artists performing independently, without determined salaries, wages, or remuneration, but who enjoy the yield of the activity, are subject to a 15% tax on the gross amount, without any deduction.

Other Financing Considerations

Tax Costs of Share and Bond Issues

Stamp duties are levied on the issue of share certificates and loan capital. Stamp duties levied on the share certificates issued are 0.5% of the nominal value of the share certificates. No share certificates need to be issued in relation to shares in an Icelandic private limited liability company (ehf.), therefore no stamp duties are levied on the shares. This corporate form is most commonly used for film production. Endorsement is never subject to stamp duties.

Stamp duties on bonds and insurance letters, with interests and insured with a mortgage or guaranty, is ISK 15 for every started thousand of the amount of the letter. Stamp duties on other bonds and insurance letters are ISK 5 for every started thousand of the amount of the letter.

Exchange Control and Regulatory Rules
In the end of 2008, the Central Bank of Iceland issued new rules on foreign exchange, providing for changes in the Foreign Exchange Act of 1992. According to Rules on Foreign Exchange no. 1130, December 15, 2008, capital outflows from Iceland are restricted in order to prevent further weakening of the Icelandic currency following the Icelandic and global financial crisis in year 2008.

Movement of capital refers to the transfer or conveyance of money between countries in connection with, among other, transactions with and issuance of securities; deposits to and withdrawals from accounts with credit institutions; lending, borrowing, and issue of guarantees not related to cross-border trade with goods and services; and importation and exportation of securities and foreign and domestic currency.

According to the exchange control rules, foreign currency acquired by Icelandic parties must be submitted to an Icelandic financial institution within two weeks of the time the foreign currency was acquired or could have been acquired by the owner or his agent or representative. The Central Bank has the authority to grant exemptions in exceptional cases. KPMG has assisted several companies to obtain such exemption from the Rules on Foreign Exchange No. 1130, December 15, 2008.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income
The profit on a production derived by a company that is resident in Iceland, and non-resident companies carrying on business through a permanent establishment in Iceland, has to fulfill the arm's-length principle. If the profit does not fulfill the arm's-length principle, the Icelandic Tax authorities can dispute it.

The Internal Revenue Directorate decides if a company has a permanent establishment in Iceland and takes into consideration all the facts and circumstances in a specific case. The concept is not defined in Icelandic law, but can, in general, be expected to be interpreted in accordance with the OECD Model Convention and its Commentaries.

Film Production Company – Sale of Distribution Rights
If an Icelandic resident company sells distribution rights of a film or television program to another company, the payments it receives would be treated as royalties.

Amortization of Expenditure

Deduction of Expenses
No special tax rules regarding the deduction of expenses apply to a film distribution company, a film production company or a television broadcaster. Consequently, these companies are subject to the usual rules to which other companies are subject. For example, in calculating taxable trading profits, they may deduct for tax purposes most normal day-to-day business expenditures such as salaries, rent, advertising, travel expenses and professional costs normally related to the business.

Depreciation
In calculating depreciation for income tax purposes, the straight line depreciation method is employed with regard to immovable property, non-sustainable natural resources, acquired intellectual property rights, and acquired goodwill, whereas gradual depreciation is employed with regard to movable property. Residual value of 10% of the original value of the asset in question remains on account until the asset is scrapped or sold. Accelerated and/or extraordinary depreciation or write-offs are deductible from income in certain limited and specific cases.

Assets subject to ordinary depreciation are classified in various categories, with different yearly depreciation rates. Different categories have different depreciation rates varying from 1 to 35%; rates within a category are optional. Machinery and equipment used in industry should be depreciated at a rate between 10 and 30%, which would apply to film production equipment. Depreciation can start in the beginning of the year when the assets are first used to derive income in Iceland. Depreciation is not authorized in the last year of utilization because of sale of the asset or other reasons.

When the purchase price of a single asset or a combination of assets (e.g., movie camera and lens) does not exceed ISK 250,000, the assets may be expensed in full in the year of acquisition.

Amortization
Intangible assets are amortized on straight-line basis. Patents, copyrights, and other similar rights may be written off over their estimated economic lives if the economic life is shorter than five years. Purchased intellectual property can be depreciated at 15 to 20% and goodwill at 10 to 20%. Research and development expenses may be capitalized and subsequently amortized.

Losses
Net operating losses may be carried forward and offset against taxable profits during the following ten years. No carryback of losses is allowed.

Foreign Tax Relief
Where income can be allocated to a permanent establishment abroad, any foreign tax on such income may be credited against Icelandic tax on the income, either under domestic law or relevant treaty.

An Icelandic film production or distribution company which receives worldwide income can in many cases avoid the deduction of foreign withholding taxes or obtain a refund of such taxes under relevant tax treaties.

Indirect Taxation

Value Added Tax (VAT)
Where a film producer makes an agreement, for example with a broadcasting company to make a film in Iceland, he or she will probably be charged VAT on the production. The producer is obliged to register him or herself in the VAT register and file the appropriate VAT returns. VAT generally must be charged on the sale of all goods.

The standard VAT rate is 25.5%. A reduced rate of 7% applies to the supply of the following goods and services:

- Hotel rooms, rooms in guest houses, and other accommodations, as well as campground facilities
- Newspapers, magazines, and periodicals (local or nationals)
- Books
- License fees to use radio and television broadcasting services
- Warm water, electricity and fuel oil used for the heating of houses and swimming pools
- Food for human consumption
- Road tolls
- Music CD's, records, and tapes

VAT on the following costs does not qualify for input tax:

- The cafeteria of the taxable party and all food purchases
- The acquisition or operation of living quarters for the owner or staff

- Perquisites for the owner and staff
- The acquisition and operation of vacation homes, summer cottages, children's nurseries and similar objects for the owner and staff
- The acquisition, operation and rental or lease (long-term or short-term) of passenger cars and coaches and delivery and transport vehicles not fulfilling certain requirements. If these requirements are met, the VAT can be reclaimed fully

Although the film production is liable to VAT, a few aspects relating to the production are outside the scope of VAT. The admission fee to Icelandic films is exempt from VAT, as well as the payments to some individuals providing certain services (actors and writers) relating to the project who are considered self-employed.

Imports of Goods and Customs Duties
When goods are imported to Iceland, Customs duties and VAT are payable in respect of the goods. The VAT is refundable as input tax but Customs duties are not.

A resident company of Iceland should pay Customs duties in respect of all imported products, both new and used.

Goods that are temporarily imported (for example, goods imported by a foreign film producer and artists) may potentially not be subject to any tax or Customs duties if the goods are subsequently exported without alteration, provided that the goods and the volume thereof is customary and meets the purpose of the current project.

Personal Taxation

Non-resident Artists
An individual is considered a non-resident if the individual does not have a domicile in Iceland and stays here for less than six months over a twelve-month period. Non-resident actors and artists are subject to special income tax of 18% on salaries, wages or remuneration, whether they perform independently, in a group, or as employees, as mentioned earlier. Non-resident actors and artists are also required to pay the municipal income tax and Social Security contribution, contribution to the Bankruptcy Fund and the Market charge, amounting to a total of 8,65%.

Artists performing independently, without fixed salaries, wages or remuneration but enjoying the return of the activity, are subject to a 10% tax on the gross amount, without any deduction.

Resident Artists

If an individual spends a period exceeding 183 days over a twelve-month period in Iceland, the individual is considered a resident of Iceland.

Resident actors and artists are subject to national and municipal income tax. Residents are entitled to personal tax credit, which amounts to ISK 530,466 for the income year 2011. General rules of Icelandic tax law concerning individuals apply on resident actors and artists.

Residence and Work Permits

If a person is not a resident of one of the Nordic countries or a country that is a Member of the European Economic Area, the person must have a work and residence permit. However, special rules apply for citizens from the EEA states Bulgaria and Rumania until January 1, 2012. Information about work and residence permits is available on *www.utl.is or www.vinnumalastofnun.is*.

Employees

Income Tax Implications

For the 2011 income tax year, the national income tax is 22.9% for income up to ISK 2,400,000, 25.8% for income up to 5,400,000 and 31.8% for income above 7,800,000. The average municipal tax on the same income is 14.41% (and higher than 14.48%).

All resident individual taxpayers are entitled to a personal tax credit against the computed national and municipal income taxes. The credit amounts to ISK 530,466 for the income year 2011. If the credit exceeds the calculated tax, the excess will be applied by the State Treasury to settle the municipal tax payable. Any part of a single person's credit remaining thereafter will be cancelled.

Social Security Implications

Every employer is obligated to pay, in relation to his or her employees' total revenues, Social Security contribution, contribution to the Bankruptcy Fund and the Market charge, altogether totaling 8.65%. This also applies to presumptive employment income of self-employed individuals. The contributions are deductible for tax purposes.

For foreign employees having E101 certificate issued from another country, no Social Security contribution is needed, only a contribution to the Bankruptcy Fund and the Market charge which amount to 0.632%.

Pension Fund Premiums

An employee is required to pay premium into a pension fund. The minimum payment is 12% of gross salary, with 8% paid by the employer and 4% paid by the employee (deducted from his or her salary). Furthermore, the employee may choose to make an additional payment of 4% into his or her pension fund. Should the employee choose to make the additional payment, the employer is obliged to pay an additional 2% into a pension fund for the benefit of that employee.

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Chapter 15

India

Introduction[1]

The Indian film industry is considered to be the largest film industry in the world in terms of the number of feature films produced and released every year (more than 1,200). In addition, over 1,800 short films, documentaries, and non-feature films have been released during the year 2010 (several of which have won international awards). India's film industry is multi-lingual. Films are produced in 'Hindi' (the national language) and in several regional languages. In the year 2000, the film industry was granted the status of an 'industry'. Since then, the Government of India has taken several initiatives to liberalize the Foreign Policy regulations relating to films. It has also entered into co-production treaties with several countries[2] and is in the process of entering into more bilateral pacts (e.g. with Australia, China, Canada, etc.). The film industry contributes approximately 13 percent directly to the entire entertainment industry and is projected to grow at a CAGR of 9.6 percent and to reach a size of INR 132.1 billion by 2015.

The Indian television and broadcasting industry has grown tremendously over the last two decades and has emerged as the world's third largest TV market. The industry added almost 100 million viewers in 2010, to reach 600 million viewers and crossed the 650 channel mark from 460 in 2009 (more than 250 channels are also awaiting approval). Entry of new broadcasters and shifts in viewing patterns have put pressures on the mainstream channels, necessitating them to revisit their content strategy- quality of content/developing new content formats.

Globalization has also emerged with the collaboration/adaptation of formats of successful shows running elsewhere being brought into India, e.g., Kaun Banega Crorepati (based on Who Wants To Be A millionaire), Indian Idol (based on American idol).

[1] The data included has been sourced from Annual Report for the year 2010 of Central Board of Film Certification, TRAI Performance Indicator Report 2011 and KPMG India's thought leadership with Federation of Indian Chambers of Commerce and Industry ('FICCI'): *FICCI–KPMG Indian Media and Entertainment Industry Report 2011.*

[2] Italy, U.K., Germany, Brazil, France and New Zealand.

Key Tax Facts[3]

Corporate income tax rate: Domestic companies	32.445 percent
Minimum Alternate Tax: Domestic companies	20 percent
Corporate income tax rate: Foreign companies	42.024 percent
Maximum Marginal personal income tax rate	30.9 percent
Partnership (including Limited Liability Partnership)	30.9 percent
State-Value Added Tax (VAT) rates	General rate ranges between 4 – 15 percent[4]
Interstate sale is generally subject to Central Sales Tax	2 percent[5]
Service Tax rate	10.30 percent[6]
Withholding tax rates[7] on non-residents/foreign companies:	
Dividends[8]	Nil
Interest	21.012 percent
Royalties (pursuant to an agreement made on or after June 1, 2005)	10.506 percent[3]
Fees for technical services (pursuant to an agreement made on or after June 1, 2005)	10.506 percent[3]
Capital gains (on sale of shares)	

[3] The indicated tax rates are applicable for the financial year 2011–12 and include surcharge, education cess and secondary & higher education cess; surcharge is levied on companies where the total income exceeds INR 10 million.

[4] Depending upon the items, rates vary from State to State. Certain specified items also attract VAT @ Nil/1 percent/20 percent.

[5] 2 percent rate is applicable only on fulfillment of prescribed conditions. Where such conditions are not fulfilled, applicable VAT rate is leviable.

[6] Including Education Cess and Secondary & Higher Education Cess.

[7] These rates are as per the Income Tax Act, 1961 ('the Indian tax law'). In case of a non resident, there is an option to choose between the rate as per the Double Taxation Avoidance Agreement ('the treaty') and the Indian tax law, whichever is more beneficial.

[8] Currently, a dividend declared, distributed or paid by an Indian company is tax-exempt for its shareholders. However, an Indian company declaring a dividend would be required to pay 16.223 percent dividend distribution tax (including surcharge and education cess) on such dividend declared/distributed/paid.

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Long term capital gain (where shares are held for more than one year)	1 Nil[9]
Short term capital gain (where shares are held for one year or less)	15.759 percent[10]

Notes: The Indian tax year is from April 1 to March 31. The same is uniform for all tax payers.

Film Financing

Financing Structures

Under the existing Indian tax law, taxable entities that engage in film production and distribution, *inter alia*, include:

- Individuals
- Associations of Persons
- Limited Companies
- Partnerships
- Limited Liability Partnerships

Association of Persons ('AOP')

AOP is an unincorporated body and the rights of its members are governed by the agreement inter-se. An AOP can result in joint and several liabilities with an unintended exposure for each party to the tax liability of other members of the AOP. All the AOP members are taxed as a single entity. In the case of a member having a lower share in profits, has incurred losses from his part of the activity, he will still be liable for taxes, given that the profits of all members are considered in one assessment. Further, there may also be the inability to off-set losses or expenses incurred by the members independently against their share of the AOP profit. The income so assessed is liable to be taxed at the same rates applicable to an individual. This income is also included in the total income of the individual for rate purposes. To avoid the AOP status, members are required to carefully plan the production and exhibition/distribution rights arrangements. This is required particularly to ensure that the respective rights, obligations, scope of work and income of each party are clearly defined and demarcated.

[9] Where the shares sold are listed on a recognized stock exchange in India and securities transaction tax ('STT') has been paid. In case of sale of unlisted shares or listed shares on which STT has not been paid, tax is charged @ 10.506 percent (without adjusting the inflation index notified by the revenue authorities) and 21.012 percent (after adjusting the inflation index).

[10] Where the shares sold are listed on a recognized stock exchange and STT has been paid; in other cases, corporate Income tax rate would apply.

[9] Taxability of Individuals has been discussed later in the Chapter under section "Personal Taxation"

Limited company

A limited company is considered as an entity separate from its shareholders and is taxed as a separate entity. Dividend distributions from a domestic Indian company are not taxed in the hands of the shareholders; such companies are required to pay dividend distribution tax at 16.223 percent on dividends declared/distributed/paid. The company's liability is limited to its paid up share capital and the shareholders are not personally liable for losses and debts of the company.

Partnership firm ('firm')

Under the Indian tax law, a partnership firm is assessed as a separate entity. A firm cannot have limited liability; the liability of all partners is joint and several. The partner's share in the firm's income is not included while computing his total income. Salary, bonus, commission and interest payments due to or received by each partner are allowed as a deduction to the firm, subject to certain restrictions. Such payments to partners are taxed as business profits in their hands.

Limited Liability Partnership ('LLP')

LLP is a new form of doing business in India, introduced recently by the enactment of Limited Liability Partnership Act, 2008 ('LLP Act').

LLP combines the benefits of limited liability of a company and flexibility of a general partnership firm (less onerous compliance and limited disclosure requirements). LLP as a form of doing business may be explored for undertaking co-production activities in India.

Under the Indian tax law, the provisions applicable to a partnership firm have also been extended to an LLP.

Unlike LLPs in several other countries, Indian LLPs do not enjoy a pass through status. Accordingly, where a foreign partner receives its share of profits from an Indian LLP (which would be subject to tax in India), claiming tax credit in his home country may pose a problem in absence of express provisions in the tax treaties.

Foreign investment in Indian LLPs

The Government has recently[10] allowed Foreign Direct Investment ('FDI') in LLPs in a calibrated manner beginning with open sectors, where 100 percent FDI is allowed under the Automatic Route, no prior approval is required, and there are no FDI-linked performance related conditions.

It is also pertinent to note that LLPs with FDI would not be eligible to make downstream investments.

[10] Press Note No. 1 (2011 Series) dated 20 May 2011

The FDI policy permits 100 percent FDI under Automatic Route in the Film Sector. Accordingly, LLPs may be explored as another legal form of doing business in India, especially in case of co-productions.

Other Financing Considerations

Modes of film financing

Producers engaged in film production in India rely essentially on the following modes of film financing:

- Self-funding;
- Advances from distributors against distribution agreements;
- Advances from financiers against financing agreements;
- Sale of negative rights;
- Sale of music rights;
- Bank financing;
- Venture capital investments;
- Equity markets;
- Corporate sponsorships and merchandising (including branded entertainment); and
- Co-Production.

For distribution agreements, which involve the lease of distribution rights by a producer to the distributor for a particular territory and/or period, the considerations are:

- A minimum guaranteed amount;
- A fixed percentage of commission/royalty on gross collections; and
- A combination of the above.

Financing agreements involve the receipt of financing by the producers in consideration of:

- Interest;
- Percentage of receipts/profits; and
- A combination of the above.

Such agreements sometimes also provide for share of losses by financiers. In addition to this, film producers, distributors and financiers can raise finance through equity and preference shares, debentures or bonds, deposits, etc.

Access to finance, etc via film co-production treaties

India has concluded six film co-production treaties[12] to date and is in the process of entering into additional, similar bilateral pacts. Film co-production treaties are entered into with an objective of developing the film industries of the contracting countries, promoting economic and cultural cooperation, extending national film status to the co-produced film (thereby the benefits that are available to such films in the respective contracting countries). Certain countries extend several benefits to their national films, including:

a) Tax incentives;

b) Access to government funding at nominal interest rates; and

c) Regional grants and publicity and marketing budgets from the government.

However, India does not provide any defined benefits to Indian films. Accordingly, the benefits offered by other contracting jurisdictions may be explored.

Several such co-production treaties also take within their ambit third countries with respective contracting countries that have entered into other similar agreements, thereby enabling the participation of such third countries in the agreement entered into by the contracting countries. Such treaties with third countries can also be explored for benefits available in those jurisdictions.

Foreign Exchange regulations

As discussed earlier, through the liberalization of the foreign exchange regulations, the Government of India has allowed 100 percent FDI in the Film Sector. For the purposes of FDI, film sector broadly covers film production, exhibition and distribution, including related services and products. FDI in the sector is permitted without any prior approval ('Automatic Route'). Further, there are no entry level conditions for FDI in the sector. However, investors must comply with certain post filing requirements, namely, notifying the Reserve Bank of India ('RBI')[12] within 30 days of receipt of inward remittance in India, filing of certain documents within 30 days of allotment of shares, etc. Further, price of shares issued/transferred to foreign investors shall not be less than:

- *In case of Listed companies* – The price is worked out in accordance with the Securities and Exchange Board of India guidelines;
- *In case of Unlisted companies* – The fair valuation of shares done by a Merchant Banker or Chartered Accountant per the discounted free cash flow method; and

[11] India has entered into film co-production treaty with Italy, the U.K., Germany, Brazil, France and New Zealand

[12] RBI is the apex body governing foreign exchange regulations in India

- *Where shares are issued on a Preferential allotment basis* – The price is determined per pricing guidelines laid down by the RBI.

Foreign investors seeking to acquire shares of an existing Indian company (engaged in film production, exhibition or distribution) from the resident shareholders are granted a general permission, subject to compliance with prescribed terms and conditions. This means that a prior approval of the RBI is not required.

Further, remittance of hiring charges of transponders by TV channels requires prior approval of the Ministry of Information and Broadcasting. However, approval will not be required where drawal is made out of funds held in Resident Foreign Currency Account ('RFC') Account.

Loans and borrowings

Borrowings in foreign currency are governed by the guidelines on External Commercial Borrowings ('ECB guidelines') issued by the RBI. The guidelines stipulate that ECB can be raised by entities engaged in:

- Industrial and Infrastructure sector in India; and
- Qualified services sector (hotels, hospitals and software companies).

As the film/television sector may not fall in the above categories of qualified service sector, it is unlikely that the permission for raising ECBs is allowed to the sector.

In this regard, it should be noted that for purposes of the foreign exchange regulations, non-convertible/optionally convertible/partially convertible preference shares, and debentures are considered as ECB. Accordingly, these instruments would not be permitted in the film/television sector.

However, investment can be made by way of fully and compulsorily convertible preference shares and debentures which are treated as equity for the purpose of FDI policy.

Corporate Taxation (as per Indian tax law)

Direct Taxes Code Bill, 2010

As part of the tax reform process in India, the country's Finance Minister released a draft of the proposed new Direct Taxes Code for public debate in August 2009. After considerable consultations and representations received from various stakeholders, the Government unveiled the revised draft of the Direct Taxes Code Bill, 2010 ('DTC' or 'the Code') in August 2010. The Code proposes several changes in the current direct tax regime including taxation of foreign companies and introduction of General Anti Avoidance Rules. It is proposed to come into force on April 1, 2012, after due introduction and approval by the Indian Parliament.

It is pertinent to note that only a draft of the DTC has been unveiled by the government. Further, no rules and procedures to implement the provisions of the proposed Code have been released for public discussion. Accordingly, the final impact of the proposals can only be ascertained post enactment of the Code and rules there under.

We have hereinafter discussed key provisions aspects of the existing income tax legislation in India relevant for non-residents and the impact of the DTC based on the current draft.

Taxability of Income in case of non-residents

Non-resident filmmakers/news agency

The taxability of a person in India is determined based upon their residential status, i.e., whether such person is resident or a non-resident in India.

In case of non-residents, income is taxable in India which is:

- received or deemed to be received in India; and/or
- accrues or arises or is deemed to accrue or arise in India.

Under the existing income tax laws, income of non-residents arising on account of a 'Business Connection' in India is deemed to accrue or arise in India [business connection is akin to the concept of a Permanent Establishment ('PE') discussed in tax treaty(s) entered into by India with other countries].

However, incomes from following activities are not deemed to accrue or arise in India–

- shooting of any cinematographic film in India; and/or
- collection of news and views in India for transmission out of India for a non-resident who is engaged in the business of running a news agency or of publishing newspapers, magazines or journal.

Impact of the DTC

The aforesaid specific exclusions have not been covered under the DTC. However, in this regard, recourse may be taken to tax treaty(s) which may contain beneficial provisions.

Other aspects

Taxability of income shall also be determined based on the manner in which the same is characterized, namely 'royalty', 'fee for technical services', etc.

In this regard, it may be noted that the existing income tax law does not cover consideration for the sale, distribution or exhibition of cinematographic films in India within the ambit of 'royalty'.

Impact of the DTC

It is proposed to include 'Transfer of all or any rights (including the granting of a license) in respect of cinematographic films or work on films, tapes or any other means of reproduction' within the ambit of royalty.

However, given that certain tax treaties may have a narrower definition of 'royalty', such treaties being beneficial would prevail over the provisions of the DTC.

Transactions between related parties

Given the increased linkages between the Indian media players with their counterparts across the globe (coupled with the impressive growth achieved and targeted for the sector), the transactions between Indian players and their related parties overseas have increased manifold. Such related party transactions come under the purview of Transfer Pricing ('TP') regulations and require the same to be carried out at an arms-length price. These regulations prescribe mandatory documentation which needs to be maintained annually.

In the recent past, a number of companies in this industry have been scrutinized by the Indian TP administration on account of related party transactions. Key factors that need to be considered in case of related party transactions and analysis thereof include:

- Detailed Functions, Assets and Risks analysis to support adequacy of the arm's length price;
- Transaction specific approach; and
- Choice of tested party in an economic benchmarking analysis.

TP policies should be based on a thorough functional and economic analysis that identifies the various functions including the value drivers, risks and location of the company assets. The existence of TP documentation, alongside policy and procedures documentation, could streamline the discussions with Indian tax authorities. In addition, establishing a robust set of TP policies and guidelines could help to proactively identify and effectively manage new TP exposures that are created as a result of business expansions, acquisitions, restructuring, etc.

Impact of the DTC

The DTC proposes to introduce 'Advance Pricing Agreements' ('APA') for determining arm's length price in case of international transactions. APAs are likely to offer several benefits to the taxpayers such as, greater certainty on the transfer pricing method adopted, mitigating the possibility of disputes and facilitating the financial reporting of potential tax liabilities.

Deduction of Expenditure

Film production and distribution cost

There are specific rules[13] provided under the Indian tax law which govern the deduction in respect of expenditure on production of feature films/acquisition of distribution rights thereon.

As per the prescribed rules, a film producer who sells the entire exhibition rights of the film is entitled to a deduction of the entire cost of production incurred by him in the same year in which the Censor Board certifies the film for release in India. A similar deduction is also available to a film distributor for outright sale of the film distribution rights acquired. In case of a partial sale and/or partial exhibition of film rights by the film producers/distributors, it is necessary that the film should be released at least 90 days before the end of the tax year to claim a full deduction of specified production costs/specified costs of acquiring distribution rights.

Where the film is not released at least 90 days before the end of such tax year, then the cost of production/acquisition cost of the film distributor, limited to the amount earned from the film, shall be allowed as a deduction in the tax year and the remaining cost shall be allowed in the following year.

Where the feature film is not exhibited by the producer himself or not sold, leased or transferred on a minimum guarantee basis or the distributor does not exhibit the film commercially or does not sell/lease the rights of exhibition, no deduction in respect of the cost shall be allowed in the tax year. The entire cost shall be allowed in the succeeding tax year(s).

Sale of rights of exhibition also includes the lease of such rights or their transfer on a minimum guarantee basis.

[13] Rule 9A and 9B of Income tax Rules, 1962 ('the Rules'); As stated earlier in this chapter, impact of the proposed rules under the Direct Taxes Code corresponding to Rules 9A and 9B would be ascertained post enactment of the final code and the rules thereunder.

Other expenditures

As a general rule, all expenses incurred 'wholly and exclusively' for business purposes are deductible. However, there are limits/disallowances on certain types of expenses, such as *(illustrative list only)*:

- Expenses in the nature of interest, royalties, fees for technical service or any other sum chargeable to tax paid to residents and non-residents on which tax has not been withheld or after withholding not been deposited with the Government of India within the prescribed time. Deductions, however, will be allowed in the year in which such tax has been deposited with the Government treasury subject to fulfillment of prescribed conditions;
- Corporate tax, wealth tax, securities transaction tax, etc.;
- Provisions in accounts for specified staff welfare expenses, duties, taxes, and interest on borrowings from financial institutions, not actually paid before the specified dates; and
- Indirect general and administrative costs of a foreign head office in excess of 5 percent of taxable income (before unabsorbed depreciation, etc.).

Depreciation

Depreciation is calculated on a reducing balance method on the 'block of assets'. The 'block of assets' concept requires aggregation of all assets of the same class with the same depreciation rate into a common block. Depreciation is allowed at varying rates on different classes of assets. Further, if in the year of purchase an asset is used for less than 180 days, then the depreciation is allowed at half the normal rate. In other cases, depreciation is allowed at full normal rates. No depreciation on the asset is permissible in the year of sale of an asset and the sale proceeds have to be deducted from the value of the 'block of assets'.

Depreciation is also allowed on intangible assets like technical know-how, patents, copyrights, etc

Certain specific tax issues

Tax issues for foreign television channels/telecasting companies ('FTC')

Taxability only when Permanent Establishment exists in India

The two primary sources of revenue for FTC's, *inter alia*, is income from the sale of advertising airtime/sponsorships on the TV channel and subscription revenues. Under the Indian domestic tax law, income of the FTC's is taxed in India in the case where a business connection exists in India. In the event an FTC operates from a country that India has a tax treaty with, such revenue is taxable in India only if such FTC maintains a PE in India.

The provisions of a tax treaty apply to the FTC to the extent they are more beneficial as compared to the provisions of the domestic law. The term 'business connection' is widely interpreted and is based on case laws. The definition of PE is generally narrower as compared to the term business connection. In case the FTC has a business connection/PE in India, the profits attributable to such presence in India need to be computed. In case the FTCs do not maintain country wise accounts as prescribed under the domestic law, then this could pose considerable difficulty in computing the profits which can be taxed in India.

Subscription revenues are usually collected by the Indian distributors and subsequently paid to the FTCs. Technically, these revenues should be taxed in India only if a business connection/PE of the FTC exists in India. However, the Indian tax authorities are contending that the payment of subscription fees repatriated to the FTCs are subject to withholding tax, considering such payments to be royalties.

The Indian tax authorities are also increasingly litigating the existence of a PE in case of airtime/subscription revenues of FTC. Further, even where payments have been made on an arm's length basis, the tax authorities are agitating the attribution of income in the hands of the FTCs before the courts.

PE exposure under Downlinking Guidelines of the Indian Government

In case a non-resident wishes to broadcast a TV channel in India, it has to comply with the downlinking guidelines issued by Ministry of Information and Broadcasting, Government of India ('MIB'). These guidelines mandate that either the applicant company should be the owner of the channel or it should have exclusive marketing/distribution rights for the territory of India, which includes rights to advertisement/subscription revenues for the channel. If the applicant has such rights, it should also have the authority to conclude contracts on behalf of the channel for advertisements, subscription and program content. It is necessary to comply with the aforesaid conditions to obtain approvals from the MIB.

However, conforming to the aforesaid conditions may lead to a creation of PE exposure for the foreign company in India, as authority to conclude contracts on behalf of the foreign company is a trigger point for PE, pursuant to various tax treaties with India.

Withholding tax implications on payments to Satellite Companies

Some other issues which the TV channel companies need to consider is withholding taxes on the payments made in respect of up linking and use of transponder and satellite space. The withholding tax issues may arise on account of characterization of payment as royalty or fees for technical service, existence of permanent establishment/business connection of the non-resident payee (e.g., Satellite Company) in India.

In the past, Indian tax authorities have held that payments made by a TV channel company to a non-resident company owning satellites towards lease of transponder capacity is in the nature of royalty for "use of process" under the tax treaty. On this issue, there have been contradictory decisions at the Tax Tribunal level.

Recently the Delhi High Court[14] has held that payments made for using transponder capacity for up linking/down linking data do not constitute 'royalty' under the provisions of the Indian tax law. The High Court held that the customers did not make payments for the use of any process or equipment, since control over the process or equipment was with the satellite company and not with the broadcasters.

The High Court reiterated that because the satellite merely had a footprint in India, it would not mean that the process took place in India, and accordingly, the payments could not be taxed in India due to insufficient territorial nexus with India.

Given that the High Court is a court superior to the Tribunal, the aforesaid judgment comes as a welcome relief for TV broadcasters due to the uncertainties caused by earlier unfavorable decisions of the Tax Tribunals. The case is likely to achieve finality only at the Supreme Court level. However, the issue will have to be analyzed taking into consideration the particular facts and circumstances of each case.

Impact of the DTC

The DTC proposes to specifically include payments for the "use or right to use of transmission by satellite" within the ambit of 'royalty'. Such specific inclusion would need further analysis for determining the impact thereof and way forward for the stakeholders.

[14] Asia Satellite Telecommunications Co. Ltd. vs. DIT [2011] 332 ITR 340 (Del)

Losses

The Indian tax law permits off-set of losses from one business against the gains of another. However, the net unabsorbed business losses can be carried forward and off-set against the business profits of the subsequent years, for a maximum carryover period of eight years. In the absence of adequate profits, unabsorbed depreciation can also be carried forward and off-set against the profits of future years without any time limit.

Impact of the DTC

No time limit has been specified in relation to carry forward of unabsorbed losses and accordingly, such losses may be allowed to be carried forward for an indefinite period.

Foreign Tax Relief

Pursuant to increase in cross border transactions, foreign source income of Indian Companies is on the rise. Such foreign source income may also have been subject to Income-tax in the source country.

Indian companies which have suffered such foreign tax are allowed to claim credit for such taxes while determining their tax payable in India, under the relevant provisions of the Indian tax law/treaty.

Further, the Government of India has been empowered to make such provisions as may be necessary for adopting and implementing an agreement between specified associations for double taxation relief.

Tax Incentives in India: Special Economic Zones ('SEZ')

The SEZ regime in the country allows tax breaks (subject to fulfillment of certain conditions) to eligible entities on export earnings for a period of 15 years (in a phased manner). However, SEZ units are liable to Minimum Alternate Tax at 20 percent (including applicable surcharge and cess) even during the period of the tax holiday effective from April 1, 2011.

The benefits are available to entities operating in various sectors and can be explored for media activities such as content development, animation, film restoration etc. However, feasibility of the same needs should be analyzed on a case to case basis.

Impact of the DTC

The DTC proposes to replace the existing profit linked incentives with investment linked incentives. However, existing units as well as units commencing operations before April 1, 2014 would continue to avail incentives on profit linked basis for the unexpired tax holiday period.

Indirect Taxation

Central and state levies

There are levies, central as well as state, which directly affect the media and entertainment industry – central levies being Central Excise duty, Customs duty and Service tax and State levies being state-VAT and Entertainment tax. Of the various indirect taxes applicable in the media sector, Service tax and state-VAT merit special attention. Applicability of these taxes on program production, in-film placements, grant of various rights such as distribution rights, theatrical rights, cable and satellite rights, sale of airtime for advertisement purposes, recording/editing of program, sale/lease of program content, etc. are becoming increasingly contentious and leading to disputes with authorities.

Applicability of State VAT on Sale of a Film

Factors such as interplay of multiple indirect taxes, availability of various options for computation of tax, frequent evolution of concepts in taxation through changes in law and judicial rulings, have given rise to complex tax issues in this space. For example, a High Court has held that production and sale of a film resulted in creation of a work of art and not sale of goods. However, some other state-VAT laws have included films as 'goods' liable to sales tax/VAT. Further, certain states levy state-VAT on intangibles like copyright and also on grant of film rights to use/hire. There is need for greater consistency and uniformity in taxation for such an important industry.

Service Tax

Service tax is levied on provision of certain notified categories of services (including copyright, intellectual property right, broadcasting, cable, development and supply of content, sound recording and video production services). Service tax being an indirect tax, normally the service provider recovers the Service tax from the service recipient. However, in some cases such as services provided by non-residents, goods transport agencies, sponsorship services etc., the reverse charge mechanism is applicable (i.e., the obligation to pay Service tax is that of the service recipient and not of the service provider). A mechanism[15] for credit of input Service tax and Central Excise duty on input services, inputs and capital goods is also put in place by the Government.

Effective from March 1, 2007, subject to fulfillment of specified conditions, exemption[16] is granted from levy of Service tax to services provided for granting right to authorize any person to exhibit cinematograph film, the content of the film being in digitized form and is transmitted through use of satellite to a cinema theater.

[15] CENVAT Credit Rules, 2004

[16] Notification 12/2007 dated 1 March 2007

Entertainment Tax

Entertainment tax is levied on various modes of entertainment such as on film tickets, cable television, live entertainment, etc. India has one of the highest rates of entertainment tax across the globe and there has been a constant cry from the stakeholders to reduce it. Recently, some states have granted exemption from entertainment tax to multiplexes.

Other challenges

The key challenge under indirect tax regime in India includes analysis of transactions and identification of the indirect tax implications on such transactions and entities involved. Some typical transactions include:

- Internet services (e.g. sale of space, including 'content' provided to telecom companies, e-mail subscription services, e-commerce transactions, etc.);
- Taxability of subsidiary/agent in India where the principal broadcasting agency is outside India;
- Sale of advertisement time/space by media companies to advertisement agency and subsequent sale from agency to advertisers;
- Transactions involving transfer of right to use film/programme content; and
- Special transactions (e.g. cost sharing arrangements, import of technology, sharing of telecom revenues generated through contests/opinion polls, hiring of equipments for film production, etc.).

Proposed Goods and Service Tax ('GST')

To overcome issues under the present tax regime, the Government has proposed to implement GST which is expected to include most Indirect taxes at the Centre and State level. Though, the expected date for the implementation of GST is October 2012, there could be some delay in its implementation.

Draft GST legislation is yet to be finalized. However, the Draft Constitution Amendment Bill, 2011 ('the Bill') has been presented before the Parliament suggesting the proposed changes in the Constitution of India in order to implement GST. Under the Bill, taxing power in relation to Entertainment tax has been proposed to remain with the municipalities/local bodies, until the State Legislatures concerned, repeal the relevant laws.

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Personal Taxation

Residential status and taxability of income in India

Residential status

An individual is taxable in India based on their 'residential status' in the relevant financial year.[17] Residential status is determined on the basis of physical stay/presence in India. The residential status of an individual could be that of a 'Resident' or a 'Non Resident'.

Resident

A person is said to be a "resident" of India if:

a) the individual stays in India for 182 days or more in a financial year; or

b) the individual stays in India for a period of 60 days or more in a financial year coupled with a stay of 365 days or more in the four financial years preceding the relevant financial year.

"Resident" is further sub-divided into:

- *Resident but Not Ordinarily Resident ('NOR')*: An individual is said to be an NOR if he is:
  - a *non-resident* in India in 9 out of 10 financial years preceding the relevant financial year; or
  - present in India for 729 days or less during the 7 financial years preceding the relevant financial year.
- *Resident and Ordinarily resident ('ROR')*: A person becomes an ROR if he does not satisfy any of the above said conditions [i.e. neither condition (a) nor condition (b) is satisfied].

Non-Resident ('NR')

A person is said to be a "non-resident" if he does not satisfy any of the above two conditions [i.e. neither condition (a) is satisfied nor condition (b) is satisfied]

Normally, a foreign citizen who is visiting India for the first time would become ROR in the fourth financial year, from the year of start of their assignment.

[17] Indian financial year runs from 1 April to 31 March of the following year

Taxability of Income based on Residential Status

Based on the residential status, an individual is taxable as below:

- ROR: Liable to tax on worldwide income i.e., salary income and income other than salary earned/received in India or abroad.
- NOR: Liable to tax on the income sourced (i.e., accruing or arising/deemed to accrue or arise) from India or received/deemed to receive in India or on the income derived from a business controlled or profession set up in India.
- NR: Liable to tax only on the income sourced (i.e., accruing or arising/deemed to accrue or arise from India or received/deemed to received in India).

The salary income earned by an NOR/NR for 'services rendered in India' is liable to tax in India, irrespective of the place of receipt of such income, i.e., whether the salary income is received in India or overseas.

Taxability of self-employed in India

Non-Resident Artists (self-employed)

Income from profession

Artists are taxed in India with respect to income earned from performances in India. The Indian payer is obliged to withhold tax at the appropriate rate of income tax applicable to non-resident individuals. This is, however, subject to any benefits that may have been available to the artist under the relevant double tax avoidance treaty *(article on 'Artistes and sportsmen')*.

Some specific cases where the consideration paid to an artist may be taxed in India[18] have been illustrated hereunder:

- For acquiring copyrights of performance in India for subsequent sale in India (of CDs, etc.);
- For acquiring the license for broadcast or telecast in India;
- Portion of endorsement fees relating to artist's performance in India; and
- For a live performance in India or simultaneous live telecast or broadcast of such performance is taxable in India.

Additional capital gain tax issues for Non Residents in India

For non residents, capital gains arising from the transfer of shares or debentures of an Indian company are calculated in the same foreign currency as was initially used to purchase such shares or debentures and the cost inflation index is not applicable to such gains.

[18] Circular No. 787 dated 10 February 2000

Long term capital gains arising from the transfer of specified bonds or Global Depository Receipts issued in foreign currency are taxed at the rate of 10 percent. Exemption from the long term capital gains may be claimed by making investment in residential house and/or certain bonds subject to certain conditions.

Resident Artists (self-employed)
Taxability of Income

Indian residents are taxed on their worldwide income from all sources.

Relief for Foreign taxes in India

A resident in India is entitled to credit for foreign taxes paid on foreign sourced income in the following manner:

- Where agreement for avoidance of double taxation exists between the two countries, in accordance with the terms of that agreement; and
- Where there is no double taxation avoidance agreement, under the provisions of domestic tax law.

Social Security Regime in India

General principles of the social security scheme

Persons Covered

Social security regime in India is primarily governed by Employees' Provident Funds and Miscellaneous Provisions Act 1952, ('the PF Act') and is comprised of the following schemes:

- Employees Pension Scheme, 1995 ('EPS');
- Employees Provident Fund Scheme, 1952 ('EPFS'); and
- Employee Deposit linked Insurance Scheme.

The above schemes provide for the social security of employees working in the establishment employing 20 or more persons. The employer is mandatorily required to contribute towards these schemes for the employees earning wages below INR 6,500.

The Ministry of Labour and Employment, Government of India, has issued a notification dated October 1, 2008 ('Notification') introducing a new concept of "International Workers" ('IWs') which includes expatriates (foreign passport holders) working for an employer in India and the Indian employees working overseas.

The existing IWs are required to become members by joining the PF Scheme and the Pension Scheme effective from November 1, 2008. A relief has been provided in case of "Excluded Employee"[19] which primarily refers to IWs coming from a country with which India has entered into a Social Security Agreement ('SSA').

As per the PF Scheme, an employee earning a salary of more than INR 6,500 per month may opt not to contribute under the scheme. However, the said exemption limit of salary of INR 6,500 per month applicable for Indian employees is not applicable in the case of IWs. Accordingly, in the case of IWs, it is mandatory for the employer and IWs to contribute to the PF Scheme irrespective of the salary income.

- *Scheme for salaried persons*
  The above schemes are applicable only to employees working with the covered establishments. Every employee as mentioned above, working with a covered establishment is required to become member of the schemes. Both employee and employer are required to contribute toward the schemes. The schemes provide for retirement savings, retirement pension and life insurance benefits to the employees.
- *Scheme for self-employed persons*
  The above schemes do not cover the self employed persons.

Incomes subject to social security contribution

- *Scheme for salaried persons*
  Calculation of the contributions to be paid by salaried persons is based on the salary earned by the employee.

  'Salary' for the purpose of the PF deduction would include basic wages, dearness allowance (including cash value of any food concession) and retaining allowance.[20]

  Dearness allowance is likely to include any allowance by whatever name called, granted to an employee to compensate towards the rise in the cost of living.
- *Scheme for self-employed persons*
  As mentioned above, the above schemes are not applicable to the self-employed persons.

[19] As per the Notification dated 1 October, 2008 "Excluded Employee" means an International Worker, who is contributing to a social security programme of his/her country of origin, either as a citizen or resident, with whom India has entered into social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement.

[20] Para 29 of the PF Scheme.

However, for self employed persons, Public Provident Fund, National Pension Scheme and private pension plans are some of the schemes available in India.

Social security rates

The above schemes are financed by collecting contributions paid by the employees and employers.

- *Employee's social security rate*

  Every employee is required to contribute to the EPFS at the rate of 12 percent of their salary.

- *Employer's social security rate*

  The employer is also required to make a matching contribution of 12 percent. A portion of the employer's contribution, i.e., 8.33 percent of the salary (forming part of the 12 percent of employer contribution) is mandatorily contributed by the employer into the EPS. However, the ceiling of INR 6,500 per month is applicable as far as the contribution under the EPS is concerned. Accordingly, out of employer's contribution of 12 percent, an amount of INR 541, i.e., 8.33 percent of INR 6,500, per month is contributed towards pension scheme and the balance is contributed towards Provident Fund.

  Effective September 2010 and onwards, the employer contribution to pension fund in respect of IWs will no longer be limited to INR 541 per month, i.e., 8.33 percent of INR 6,500.[21]

  Additionally, administration charges at 1.11 percent of the salary are required to be deposited by the employer in relation to the PF charges. These charges need to be deposited by the employer and cannot be recovered from the employees. The limit of INR 6,500 is not applicable in case of IWs and local employees for the purpose of administration charges. Accordingly, the administration charges will be made at 1.11 percent of the salary for the purposes of PF of the IW.

  Further, it is also mandatory for the employer to contribute at 0.5 percent of salary into the EDLIS every month. The limit of INR 6,500 is applicable in case of IWs for the purpose of EDLIS. Accordingly, the contribution to EDLIS will be made at 0.5 percent of INR 6,500 [i.e., INR 33 (approx.)].

  Additionally, inspection charges at 0.01 percent need to be deposited by the employer. These contributions need to be made by the employer and cannot be recovered from the employees. The limit of INR 6,500 is applicable in case of IWs. Accordingly, the inspection charges will be 0.01 percent of INR 6,500 subject to a minimum of INR 2 per employee per month.

[22] Notification G.S.R. 148 and 149 dated 3 September 2010

How social security contributions are levied?

- *Scheme for salaried persons*

  Generally, the employer is required to withhold the employee's contribution from the salary of the employee and contribute the same along with its own contribution towards the fund set-up by the Regional Provident Fund Commissioner ('RPFC'). The employer is also required to comply with certain filing requirements at the time of joining of employee and on a monthly/annual basis.

Benefits covered (for salaried persons)

Provident Fund

The amounts contributed by the employee and employer are accumulated in a separate account maintained by the RPFC which also allows interest on the said amount on a monthly basis.

Effective September 2010 and onwards, IW(s) can withdraw the amount standing to their credit under the PF Scheme under the following situations:

- On retirement from service in the establishment at any time after the attainment of 58 years of age;
- On retirement on account of permanent and total incapacity from work due to bodily or mental infirmity duly certified by the medical officer/ registered medical practitioner designated by the organization;
- On suffering from tuberculosis, leprosy or cancer, even if contracted after leaving the service on the grounds of illness but before the payment has been authorized; and
- In respect of the member covered under a SSA, on such grounds as specified in such agreement.

Prima facie it appears that the funds will get blocked in India until the age of 58 years (subject to other conditions mentioned above).

It is pertinent to note that under the Act, for the Indian national employees the age limit for withdrawal for PF accumulations on account of retirement is prescribed as 55 years.

Pension

The local employee is entitled to monthly pension in the following manner:

- Superannuation pension if the employee has rendered eligible service of 10 years or more and retires on attaining the age of 58 years;

- Early pension, if the employee has rendered eligible service of 10 years or more and retires or otherwise ceases to be in employment before attaining the age of 58 years; and
- A member if the employee so desires may be allowed to draw an early pension from a date earlier than 58 years of age but not earlier than 50 years of age. In such a case, the amount of pension shall be reduced at the rate of 4% for every year the age falls short of 58 years.

The IWs is entitled to pension in the following manner:

- For IWs coming from a country with which India has a SSA, the totalization/withdrawal benefit will be allowed.
- In case of IWs coming from countries with which India has no SSA, the totalization/withdrawal benefit will be not allowed Prima facie, it appears that the pension benefit seems to be available only to IW's from SSA countries.

Life insurance

The employee is required to nominate a person at the time of joining a scheme. The nominated person would be entitled to the amount of life insurance in case of a death of the individual.

Tax Implications in respect of PF Scheme

As mentioned above, the social security schemes are not applicable to the self- employed persons. Accordingly, the tax implications as discussed below are not applicable in case of self-employed persons.

At the time of making of contribution

Employees can claim deduction under the Income-tax Act, 1961 ("the Act") up to the maximum amount prescribed. Presently, the maximum amount of deduction prescribed under the Act is INR 100,000/- per financial year.

At the time of withdrawal of accumulated balance

The tax treatment at the time of withdrawal would need to be examined on a case-to-case basis:

- *In case employee has rendered less than 5 years of continuous service*

  In this case, the refund of employer's contribution and the interest thereon would be fully taxable as salary income. The employee's contribution would be taxable to the extent of deduction claimed, if any under the Act. The interest earned on employee's total contributions would be taxable as income from other sources in the hands of the employee.

- *In case employee has rendered more than 5 years of continuous service*

  In this case, the entire accumulated balance of received by an employee would be exempt under the Act.

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Chapter 16

Indonesia

Introduction

In an attempt to attract foreign investors, increase tax collection and provide a more neutral, simple and transparent tax environment, the Indonesian government revised the tax administration, income tax and Value Added Tax laws in 2007, 2008 and 2009 respectively.

In addition, the Indonesian government has also entered into tax treaties with several countries. As of August 2011, Indonesia has tax treaties with 59 countries.

Unfortunately, the filmmaking industry is still closed to foreign investors but for establishing a company that engages in providing technical assistance to the filmmaking industry, it is opened with a foreign ownership limitation (49% maximum of foreign ownership), such as establishing a film studio, film processing, dubbing and editing. Film companies may hire foreign artists or employ foreign technical assistance services etc. As there are no specific regulations on the film industry, ordinary tax provisions operate.

Key Tax Facts

Corporate income tax rate	25%
Highest personal income tax rate	30%
Value added tax rate	10%
Normal non-treaty withholding tax rates: Dividends	20%
Interest	20%
Royalties	20%
Tax year-end: Companies	12-month period
Tax year-end: Individuals	December 31

The tax year-end for companies is determined based on the company's policy as long as the fiscal year covers a 12-month period.

Film Financing

Financing Structures

Apart from borrowing from local banks, the film industry may borrow from overseas banks or private lenders by utilizing the available tax treaty protection. There are no specific tax regulations on film industry financing. Interest payable on loans and other forms of business debt can generally be deducted for tax purposes. However, the loan principal cannot be deducted in calculating taxable profit.

Other Financing Considerations

Stamp Duties

Stamp duty of 6,000 Indonesian Rupiah (IDR) applies for each commercial document entered into, such as agreements, commercial papers and invoices.

Exchange Controls and Regulatory Rules

There are no specific exchange controls or other regulatory rules in Indonesia. However, there is a requirement by the Indonesian Central Bank to report the purpose of any transfer made to an overseas recipient. In addition, when purchasing US$100,000 or more (or its equivalent) in a single month, the purchaser should attach their tax ID number, state the purpose of the purchase and a statement that the purpose of the purchase is accurate in their report.

Other than the above, there is nothing to prevent the repatriation of income arising in Indonesia back to foreign lenders or foreign artists.

Corporate Taxation

Indonesian companies are subject to corporate tax of 25 percent from 2010 onwards. Taxable income is calculated based on the commercial income statement after adjustments for non-taxable income and non-deductible expenses. Interest expense is generally deductible for the purposes of calculating the corporate tax payable.

Film Distribution Company

If an Indonesian company acquires distribution rights by way of a lump-sum payment from another production company (local or overseas), the payment for the acquisition of the rights is normally treated as an expense in earning profits. The expense is not regarded as the purchase of an intangible asset but as a royalty payment. If such rights cover several years the royalty payment should be amortized in calculating the corporate tax payable.

Where the recipient of payments is a non-resident, payments for distribution rights are subject to domestic regulation withholding tax of 20 percent. However, if the recipient resides in a tax treaty country, the withholding tax rate can be reduced by the relevant treaty.

Examples of the relevant treaty royalty withholding rates are as follows:

U.S.	10%
U.K.	15%
Netherlands	10%
Japan	10%
Singapore	15%
Malaysia	10%
Thailand	15%

The income arising from exploiting such rights is normally recognized as trading income. A distribution company will be taxed on the income derived from the exploitation of any of its acquired films, wherever and however these are sublicensed, provided the parties are not connected. If they are connected, the tax authorities may question the level of income returned.

Other Expenditure

As there are no specific tax regulations for a film distribution company or a film production company, they are subject to the ordinary rules applicable to other companies. For example, in calculating taxable income, as most day-to-day business expenditure such as the cost of film rights, salaries, rents, advertising, travel expenses, and legal and professional costs normally relate to the business, they may be deducted.

Certain other expenditure cannot be deducted, for example, any bad debt provisions, employees' benefits in-kind, depreciation of luxury vehicles etc. Capital expenditure, such as the purchase of land and buildings, equipment and motor vehicles should be depreciated. For tax purposes, the useful life of the assets is categorized as either 4 years, 8 years, 16 years or 20 years depending on the type of assets.

Losses

Tax losses can be carried forward up to a maximum 5 years.

Indirect Taxation

Value Added Tax

Value Added Tax (VAT) of 10 percent is payable by an entity on taxable supplies it delivers (output VAT). Most services, including royalty and professional services, and goods are subject to VAT in Indonesia, including film distribution income. Interest is not subject to VAT. Export of goods is subject to VAT at 0 percent.

An entity is also entitled to claim tax credits for the VAT component (input VAT) of its local purchases and imports of goods and services against the VAT payable. If the input VAT is higher than the output VAT, the excess may be carried forward to the following month to be compensated with the output VAT. A refund application is also allowed.

Utilizing overseas services and payments of royalties to overseas recipients is subject to self-assessed VAT at 10 percent. This is treated similar to input VAT on local purchases.

Non residents cannot register for VAT purposes in Indonesia.

Customs Duties

Importation of cinematographic film, exposed and developed, is subject to customs duty of 10 percent. Customs duty on publicity, advertising, and promotional materials will depend upon the particular type of good. For example, some advertising material is free of customs duty while other material is generally subject to a customs duty of 5 percent. The value of the customs duty and VAT is calculated at the time of importation and is the customs value, plus overseas freight and insurance.

Personal Taxation

Non-Resident Artists (self-employed)

Income Tax Implications

Subject to its double tax treaties, Indonesia taxes the income earned by a non-resident artist from a performance in Indonesia and any other activities carried on in Indonesia.

If a non-resident artist receives any payment arising from or in consequence of an Indonesian activity, the Indonesian payer is obliged to deduct withholding tax and account for this tax to the authorities. This withholding tax obligation also applies to payments made to related support staff (e.g. choreographer, costume designer, director, director of photography, film editor, musical director, producer, production designer or set designer) who are not engaged as employees. The rate of withholding for payments to entertainers and their associates that are individuals is 20 percent under the local regulation.

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Indonesia's double tax agreements provide the following rules:

U.S.	U.S. artists are taxable in Indonesia where the payment for remuneration, including expense reimbursements, exceeds US$ 2,000 in any consecutive 12-month period, except under cultural agreement between Governments (Article 17)
U.K.	U.K. resident artists are taxable in Indonesia to the extent which they perform services in Indonesia, except under cultural agreement between Governments or where the visit is supported by Government funds (Article 17)
Netherlands	Dutch resident artists are taxable in Indonesia to the extent to which they perform services in Indonesia (Article 18)
Japan	Japanese resident artists are taxable in Indonesia to the extent which they perform services in Indonesia, except under cultural agreement between Governments or where the visit is supported by Government funds (Article 17)
Singapore	Singapore resident artists are taxable in Indonesia to the extent to which they perform services in Indonesia, except where the visit is supported by Government funds (Article 16)
Malaysia	Malaysian resident artists are taxable in Indonesia to the extent to which they perform services in Indonesia, except where the visit is supported by Government funds (Article 16)
Thailand	Thai resident artists are taxable in Indonesia to the extent to which they perform services in Indonesia, except where the visit is supported by Government funds (Article 17)

Resident Artists (self-employed)

Resident artists are taxable as individuals.

Employees

Income Tax Implications

Employers are obliged to make regular, periodic payments to the Indonesian tax authorities in respect of employees' personal tax liabilities arising from salaries or wages paid to them. Deductions are made for the non-taxable income band based on the number of dependents (to a maximum of three). The progressive withholding tax rates applicable for the 2009 fiscal year onwards are between 5 percent and 30 percent for annual income which exceeds 500 million IDR.

Social Security Implications

Employers are liable for social security contributions (Jamsostek) in respect of payments of salaries or wages. Currently the minimum Jamsostek contribution is 6.24 percent from employees' regular monthly remuneration of which 2 percent should be borne by employees.

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Chapter 17

Ireland

Introduction

Ireland has produced many critically acclaimed films in recent years. Notable successes have included *My Left Foot, The Crying Game, In the Name of the Father, Braveheart, Saving Private Ryan and Michael Collins*. Film producers, script writers and actors alike, have enjoyed tremendous success as a result of filming on Irish shores. Furthermore the following films which were produced in Ireland have also achieved tremendous acclaim on the international stage:

- *There Will Be Blood* (2008) starred the Irish actor Daniel Day-Lewis. Daniel Day-Lewis won "*Best Actor*" at the BAFTAs and received a Golden Globe for his role in the film
- *Once* (2007) which starred Irish actor and singer-song writer Glen Hansard, won an Oscar for best song. It also won "*Best International Film*" at the Raindance Film Festival in London. John Carney the writer/director of Once, won "*The Most Promising Newcomer Award*" at the Evening Standard British Film Awards
- *The Garage* (2007) starred the infamous Irish actor Pat Shortt. As a result of his role Pat Shortt went on to win "*Best Actor*" at the Monte Carlo Film Festival
- *The Wind that Shakes the Barley* (2006) was the winner of the momentous "*Palme D'Or Award*" at the Cannes Film Festival. *The Wind that Shakes the Barley* starred Irish actor Cillian Murphy. Since the production of this film Cillian Murphy has enjoyed considerable success and has gone on to star in films such as *Red Eye* and *Breakfast on Pluto*

It is clear from the dramatic images demonstrated in films such as *Braveheart* (1995) and *Saving Private Ryan* (1998) that Ireland's scenic countryside, dramatic coastline and picturesque views have much to offer film producers and actors alike.

Irish produced television drama series such as *Bachelors Walk*, *Killinaskully*, *The Clinic*, *Ballykissangel* and *Love is the Drug* have also been extremely successful. Apart from the wealth of literary and creative talent, which Ireland has always had in abundance, a sizeable pool of very experienced film technicians is also available to crew any production. The Irish government is committed to the continued development of a vibrant Irish film industry and supports the industry through tax incentives for film production and through the Irish Film Board, a development agency. As a result, Ireland is a very attractive location for film investment and continues to be used by overseas producers.

The key attractions of Ireland are as follows:

- Experienced crews and facilities
- Co-operative State agencies
- English speaking
- Tax efficient finance through Section 481 relief
- Tax relief for some scriptwriters and composers
- Certain income of foreign expatriates is exempt from tax
- One of the lowest corporate tax rates in the world

Key Tax Facts

Corporate tax rate – trading income	12.5%[1]
• passive income	25%[2]
• capital gains	25%[3]
Highest personal income tax rate	41%
Universal Social Charge	2%, 4% and 7% and 10%[4]
VAT Rates	0%, 9%, 13.5%, 21%[5]
Annual VAT registration thresholds: Goods	EUR 75,000
Services	EUR 37,500
Normal non-treaty withholding tax rates: Dividends	0%[6]

[1] A rate of 10 percent was previously available in respect of certain film production activities which qualified as manufacturing activities or internationally traded services where the trade existed at 23 July 1998. The 10 percent rate regime has since been phased out and is no longer available as of 31 December 2010.

[2] Passive income would include income other than capital gains and income from the carrying on a trade or profession in Ireland, for example: certain interest received, income from foreign possessions, rental income etc.

[3] The rate of capital gains tax is 25 percent in respect of disposals made on or after 8 April 2009.

[4] From 1 January 2011 onwards, the universal social charge was introduced which effectively replaced the income levy and health levy. Broadly, the charge is payable by individuals on gross income (less certain deductions) at a rate of 2 percent on the first €10,036 of income, 4 percent on the next €5,960 and 7 percent on the remainder of income (subject to certain exceptions). Individuals with self-employment income in excess of €100,000 are liable to the charge at a rate of 10 percent in respect of the excess of such income.

[5] From 1 January 2010 onwards, the standard rate of VAT is 21 percent (previously 21.5 percent). From 1 July 2011, a reduced VAT rate of 9 percent applies for certain goods and services (mainly related to tourism) up to the end of 2013, subject to review being carried out in 2012.

[6] A domestic Law exemption from withholding tax exists in many cases.

Interest	0%, 20%
Royalties	0%, 20%[7]
Tax year-end: Individuals	December 31
Tax year: Companies	Usually accounts period end if not more than 12 months

Key Tax Facts

Partnership
Two or more parties (either companies or individuals) may come together to produce and exploit a film in partnership sharing overall profits and losses in accordance with the terms of the partnership agreement. Ireland recognizes both limited partnerships (whereby some but not all of the partners enjoy limited liability with regard to partnership activities) and general partnerships (whereby all partners have unlimited liability in respect of partnership activities). Limited Partnerships must be registered with the Registrar of Companies. Where a partnership is formed to produce a film in Ireland, each of the partners (including foreign resident partners) are likely to be regarded as taxable in Ireland on their share of the partnership profits. Irish-resident partners of partnerships established overseas are liable to Irish tax on their share of partnership profits subject to relief or credit for foreign income tax borne in respect of such income being available under a double tax treaty.

Equity Tracking Shares
Equity tracking shares are a possible but not a particularly common form of finance for film productions. Such shares typically provide for dividend returns dependent on the profitability of a film production company's business. These shares have the same rights as the production company's ordinary shares/common stock except that dividends are profit-linked and typically have preferential rights to assets on liquidation of the company.

If the production company is resident in Ireland, these tracking shares should be regarded as preference share capital. The dividends paid on the tracking shares should be taxable in the hands of an Irish corporate investor.

If the tracking shares are acquired by Irish resident investors, but the production company is resident elsewhere, any dividends received on the tracking shares should be treated in the same way as dividends on ordinary shares. Any tax withheld should be dealt with according to the dividend article of the appropriate double tax treaty.

[7] The 20 percent rate applies to patent royalties and annual payments only. In all other cases, no withholding tax should apply.

Yield Adjusted Debt
Again, although not particularly popular, film production companies may sometimes issue "debt securities" to investors. The yield on these securities may be linked to revenues from specific films. The principal should be repaid on maturity and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplemental (and perhaps increasing) interest payment may be paid where a predetermined target is reached or exceeded (such as revenues or net cash proceeds).

For Irish tax purposes, this "debt security" should most likely be classified as debt. However, the excess supplemental interest may be regarded subject to certain exceptions, as a "distribution", i.e., a form of dividend. The conditions that determine whether or not it is treated as a dividend are highly complex and depend, inter alia, on the residence status of the recipient company and of the paying company, on the trade carried on by the paying company and the date on which the loan was issued. Due to the complexities, it is essential that advice be taken on a case-by-case basis. Interest payable to a 75 percent non resident parent or group company may be treated as a distribution in certain cases.

Sale and Leaseback
There is little precedent in Ireland and it could be difficult to structure a sale and leaseback of a master negative.

Other Financing Considerations

Tax Costs of Share or Bond Issues
Companies can be funded by way of debt and equity. Interest costs are normally fully tax deductible. However, in certain instances, interest can be regarded as a profit distribution. No capital duty applies on the issue of shares. Stamp duty arises on the transfer of shares in an Irish incorporated company. The rate charged is 1 percent of the market value of shares and it is payable by the acquirer.

Exchange Controls and Regulatory Rules
There are no specific exchange controls or other regulatory rules in Ireland. There is therefore nothing to prevent a foreign investor or artist repatriating income arising in Ireland back to his own home territory.

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Tax and Financial Incentives

Background

Taxation incentives for film investment has a strong heritage in Ireland and the first film tax incentives have been in operation as a far back as 1984.
In 1984 the Business Expansion Scheme (BES) was introduced and it meant that Individuals could claim tax relief on investments in shares in companies of a specified trade. Film production was one of the trades specified.
In 1996 Section 481 *Relief for Investment in Films* was introduced and it is widely acknowledged that the increase in film production activity in Ireland in recent years was greatly encouraged by this initiative.

Section 481, Taxes Consolidation Act (TCA 1997)

General Overview

Section 481, TCA 1997 provides for tax relief for investment in films for both individuals and companies where certain conditions are met.
In the Finance Act 2011 the Irish government announced their continued commitment to the success and support of this scheme and provided that a further extension of the relief from 31 December 2012 to 31 December 2015 (subject to Ministerial Order).

Corporate Investors

A company investing in a film must be a third party which is not connected with the film-making and distributing company. In general companies will be connected with one another if one controls the other, or both are under the control of the same person or persons. An investor company is allowed to claim relief of equal to 100 percent[8] of their qualifying investment (see overleaf for explanation of a qualifying investment). The maximum allowable investment for an investor company or group of companies in any 12 month period is €10.16 million, subject to a cap of €3.81 million in any one film. However, where a single company or a corporate group of investors invests more than €3.81 million in qualifying films[9] in a 12 month period, the excess over this figure will qualify, once it is targeted at films with a production cost of €5.08 million or less. The investor company can carry forward unclaimed relief to subsequent tax years if there are insufficient funds to absorb it in the year of investment.

Individual Investors

An individual investing in a film must also be a third party which is not connected with the qualifying film company. Individuals can invest a minimum of €250 and a maximum of €50,000 in any one tax year.
The individual investor can claim relief on 100 percent of their qualifying investment. Individuals may carry forward unclaimed investments for relief up to and including 2015[10] subject to the limit of €50,000 in any one year.

Qualifying Investments

The level of finance which can be raised by a qualifying film production and distribution company through Section 481 is regulated by the Revenue Commissioners in conjunction with the Minister for Tourism, Culture and Sport. A qualifying company must be Irish incorporated and resident, or carry on a trade in Ireland through a branch or agency, and exist solely for the purposes of producing and distributing one qualifying film[11]. The amount of production costs which may be funded by Section 481 financing is dependent on the total production budget of that film. The amount of the film budget which qualifies for relief under the scheme will generally be restricted to the amount expended in the State or on the production of the film. Typically this will involve a minimum amount of money being expended on the employment of eligible individuals and on the provision of certain goods, services and facilities.

The maximum proportion of film costs which can be financed by the qualifying company by way of Section 481 Investment relief is the lower of:

(1) Eligible expenditure[12] or

(2) 80 percent of the cost of production subject to a cap of €50,000,000.

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[8] Finance Act (No. 2) 2008 increased the relief available from 80% to 100% of the relevant investment.

[9] A qualifying film means a film in respect of which the Revenue Commissioners have issued a certificate which has not been revoked. The film must be one which is included within the categories of films eligible for certification by the Revenue Commissioners. The film categories which will qualify for relief are set out in Appendix A of this chapter. The film must be one which is produced on a commercial basis with a view to the realization of profit and is produced wholly or principally for exhibition to the public in cinemas or by means of television broadcasting, but does not include a film made for exhibition as an advertising programme or as a commercial.

[10] Finance Act 2011 extended the regime from 31 December 2012 to 31 December 2015, subject to Ministerial Order.

[11] Further conditions which are required to be fulfilled in order to be deemed a qualifying company are set out in Appendix A of this chapter.

[12] Eligible expenditure is defined as meaning both expenditure on employment of eligible persons and also expenditure upon eligible goods, services and facilities.

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In order for an investment to be a qualifying investment the following conditions must be fulfilled:

- The investment must be a sum of money paid by the investor on the investor's own behalf in the qualifying period[13] in respect of shares in a qualifying company
- The investment must be paid directly to that company to enable it to produce a film in respect of which an authorized officer of the Revenue Commissioners has indicated that he/she is satisfied for the time being with the application which the company has made for certification of the film
- The investment be used within two years for the purpose of producing the qualifying film
- The investment has been or will be used in the production of a qualifying film
- The investment must be deemed to be made at the risk of the investor company/individual and no provisions may be enacted to protect the investor from the normal commercial risks of the investment. Taxation relief should not be granted unless the investment has been made for bona fide commercial reasons and not as part of a scheme in which the principal purpose was the avoidance of tax

The following should also be noted:

- Pre-sales agreements are unlikely to contravene the risk provisions provided they are genuine commercial transactions
- Completion bonds taken out on behalf of the production company from recognized insurers are acceptable. However, bonds taken out by or on behalf of the investors to secure a return on the investment should the film fail to be completed, are not acceptable
- Arrangements by persons other than the investors to give a charge or other security to the bank in connection with any bank loans associated with the Section 481 investment would be in breach of the risk provisions involved in the granting of the relief
- An option extended by the producer/production company to any nominee company or any company funded by it, to purchase shares in the Section 481 company will not be acceptable under the provisions of which the tax relief is granted

[13] The qualifying period in relation to an allowable investor company and a qualifying individual means the period commencing on 23 January 1996, and ending on 31 December 2015 (the extension from 31 December 2012 to 31 December 2015 is subject to Ministerial Order).

Certification Process

The company must receive written confirmation from the Revenue Commissioners that a satisfactory application for certification has been made, before any qualifying investment for this taxation relief can be raised. It is also necessary that this certificate be received before any work on the film begins i.e. principal photography, first animation drawings or first model movement commences. An application for certification[14] under Section 481 TCA 97 must be made at least 21 days prior to the earlier of:

a. The commencement of the raising of relevant investments, or

b. The commencement of the principal photography, the first animation drawings or the first model movement as the case may be.

Approving Bodies

A Certificate is issued by the Revenue Commissioners but both the Minister for Arts, Sport and Tourism and the Revenue Commissioners have specific responsibilities in relation to the certification process. The Minister has responsibility to ensure that it is appropriate for the Revenue Commissioners to consider the issue of a Certificate for a film.

The Minister, in considering whether to give the Revenue Commissioners an authorization in relation to a film, will have regard to:

- The categories of film eligible for certification
- The contribution a film should make to either or both the development of the film industry in the State and the promotion and expression of Irish culture
- The film should act as a stimulus to film-making in Ireland through employment and training opportunities

The Revenue Commissioners have responsibility to ensure that all other aspects of the project, including the financial aspects, have the potential to satisfy the requirements of the law. The Revenue Commissioners will not issue a Certificate unless they have received an authorization from the Minister for Arts, Sport and Tourism and they are satisfied with the other aspects of the proposal. The application procedure however is simplified so that the producer/promoter has to deal with only one body, the Revenue Commissioners. Specific application and certification procedures are outlined by the Irish Revenue on the website www.revenue.ie and also in the Film Regulations 2008 booklet[15].

[14] The Film Regulations 2008 set out the application procedures and the compliance and reporting requirements which must be carried out by the qualifying company at the various stages of production (i.e. prior to the commencement of film production, during film production and after completion of film production). This booklet is available on the Irish revenue website http://www.revenue.ie/en/tax/it/leaflets/it57.html.

[15] This booklet is available on the Irish revenue website http://www.revenue.ie/en/tax/it/leaflets/it57.html.

Other Financial Incentives

The Irish Film Board

The Irish Film Board, under the Department of Arts, Sport and Tourism, was set up to aid the development of the Irish film industry. The primary function of the Irish Film Board is to provide development and production finance for Irish film projects. Development loans are provided in order to provide resources to allow a project to be brought from the drawing board to the stage of being properly researched and developed. Production loans are available to assist with the actual cost of producing the finished film or documentary.

The Board's total Capital grant aid allocation for 2011 amounts to approximately €18, 000,000. This amount includes €1, 300,000 which will be deployed for support training and a variety of other ancillary film industry activities and a balance of €16, 700,000 which will be used to enable the development, production and distribution of new Irish work for the screen.

As mentioned above, the Irish Film Board provides 2 forms of financial assistance to independent Irish filmmakers:

- Production Loans
- Development Loans

1. Production Loans

a. For projects with budgets of more than EUR 100,000 and not more than EUR 1,500,000, the Irish Film Board can provide up to 65 percent of the budget with no cap.

b. For projects with budgets of more than EUR 1,500,000 and not more than EUR 5,000,000, the Irish Film Board can provide up to EUR 1,000,000, or 40 percent of the budget, whichever is greater.

c. For projects with budgets of more than EUR 5,000,000, the Irish Film Board can provide up to EUR 2,000,000, or 25 percent of the budget, whichever is greater.

d. It is a condition of Irish Film Board Funding of fiction, that the production budget must contain adequate line items for the making of marketing materials. This requirement however does not apply to animation production or documentary production projects.

e. European Commission regulations still allow the Irish Film Board to provide 100 percent production funding to film projects capable of being realized and delivered for a total production cost of not more than EUR 100,000[16].

[16] http://www.irishfilmboard.ie/funding_programmes/Regulations__Limits/40

2. Development Loans

a. Development Loans up to EUR 100,000, for any one project are available.

b. It is important to note that development funding of above EUR 50,000 to any one project must be matched by funding from other sources. It is also important to note that Irish Film Board development loans must be included as a production budget line item and repayment made in full by first day of principal photography.[17]

International Co-Production

The Irish Government has entered into official co-production arrangements with Australia, New Zealand and Canada. In order to qualify as an official co-production under these arrangements, there must be a co-producer in each country. The official co-production arrangements provide that where a film or television programme is approved as an official co-production, then it will be regarded as a national production of each co-producer country, and will therefore be eligible to apply for funding programmes which are available in these co-production countries.[19]

Eurimages

Ireland has been a member of Eurimages, a European Support Fund for film co-production since 1992. The fund supports production of feature films, documentaries and animated films for cinematographic exhibition. Eurimages funding is available for co-productions where there are at least two co-producers from the Fund's member states. As of 31 July 2011, there were 35 member states of Euimages.[20] Irish films that have been in receipt of Eurimages funding are All Good Children (2008), As If I'm Not There (2008), Swansong: The Story of Occi Byrne (2008), Triage (2008), Dorothy Mills (2007), Das vatterspiel (2007), Summer of the Flying Saucer (2006) and Song for a Raggy Boy (2002).[21]

[17] http://www.irishfilmboard.ie/funding_programmes/Regulations__Limits/40

[18] http://www.irishfilmboard.ie/financing_your_film/International_CoProduction/10

[19] http://www.irishfilmboard.ie/financing/International_CoProduction/10

[20] http://www.aic.sk/aic/en/eurimages/

[21] http://www.irishfilmboard.ie/financing_your_film/Eurimages/20

Corporate Taxation

General

Ireland's current rate of corporation tax for trading income is 12.5 percent. This rate is EU approved. Income from non-trading activities i.e., passive income is subject to a corporate tax rate of 25 percent. In general, capital gains are chargeable to tax at 25 percent. In prior years a reduced rate of corporation tax of 10 percent applied to corporate profits resulting from the production of certain films in Ireland but this regime has been phased out and is no longer available as of 31 December 2010. As a result, it is no longer possible for new operations to be granted a certificate for the effective 10 percent rate from the Minister for Finance.

Given Ireland's extensive network of double tax treaties, locating in Ireland may be of interest to distributors and others active in the funding of film production. The current 12.5 percent tax rate should be available to both Irish resident and non-resident companies where the company or a branch of foreign company is viewed as trading in Ireland.

Recognition of Income

Irish resident companies, i.e., companies that are managed and controlled in Ireland and some Irish incorporated[22] companies are liable to Irish corporation tax on their worldwide income. The computation of profits for tax purposes in Ireland entails recognizing income in accordance with standard accounting practice, unless specific legislative or precedent requirements dictate otherwise. Non-Irish resident companies are liable to Irish corporation tax only on profits arising through a branch or agency in Ireland.

Film Production Companies

The basis of computing film production profits normally depends upon whether the film is being produced for intended sale by the production company or whether the production company intends to retain rights in the film to exploit on an ongoing basis.

In the former case, the cost of producing the film should normally be allowed as a deduction from sale proceeds in accordance with the matching principle (i.e., which requires expenses to be matched with revenues). Any profit arising is recognized on a similar basis.

[22] The presumption of residence by virtue of incorporation in Ireland will not apply where the company or related company carries on a trade in the State and either the company is ultimately controlled by persons resident in a EU Member State or Treaty country; or the company or a related company is a quoted company on a recognized Stock Exchange; or the company is not regarded as resident in the State under the provisions of a double tax treaty between Ireland and another country.

Where a film is to be retained by the production company to exploit on a long-term basis, the cost of producing the master negative is considered to be expenditure incurred on the provision of "plant" in respect of which tax depreciation allowances are available. In such cases, receipts from exploiting the film are taxed on an accruals basis and tax depreciation allowances equal to 12.5 percent of the cost of producing the master negative are allowed on a straight line basis over the eight years of the film's life (for expenditure incurred pre 4 December 2002, different rates apply). A film production company is subject to normal tax practice and principles. As such non-capital expenses should be allowed as a deduction to the company where they are wholly and exclusively laid out or expended for the purposes of the company's trade. Certain expenses are specifically not allowable such as business entertainment.

Film Distribution Companies

Once such companies are regarded as carrying on a trade of film distribution in Ireland, the profit accruing to their trade should be chargeable to Irish corporate tax at the 12.5 percent rate. If an Irish resident distribution company acquires rights in a film from an unconnected production company, it is important that the purchase consideration be structured so as to be treated as a revenue expense rather than a capital expense, which may not be tax deductible. Distribution companies which outlay capital sums to purchase the master negative of the film will normally be entitled to tax depreciation allowances equal to 12.5 percent of the purchase price per annum.

Foreign Tax Relief

Film Production Companies

In countries with which Ireland has a double tax treaty, taxation relief is allowed by way of a credit for both foreign corporation tax and withholding taxes incurred by way of deduction or otherwise. In addition to this relief Ireland also has a unilateral tax credit relief to prevent double taxation of dividends received by Irish parent companies from foreign related companies with which Ireland does not have a double taxation agreement.

Where an Irish company receives a dividend from a foreign company located within the EU or within a state with which Ireland has a double taxation treaty, or from a company owned directly or indirectly by a publicly quoted company, this dividend may, by making a claim, be subject to corporation tax at 12.5 percent as opposed to the 25 percent rate generally applicable to dividend income. This rate is conditional on either the dividend being sourced from trading profits or its subsidiary or at least 75 percent of the foreign company's profits being derived from trading profits, and on not less than 75 percent of the value of the Irish company's consolidated assets deriving their value from trading assets. Unilateral credit relief and pooling relief is also available for foreign branch profits.

If an Irish resident film production company receives income from non-resident payers, and suffers overseas withholding tax, it can normally rely on Ireland's range of double tax treaties to obtain relief for the tax suffered. The production company normally applies to the overseas territory's tax authorities for permission to receive such income gross, by reference to the "business profits" article of the relevant treaty. If no treaty exists between Ireland and the payers' territory of residence, the tax suffered generally should be allowed to be deducted as an expense in computing the profits of the production company's trade.

A production company should take care to minimize foreign taxes suffered. To the extent that foreign taxes exceed 12.5 percent, they may constitute a real cost to the company. However "dividend pooling" provisions help reduce the impact of this real cost. This provision provides that the aggregate amount of corporation tax payable by a company for an accounting period in respect of relevant dividends received by the company from foreign companies shall be reduced by the unrelieved foreign tax of that accounting period. Any surplus of unrelieved foreign tax is to be offset separately against dividends received that are taxable at 25 percent and those taxable at 12.5 percent. Any surplus on foreign tax arising on dividends taxable at the 12.5 percent rate may not be used for offset against those dividends taxable at the 25 percent rate.

Film Distribution Companies

The same rules in relation to relief for foreign taxes apply to film distribution companies as apply to film production companies.

Other Taxation Incentives

Capital Gains Tax

Qualifying investments under Section 481 receive favorable treatment in relation to capital gains tax. As a rule any amount which has been allowed as a deduction from income tax or corporation tax cannot also be allowed as a deduction for capital gains tax purposes. However for qualifying investments of Section 481, where an investment in a company was by way of a subscription for new ordinary shares and the shares are held for at least one year, this rule will not apply. In cases such as this, the amount of the purchase price of the shares will be allowed as a deduction in computing any capital gain on their disposal, regardless of the tax relief which has been given in respect of part of that amount. However, should the shares be sold at a loss, an allowable loss for capital gains tax purposes will not arise. Instead, the sale of the shares will be dealt with on a no gain/no loss basis for capital gains tax purposes.

Research and Development Tax Credit

The introduction of the Research and Development (R&D) tax credit has meant that there is now a further advantage and incentive for companies engaged in such qualifying activities to locate in Ireland. Film producer companies advancing research and development in new or existing areas of technology may find themselves in a position to qualify for this credit. In order to obtain the credit, the company must fulfill a number of tax, technical and scientific criteria as set down under sections 766, 766A and 766B TCA 1997. In summary, in order to qualify for the relief, R&D activities must seek be carried out within a Revenue approved field of science or technology, must achieve scientific or technological advancement, involve the resolution of scientific or technological uncertainty and must be carried out in a systematic, investigative or experimental manner, with detailed documentation being maintained.

Qualifying R&D activities can fall in any one of three categories: basic research, applied research or experimental development. A tax credit of 25 percent[23] is available in respect of the incremental expenditure on qualifying capital and revenue expenditure incurred on qualifying R&D expenditure occurring in the European Economic Area[24] in the current year which exceeds the amount of such qualifying expenditure incurred in the year 2003 (the base year).

[23] A tax credit of 20% of incremental expenditure exists in respect of expenditure incurred in accounting periods commencing before 1 January 2009. However, the 12 month timeframe which was introduced subsequently for making a claim means that this rate of 20 percent is no longer relevant for current claims.

[24] The EEA includes all EU member states plus a number of EFTA Member states. EFTA states include Iceland, Norway, Switzerland and Lichtenstein.

The tax credit must be claimed within 12 months after the end of the accounting period in which the R&D expenditure, giving rise to the R&D tax credit, is incurred, i.e. a claim for the year ended 31 December 2011 must be submitted by 31 December 2012.

- The R&D tax credit can be used, on making a claim, to offset firstly against the company's corporation tax liability for the current accounting period and then against the prior period's corporation tax liability. Any excess unutilized tax credit can then be carried forward indefinitely for offset in subsequent periods.
- Alternatively, the taxpayer may obtain a repayment of the excess R&D tax credit (after the current and prior year offset) in three installments over a three year period. The repayments may be claimed on the following basis:
  - Repayment of 33 percent of such remaining excess may be claimed following the relevant CT filing date for the period in which the R&D expenditure was incurred.
  - Any remaining tax credit excess must be carried forward and used to offset against the CT liability in the subsequent period.
  - If any excess remains, repayment of 50 percent of any such further remaining excess may be claimed following the relevant CT filing date in the period subsequent to that in which the expenditure was incurred.
  - Any further remaining unutilized credit can be used to offset against the CT liability in the second subsequent period.
  - Any balance of the R&D tax credit unutilized at that stage may be repaid in full, following the relevant CT filing date in the second subsequent period to that in which the expenditure was incurred.

However, the maximum amount of cash refundable to a company is, subject to certain conditions, limited to the greater of:

- the company's cumulative current and prior year payroll liabilities, (being the income tax, employer PRSI, levies and the universal social charge payable);[25] and
- the aggregate amount of corporation tax paid by the company for the 10 years prior to the accounting period preceding the period in which the qualifying R&D expenditure was incurred.

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[25] Applies for accounting periods commencing on or after 22 June 2011. For prior periods, the maximum cash refundable to a company was limited to the greater of: the company's current year payroll liability (narrower definition); and, the aggregate amount of corporation tax paid by the company in 10 years prior to the accounting period preceding the period in which the qualifying R&D expenditure was incurred.

Cumulatively, the credit of 25 percent together with the deduction for qualifying Research and development expenditure in the calculation of trading profits (12.5 percent) can result in an effective tax relief of up to 37.5 percent for companies engaged in qualifying R&D activities.

Personal Tax Section

General

An individual's Irish income tax liability will generally be determined by reference to whether or not the individual is regarded as resident in Ireland and domiciled in Ireland for Irish tax purposes.

An individual will be regarded as Irish resident in any tax year ended December 31:

- If he or she spends 183 days or more in Ireland during that year
- If he or she spends 280 days or more in Ireland over a two year period (and at least 30 days in Ireland in the year in question)

An individual is considered to have spent a 'day' in Ireland if present in Ireland at any point on that day.

The term "domicile" broadly refers to the place that the individual regards as his or her permanent home.

Non-Resident Artists

Non-Irish resident individuals are only liable to Irish income tax on their Irish source income. It should be noted that foreign employment income attributable to duties performed in Ireland is Irish source income. However, relief may be available to such individuals under the terms of one of Ireland's range of double tax treaties.

Resident Artists

Irish resident and domiciled artists and writers are liable to Irish income tax on their worldwide income. However, certain artists and writers may qualify for the artists' exemption referred to below.

Persons who are resident in Ireland but not domiciled in Ireland are only liable to Irish tax on their Irish income sources and on other foreign income to the extent that it is remitted to Ireland. It should be noted that foreign employment income attributable to duties performed in Ireland is Irish source income. Consequently, Ireland can be an attractive location for artists or entertainers who take up residence in Ireland and who can avoid remitting non-Irish income sources to Ireland.

Irish resident individuals, whether or not they are domiciled in Ireland, can generally avail of Ireland's broad range of double tax treaties.

Artist's Exemption

Irish resident individuals who are not resident elsewhere should be able to avail of an exemption from Irish income tax (subject to an upper limit of €40,000 per annum)[26] in respect of the profits from the publication, production or sale of an original and creative work (or works) falling under one of five categories, namely:

- a book or other writing
- a play
- a musical composition
- a painting or other like picture
- a sculpture

The exemption may therefore be claimed by a writer, a dramatist or playwright, or a musical composer who produces an original or creative work. To avail of the exemption it is also necessary that the work is judged to have cultural or artistic merit. The exemption extends only to the profits from the writing, composition or execution of the work. Consequently, if, for example, an individual derives profits both from the composition of music and also from performing it, he or she will be exempt from tax on that portion of the profits derived from the composition of the music (subject to an upper limit of €40,000) but taxable in the normal way on such earnings in excess of €40,000 and any other earnings derived as a performer.

The determination of whether a work or works of art by a writer, playwright, composer etc. are original and creative works, and whether they are generally recognized as having cultural or artistic merit is assessed by reference to Guidelines drawn up by the Minister for Heritage, Gaeltacht and the Islands and An Comhairle Ealaion.

Additionally, this relief may be restricted where the individual's taxable income before the relief is applied, exceeds €125,000 in the tax year. In such cases, the relief that may be claimed in the year will be restricted to the greater of €125,000 and 50 percent of the adjusted income, i.e. the income before the relief.

[26] For tax years 2011 onwards, an upper limit of EUR 40, 000 per annum applies to the income tax exemption available in respect of earnings derived from qualifying artistic works (Finance Act (No.1) 2011).

Employees

The correct tax treatment of persons employed in Irish film production depends on whether the nature of their contract with the production company is regarded as a "contract for services" or a "contract of service". In the latter case, the person should be regarded as an employee and the production company should be obliged to operate Irish payroll taxes on all payments made to him or her. In such circumstances, if the individual is a resident of a country with which Ireland has a double tax treaty, credit should normally be available for any Irish tax suffered against the individual's tax liability in his country of residence.

Irish production companies are also obliged to deduct the universal social charge on all salaries and wages paid to employees, if their gross income exceeds the threshold of €4,004 per annum (€77 per week). The universal social charge is deducted from gross salary and wage payments (including notional pay) at a rate of 2 percent for income up to €10,036 per annum, 4 percent on the next €5,980 of income and 7 percent[27] applying thereafter, with no upper limit. In addition, production companies have an obligation to pay employer social security contributions for its employees at the rate of 10.75 percent on annual salary and wages. Lower rates of social security contributions are payable in relation to lower paid workers.

Where individuals are employed under contracts for services, the production company is not obliged to operate payroll taxes or deduct social security contributions from payments to the individual.

The distinction between "contracts for services" and "contracts of service" is not clear-cut and is dependent amongst other things on the Irish Revenue's interpretation of certain case precedents. Specific advice should be sought in particular instances.

Loan Out Companies

Where services are provided to Irish production companies by non-Irish "loan out" companies, and employees of the loan out company are exercising employment duties in Ireland, there is an Irish withholding tax and social security obligation for the employer. If the foreign employer fails to operate the Irish PAYE system correctly, the Irish authorities may seek the relevant amounts from the Irish host company.

[27] For medical card holders and individuals aged over 70 years, the top rate is 4 percent (not 7 percent) with no upper limit

Indirect Taxation

Value Added Tax (VAT)

General

Irish VAT is chargeable on the supply of goods or services for consideration in the course or furtherance of business under the harmonized system of VAT found in the European Union. As noted above, where an accountable person's turnover exceeds or is likely to exceed the current thresholds[28] with regard to the supply of goods (€75,000) and services (€37,500), an obligation to register for Irish VAT and to charge Irish VAT at the applicable rate arises. Where the relevant thresholds have not been breached, an accountable person has the option to elect to register for Irish VAT.

In general, once registered for VAT in Ireland, Irish VAT incurred on costs directly relating to a person's VATable activities is recoverable subject to certain statutory restrictions on "non deductible" items such as food and drink, accommodation (except, accommodation in relation to qualifying conferences), entertainment, the purchase/hire of motor vehicles (except a partial VAT deduction on certain low emission vehicles), petrol and other goods and services not purchased for business purposes.

Supply of a Completed Film

In Ireland, the supply of commissioned cinematographic and video film which records particular persons, objects or events, supplied under an agreement to photograph those persons, objects or events, is treated as a supply of goods liable to Irish VAT at the reduced rate of 13.5 percent. Other supplies of films or videos (e.g. films on DVD, minidisk, or any other digitized media) are liable to Irish VAT at the standard rate (currently 21.5 percent).

In general, a VAT point is triggered at the time of the supply of the goods or on completion of the service or if an invoice is required to be issued, the date of the invoice or the latest date by which the invoice should be raised. Valid VAT invoices should be raised no later than the 15th day of the month following the month in which the supply takes place. Please note, if payment is received in advance of delivery of a completed film, VAT becomes due at the time of the pre-payment.

Generally Irish VAT returns are submitted on a bi-monthly basis, with a VAT return due for submission to Revenue by the 19th day of the month following the end of the bi-monthly VAT period (e.g. the January/February VAT return would be due for submission by the 19th March). Please note that to encourage the filing of VAT returns on-line via the Irish Revenue's website (www.ROS.ie), the filing date has been extended to the 23rd of the month where VAT returns are filed on-line. All VAT on sales (i.e. Output VAT) and VAT incurred on purchases (i.e. Input VAT) arising and incurred within the relevant bi-monthly VAT period should be recorded in the respective VAT return.

Where an Irish established company delivers a completed film to a company established in another EU Member State (the recipient), Irish VAT should be chargeable at the zero-rate provided the recipient's foreign VAT number is stated on the Irish company's invoice, the film is physically dispatched to the other EU Member State within 3 months of the supply and evidence of the dispatch is retained by the Irish company. In this particular case, the recipient is deemed to be making an intra-community acquisition of goods and is required to account for local VAT at the rate applicable to the goods in their own Member State. The Irish supplier of the film would, be entitled to full input VAT recovery of any VAT incurred in relation to the supply of the film (subject to certain restrictions in relation to 'non-deductible' items noted above).

Where an Irish established company delivers completed films to EU VAT registered persons, it is required to prepare quarterly VIES returns. With effect from 1 January 2010, where the value of supplies of goods by an Irish established company to EU VAT registered persons exceeds €100,000[29] in any of the previous four calendar quarters, the VIES return must be filed on a monthly basis. These returns are statistical in nature, with the aim of identifying and preventing fraudulent supplies arising within the EU. The Irish established company will have to record the value of the zero rated supplies of goods made per quarter to each of its VAT registered customers located within the EU.

In addition, where the value of goods supplied to other EU countries exceeds EUR 635, 000 annually, the Irish established company will also be required to prepare a monthly dispatch INTRASTAT return. If an Irish established company acquires goods into Ireland from the EU, the value of which exceeds €191,000 annually, an obligation to file a monthly arrivals INTRASTAT return would arise. Details of supplies of goods made to VAT registered customers located within the EU and the acquisition of goods into Ireland from the EU below the above mentioned threshold should be recorded on the face of the bi-monthly VAT return in Box E1 and E2 respectively.

[28] With effect from 1 May 2008

[29] This threshold will be reduced to €50,000 with effect from 1 January 2012.

Where an Irish established company delivers a completed film to a customer located outside of the European Union, the zero rate of Irish VAT should also apply. Again, the supplier of the film would be able to recover VAT incurred in making the film (subject to certain restrictions on 'non deductible' items noted above). There are no special reporting requirements other than the requirement to complete and retain a customs export declaration on a Single Administrative Document.

Invoicing

There are certain requirements for an invoice to be a valid VAT invoice and we have set out these in Appendix B.

Pre-Sale of Distribution Rights

VAT is charged at the rate of 21 percent on a pre-sale of distribution rights to a person established in Ireland. A pre-sale of distribution rights to a business established in another EU Member State, or to any purchaser outside of the EU, is not within the scope of Irish VAT. However, the business customer, on receipt of the distribution rights, would be required to self-account for any local foreign VAT arising in their member state. VAT incurred by the supplier on expenses incurred in relation to making the film and selling the rights is fully recoverable (subject to certain restrictions on 'non-deductible' items noted above).

Royalties

Where an Irish established company pays a royalty to another Irish established company, VAT arises at the standard rate (21 percent).

Where a business established in Ireland receives a royalty from a company established outside of Ireland, VAT at the rate of 21 percent must be accounted for by the Irish company on the "reverse charge basis". Where the Irish company is engaged in fully VATable activities, it should be entitled to recover in full the VAT which it must account for under the reverse charge basis.

Where an Irish established company provides a royalty to a business established in another EU Member State, or to any person outside the EU, no Irish VAT is chargeable. However, the recipient of the royalty service may be obliged to self-account for VAT in its own Member State under the reverse charge basis. Where an Irish established company provides a royalty service to a non business person located within the EU, Irish VAT at the standard rate (currently 21 percent) will be chargeable.

Since 1 January 2010, where an Irish VAT registered company supplies services to VAT registered customers in other EU Member States on which the customer must self-account for VAT, the Irish company must provide details of these supplies in a VIES return on a quarterly or monthly basis.

Peripheral Goods and Merchandising

The sale of peripheral goods connected to the distribution of a film (such as books, magazines, published music and clothing) will be chargeable to VAT at the rate applicable to the goods in question. For example, printed books and booklets are liable to VAT at 0 percent, sheet music, magazines and periodicals are liable to VAT at 9 percent (with effect from 1 July 2011, but subject to a review in 2012); while audio cassettes are liable to VAT at 21 percent. The sale of any merchandising connected with the distribution of the film such as the sale of clothes, toys, etc. is generally liable to VAT at 21 percent, with certain exceptions such as children's clothing and footwear which are liable to VAT a zero percent.

Promotional Goods or Services

Gifts of taxable goods (i.e. promotional goods) made in the course or furtherance of business will give rise to an Irish VAT liability (at the rate of Irish tax attaching to the goods in question) unless their cost to the donor (excluding VAT) is €20 or less. A VAT registered person is generally entitled to an input VAT deduction in his/her VAT return for VAT charged to him/her in respect of the acquisition of goods to be given away as gifts, subject to the usual conditions.

Catering Services to Film Crew and Artists

In general, the supply of catering services is chargeable to VAT at 9 percent (with effect from 1 July 2011, but subject to a review in 2012) irrespective of whether or not the meals are paid for by the crew and/or artists. Where catering is provided free of charge by the film company, in the course of operating a staff canteen, VAT at 9 percent rate would be payable by the film company on the total cost of operating the canteen where the total annual cost of providing the catering service exceeds EUR 37, 500. However, certain food and drink items supplied either as part of a catering service or in isolation can be liable to a different VAT rate and this should be carefully considered.

Where catering is provided for payment by the film company, in the course of operating a staff canteen, VAT at 9 percent would be chargeable on the VAT exclusive sales proceeds from the catering service. The film company would be entitled to recover VAT on the costs incurred in providing the catering service.

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Import of Goods

Goods imported into Ireland from outside the European Union will be subject to VAT at the point of importation (at the rate of VAT applicable to the goods in question). In addition depending on the nature of the goods customs and/or excise duty may also be payable on importation. The Irish company can generally recover the import VAT through its periodic VAT return although any customs/excise duty paid is not recoverable.

Customs Duties

In general, a film company established outside the European Union would be entitled to import on a temporary basis without payment of customs duty or VAT, professional equipment for use in the making of a film. The equipment is normally imported under cover of an ATA Carnet.

Appendix A

A Qualifying Company

A qualifying company for the purposes of Section 481 TCA 97 must meet the following requirements:

- The company must be Irish incorporated and resident, or carrying on a trade in Ireland through a branch or agency, and it must exist solely for the purposes of producing and distributing one qualifying film
- The company name must not contain in its name the words "Ireland", "Irish", "Eireann", "Eire" or "National", where the company name in question is registered under either or both of the Companies Acts 1963 to 1999 and the Registration of Business Names Act 1963, or is registered under the law of the territory in which it is incorporated
- The company is required to notify the Revenue Commissioners in writing immediately when the principal photography has commenced, the first animation drawings have commenced or the first model movement has commenced
- The financial arrangements must not be:

  (i) Financial arrangements of any type with a person resident, registered or operating in a country other than a Member State of the European Communities, or other than a country with which Ireland has a Double Taxation Agreement

  (ii) Financial arrangements where funds are channeled directly or indirectly to or through a territory other than a Member State of the European Communities, or other than a country with which Ireland has a Double Taxation Agreement

Approval of certain financial arrangements involving territories outside the EU may be permissible where certain conditions are met. However such arrangements will require approval by the Revenue Commissioners.

- The company must provide evidence to vouch each item of expenditure in the State or elsewhere, on the production and distribution of the film
- The company is required to notify the Revenue Commissioners in writing of the date of completion of the film
- The company must provide copies of the film in the required format to the Revenue Commissioners and to the Minister for Arts, Sport and Tourism
- The company must also provide a compliance report to the Revenue Commissioners
- The company must be engaged in producing films on a commercial basis for exhibition to the public in cinemas or by way of TV broadcasting. Advertising programs and commercials are excluded. Private films or films made for some incidental purpose other than the profitable exploitation of the film are also excluded.

A Qualifying Film

As aforementioned, a qualifying film means a film in respect of which the Revenue Commissioners have issued a certificate which has not been revoked. The film must be one which is produced on a commercial basis with a view to the realization of profit and is produced wholly or principally for exhibition to the public in cinemas or by means of television broadcasting, but does not include a film made for exhibition as an advertising programme or as a commercial. The film must be one which is included within the categories of films eligible for certification by the Revenue Commissioners which are listed below.[30]

(i) Feature films

(ii) Television dramas

(iii) Animations (whether computer generated or otherwise, but excluding computer games).

(iv) Certain Creative Documentaries, where specific conditions are met.

The following types of film will not be eligible for certification, and include:

(i) Films comprising or substantially based on:

[30] Film Regulations 2008

- Public/special performance(s) staged for filming or otherwise;
- Sporting event(s);
- Games/competitions;
- Current affairs/talk shows;
- Demonstration programmes for tasks, hobbies or projects;
- Review/magazine-style/lifestyle programmes;
- Unscripted or "reality"–type programmes;
- Product produced in-house by a broadcaster or for domestic consumption in one country.

Appendix B

Requirements of a valid VAT invoice

(i) The date of issue of the invoice

(ii) A sequential number, based on one or more series, which uniquely identifies the invoice

(iii) The full name, address and the registration number of the person who supplied the goods or services to which the invoices relates

(iv) The full name and address of the person to whom the goods or services have been supplied

(v) In the case of a supply of goods or services to a person who is liable to pay the tax on such supply, the registration number of that person, and an indication that a reverse charge applies

(vi) In the case of a supply of goods to a person registered for VAT in another Member State, the person's VAT registration number in that Member State and an indication that the invoice relates to an intra-Community supply of goods

(vii) The quantity and nature of the goods supplied or the extent and nature of the services rendered

(viii) The date on which the goods or services were supplied, or, in the case where advance payments on account are received, the date on which the payment on account was made, insofar as that date can be determined and differs from the date of issue of the invoice

(ix) In respect of the goods or services supplied:

(a) The unit price exclusive of tax

(b) Any discounts or price reductions not included in the unit price, and

(c) The consideration exclusive of tax.

(x) In respect of goods or services supplied, other than reverse charge supplies:

(a) The consideration exclusive of tax per rate of tax

(b) The rate of tax chargeable

(x) The tax payable in respect of the supply except where the Margin Scheme, Auctioneers Scheme or the Scheme for Means of Transport applies

(xi) In the case where a tax representative is liable to pay the VAT in another Member State, the full name and address and the VAT identification number of that representativeKPMG Contact.

KPMG Contacts

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Chapter 18

Italy

Introduction

Since the Italian Government has been considering the film industry relevant, it has issued a series of incentives to promote the Italian production of films and their distribution both in Italy and abroad.

Therefore, the film industry has been expanding in Italy, and certain types of transactions are becoming more and more common. In any case, it is advisable, for foreign investors, to consider carefully the Italian fiscal implications before commencing business in this country.

Key Tax Facts

Corporate tax rate	27, 5%
Highest personal income tax rate	45%
Regional tax on productive activities (IRAP)	3, 9% (ordinary rate)
VAT rates	0%, 4%, 10%, 20%
Annual VAT registration threshold	None
Normal non-treaty withholding tax rates: Dividends	12.5%, 27%
Interest	0%, 12.5%, 27%
Royalties	22.5%
Tax year-end: Companies	As established by the bylaws
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

Co-Production

An Italian investor may enter into an Italian based co-production joint venture (JV) with a foreign investor to finance and produce a film in Italy. The rights of exploitation may be divided worldwide amongst the JV members, although the Italian company may retain exclusive media rights in Italy.

Note that the entity subject to taxation would be each investor in the JV, not the JV itself.

Provided that the exploitation can be kept effectively separate from the production, the foreign investor should not be subject to Italian tax on the income received from exploiting the film outside Italy, because the investors do not share overall revenues, but get various worldwide rights to exploit the film from their own home territory. As long as the foreign investor cannot be said to be carrying on a trade or business of film exploitation in Italy, Italian tax would be solely chargeable in respect of the Italian investor's activities and any other trade which the foreign investor may carry on in Italy.

The issue is complicated if the foreign investor produces the film in Italy under a production contract. In that case, he is likely to be taxed assuming that business profits are realized by the permanent establishment operating in Italy. This might provoke some discussions with the Italian tax authorities as to the proper level of profit that should be returned to Italy. It would be more sensible to create a separate Italian-incorporated special-purpose company, in order to undertake the production and set an appropriate market rate for the production fee so that this risk could be decreased.

On the basis of the proposed structure, the Italian investor would be taxed on the full amount of its profits arising in respect of film production and exploitation. Unless the transaction was carefully structured, the foreign investor could be taxed on a similar full amount of profits and it would need to help ensure that its exploitation did not form an Italian trading activity.

The Italian company would be taxed on the profits arising from its exploitation of the film. The foreign investor would only be taxable if it produced the film, provided the correct corporate structure was in place.

If the foreign investor produces the film in Italy, he is likely to have a production office and hence a permanent establishment in Italy. As previously stated, its business profits arising from such permanent establishment would be taxed in Italy and it would have to rely on the applicable treaty to obtain relief.

Examples of the relief available under such treaties are as follows:

U.S.	Italian tax on business profits creditable against U.S. tax (Article 23)
Netherlands	Business profits exempted from tax where already taxed in Italy (Article 24)
Australia	Italian tax on business profits creditable against Australian tax (Article 24)
Japan	Italian tax on business profits creditable against Japanese tax (Article 23)

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As indicated above, the foreign investor should not undertake the film production through a permanent establishment in Italy but should create a special purpose company. Any exploitation arrangements should be structured in such a way as to help ensure that the foreign investor exploits the film within its home territory.

Partnership

Occasionally financial investors[1] from several territories and film producers become limited and general partners respectively in an Italian partnership, all contributing funds. The partnership may receive royalties under distribution agreements from both treaty and non-treaty territories, proceeds from the sale of any rights remaining after exploitation, and a further payment from the distributors to recoup any shortfall in the limited partners' investment. Such proceeds may first be used to repay the limited partners (perhaps with a premium, e.g., a fixed percentage of the superprofits).

In such an event an Italian resident limited partner will have acquired an interest in the partnership. It will pay tax on its share of chargeable profits, including any "superprofits."

Investors would still need to pay tax on their share of profits and it would be necessary to rely on an applicable treaty to obtain relief. See above examples of the relief available under certain treaties.

A partner may be resident in Italy and the partnership's office may be located elsewhere.

If the only activity that takes place in a territory is the production of the film, there would be two permanent establishments, one being the office located in the foreign territory, the other being the film production office in Italy. If one or more partners are resident in Italy, the Italian tax position would depend on where the partnership was controlled.

It could be that the partnership's business would be carried on partly in Italy and partly abroad. If the partnership was resident abroad, all the partners would be charged tax on the entire profits arising in Italy, while the Italian resident partner would also pay tax on his or her share of the profits arising outside Italy. If the partnership was resident in Italy, all of the partners would be charged tax on the whole of the profits arising in, and from outside of, Italy, whether received or not.

[1] According to the Reform of Corporate Law, in force from January 1, 2004, even limited companies can become partners of an Italian partnership.

Consequently, the tax position of an Italian resident partner in the above circumstances is as follows when the partnership is located in the following territories:

U.S.	U.S. tax on business profits creditable against Italian tax (Article 23)
Netherlands	Dutch tax on business profits creditable against Italian tax (Article 24)
Australia	Australian tax on industrial or commercial profits creditable against Italian tax (Article 24)
Japan	Japanese tax on business profits creditable against Italian tax (Article 23)
Non-treaty country	The tax remains payable but is creditable in Italy as "unilateral" relief.

Equity Tracking Shares

These shares provide for dividend returns depending on the profitability of a film production company's business. Tracking shares have the same rights as the production company's ordinary shares, except that the dividends are linked to the profits of a particular business sector. In addition, the corporate bylaws could earmark particular rights to such shares.

According to the Italian Corporate Law Reform, in force from January 1, 2004, it is possible for an Italian resident stock company to issue tracking shares. In that case, the dividend arising from such shares issued by an Italian production company is subject to different taxation rules depending on the quality of the investor.

With respect to shares issued by a non-resident company and acquired by an Italian resident company, according to the Italian Tax Law, the shares could be treated in Italy as giving rise to dividends, only if their payment is linked to the profits (or losses) of the company. Thus, tracking shares issued by a production company not resident in Italy normally yield dividends which would be treated in the same way as dividends arising from ordinary shares.

As a result, dividends distributed to Italian resident individuals are taxed on 40 percent (49,72 percent from January 2009) of their amount, if the shareholding is higher than 20 percent of the share capital; such dividends are subject to a substitute tax of 12.5 percent if the shareholding is less than or equal to 20 percent of the share capital. Dividends distributed to Italian companies are taxed, if certain conditions are fulfilled, only on five percent of the total amount without regard to the shareholding.

Any tax withheld would be dealt with according to the dividend article of the appropriate double tax treaty.

Yield Adjusted Debt

A film production company may issue a debt security to investors. Its yield may be linked to revenues from specific films. The principal would be repaid on maturity and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplemental (and perhaps increasing) interest payment may be made where a predetermined target is reached or exceeded (such as revenues or net cash proceeds).

It is necessary to investigate the nature of the "debt security" in order to establish the treatment of the "interest" for the beneficiary and for the debtor. In fact, in certain cases, interest may be assimilated to the dividend.

If the debt security is fiscally considered as a debt, the interest payment is deductible and it is subject to a withholding tax of 12.5 percent if paid to resident individuals and non-resident persons (both corporations and individuals).

An applicable tax treaty could provide for lower withholding tax rates on payments to non-resident persons.

Other Tax-Effective Structures

There are no other particular tax effective structures in Italy.

Tax and Financial Incentives

Investors

The interest payable on loans and other forms of business debt can be deducted for tax purposes (but not for IRAP purposes). However, the loan principal can never be deducted when calculating taxable profits.

Other general tax incentives for investment include certain beneficial rates of tax depreciation (known as "Capital Allowances") for plant and buildings, and certain qualifying investments.

Producers

The Italian government offers soft loans (i.e., loans which are to be refunded within three years) and contributions (i.e., a percentage of box-office earnings) to producers as incentives to encourage the production of films in Italy. In order to qualify these incentives, the following conditions must be met:

a) The legal office of the film producer must be in Italy, or in an EU state, in which case, the film producer must have a branch in Italy and it must operate mainly in Italy, and

b) The "nationality" of the film must be Italian ("Italian film").

Producers are eligible for soft loans or contributions for the production of cultural interest "national feature films" and cartoons. A "national feature film" is an "Italian film" more than 75 minutes long. In addition, the director of the film and the writers of the story and script may be eligible for a contribution from the Italian Government.

When determining whether a film is an "Italian film" or not, the artistic and technical components to take into consideration are the following:

a) Italian director

b) Italian author of the subject matter, or the majority of the authors to be Italian

c) Italian author of the screenplay, or the majority of the authors to be Italian

d) Italian majority of principal actors

e) Three-quarters of the secondary role actors to be Italian

f) The film is shot directly in the Italian language

g) Italian photographic director

h) Italian set dresser

i) Italian composer of the music

j) Italian art director

k) Italian costume designer

l) Italian troupe

m) The film is shot in Italy and uses Italian studios

n) The use of Italian technical industry

o) At least 30 percent of the total expenses of the film referred to in l), m) and n), as well as welfare contributions, are incurred in Italy

A film is considered an "Italian film" if it meets all the requirements under a), b), c), f), l), and o); at least three of the requirements under d), e), g), and h); at least two of the requirements under i), j), and k); and at least one of the requirements under m) and n). For artistic reasons, the requirements under f) and l) may be derogated, provided that a special committee has agreed to such derogation.

In certain cases, the film may qualify as Italian even when produced under an international co-production treaty with foreign producers.

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Distributors
The Italian government provides contributions to encourage the distribution of films in Italy and abroad. The condition to obtain the contribution is that the distributed film must be "Italian," as discussed above.

The tax treaties negotiated by Italy are generally favorable, with respect to payments of film copyright royalties, provided that they do not arise in the conduct of a business operated through a permanent establishment in Italy. In certain circumstances, a tax treaty may apply a reduced or nil withholding tax rate in certain circumstances.

Actors and Artists
There are no tax or other incentives available for actors, or other artistic individuals, who are Italian residents for tax purposes.

Others Incentives
In the following are described the main incentives introduced by the Law 24/12/2007 n.244 for the film industry only referring to Italian companies or permanent establishments in Italy:

1) Company not yet operating in the film industry

A tax credit is recognized to limited and unlimited liability company not yet operating in the film industry in order to incentivate these entities to invest in the productions of films in Italy.

This tax credit is determined as 40 percent of the overall expenses incurred by the company in the filming industry up to a maximum amount of €1.000.000.

The tax credit is available only if at least 80 percent of these expenses are used in Italy (i.e. the companies benefiting from it are strictly required to make use of Italian employees and services).

2) Producers

For companies involved in producing a tax credit is estimated to an amount of 15 percent of the all expenses incurred in production up to a maximum amount of €3.500.000 per year.

The film must be qualify as an "Italian film" (see technical components above);

3) Distributors

For companies involved in producing a tax credit is estimated to an amount of 15 percent of the all expenses incurred in distribution up to a maximum amount of €1.500.000 per year.

The film must be recognized as of cultural interest.

4) Taxable basis

Only for companies involved in production and distribution, profits re-invested on production and distribution, are not included in the taxable basis.

This advantage is available only for companies in ordinary accounting regime.

5) Cinema

For companies dealing with showing film is estimated a tax credit of 30 percent of whole purchasing and assembling expenses for showing equipment up to a maximum of €50.000 for each screen.

Other Financing Considerations

Tax Costs of Share or Bond Issues
The issue of new ordinary or preference shares/stock is subject to registration tax of EUR 129.11, if a cash payment is made.

Banks which make long-term loans apply a tax equal to 0.25 percent of the loan amount.

In case of transfer of shares, capital gains tax is applicable. The capital gain is computed as the difference between the selling price and the price or value upon acquisition.

The capital gain arising from the sale of shares within the sphere of an entrepreneurial activity is partially exempted from corporate taxes, if the following conditions are respected:

- The shares have been continuously held by the company for one year before the disposal
- The shares were registered as fixed assets in the first financial statements of the company
- The company held has not been resident in a tax haven for at least three fiscal years
- The company held has been carrying out a business activity for at least three fiscal years

In that case, the percentage of exemption provided for the capital gain is 95 percent.

In case of sale of shares made by an individual, the capital gain is subject to a rate of tax of 12.5 percent if the shareholding is lower or equal to 20 percent of the share capital. For other capital gains arising from shareholdings higher than 20 percent of the share capital, the ordinary rate of taxes is applied to a percentage of 40 percent (49,72 from January 2009) of capital gain.

No specific tax is levied on the reorganization of a company's shares. The tax applicable depends on the kind of operation, e.g., a merger, division, sale of the business activity, etc.

Corporate Taxation

During 2004, Italy significantly reformed its corporate tax system with the introduction of IRES, the new corporate income tax, which effectively replaced IRPEG on January 1, 2004. Among other features, IRES provides for a flat tax rate of 27,5 percent, for dividends exemption and a partial capital gains exemption, the option for corporate taxpayers to file consolidated returns, the option for corporate taxpayers to elect to be taxed as partnerships, the introduction of thin capitalization rules, and a domestic definition of permanent establishment.

Please also consider the existence of the local tax: IRAP is a tax on production activities and essentially levies 3,9 percent of the taxable base that, broadly, is the gross operating margin excluding the deduction of certain costs.

Recognition of Income

Film Production Company – Production Fee Income

Italian-resident Company

If a special purpose company is set up in Italy to produce a film without acquiring any rights therein, the tax authorities can query the level of income attributed if it is attributed by a non-resident company, belonging to the same group at a rate lower than arm's-length. In Italy, there are no fixed parameters to determine the percentage of the total production budget that would be an acceptable level of attributed income. However, the lower the rate, the more likely that it would be required.

Note that it is possible, for companies belonging to the same group, to negotiate an acceptable level of income with the Italian tax authorities in advance. Such Advance Pricing Agreement (APA) exclusively binds the Italian company and the Italian tax authority for three years.

Non-Italian-resident Company

If a company is not resident in Italy, but it has a production office to administer location shooting, it may be subject to tax in Italy as having a permanent establishment. However, it is possible to obtain an opinion from the Italian Ministry of Finance on the effective existence of a permanent establishment.

If no exemption can be obtained, the permanent establishment would be treated as a resident company. In this case, as discussed above, it is possible to negotiate an APA with the Italian tax authorities to determine an acceptable level of income.

It is unlikely that a production office would be regarded as causing a company to be resident in Italy, unless the company has its management headquarters or its principal activity in Italy. If a company is not resident in Italy and does not have a production office within its territory, but it undertakes location shooting, it is unlikely that it would have an Italian tax liability as it would not be regarded as having a permanent establishment in Italy.

For tax purposes, the Italian authorities would interpret the term "permanent establishment" by applying the appropriate article of the Italian tax law, which is up to the OCSE definition (i.e., locations such as a branch, office, factory, workshop or similar site).

Film Production Company – Sale of Distribution Rights

If an Italian resident production company sells the distribution rights of a movie to an unrelated distribution company, in consideration for a lump-sum payment in advance and subsequent periodic payments based on gross revenues, the sale proceeds would normally be treated as income arising in the trade of film rights' exploitation. The same rules would apply without regard to the type of entity making the sale.

There are no special rules governing the transfer of intangible assets.

If intangible assets, such as distribution rights, are transferred from Italy to an entity in a foreign territory, it is better to help ensure that such a transfer is carried out as part of a commercially defensible transaction. The tax authorities could seek to attribute an arm's-length price if the transfer takes place between connected parties.

Film Distribution Company

If an Italian resident distribution company acquires a complete or partial copyright ownership in a film from an unrelated production company, the payment for the acquisition of the rights is normally treated as an expense, in relation to the earning of profits and not as a royalty. The normal method of deducting such payments for tax purposes is by claiming a deduction on revenues through depreciation.

On the other hand, if the Italian resident company, on the basis of a licensing agreement, has the right to exploit the copyright in Italy or worldwide, the payment made to the owner of the copyright has to be considered a royalty. The normal method of deducting such payments, for tax purposes, is by claiming a deduction on revenues through the accrual basis (and in case of a lump-sum payment, the deduction will be made through depreciation).

The income arising from exploiting such rights is normally recognized as trading income. The distribution company would be taxed on the income derived from the exploitation of any of its acquired films, wherever and however these are sublicensed, provided that the parties are not related. If the parties are related, the tax authorities might question the level of income returned to the licensor.

For Italian accounting purposes, income in this case is normally recognized in the year in which it arises, rather than on the date the deal is signed or payment is received. In other words, income is recognized in the specific period in which it is expected to be earned.

The tax treatment of a transaction usually follows accepted principles of commercial accounting, unless these give a completely misleading picture of the trading results.

It may occasionally be possible to argue for a tax treatment that is more beneficial than the accounting treatment. Often there are specific provisions that overrule an accounting treatment, for example when a higher rate of tax depreciation allowance in respect of capital assets might exceed the accounting depreciation rate.

Transfer of Film Rights Between Related Parties

Where a worldwide group of companies holds rights to films and videos, and grants sublicenses for exploitation of those rights to an Italian resident company, care needs to be taken to help ensure that the level of profit can be justified. Any transactions within a worldwide group of companies are liable to be challenged by the Italian tax authorities since they would seek to apply an open-market third-party value to such transactions. Indeed, if an Italian resident company remits income to a low-tax territory by virtue of a sub-licensing distribution agreement, the Italian tax authorities can be expected to question the level of such attributed income. In principle, the expenses arising from transactions between an Italian resident company and a company resident in a tax haven are not fiscally deductible.

There is no specific level of income that the Italian tax authorities seek to apply. The authorities make comparisons with contracts concluded with other unrelated parties. It is always wise to obtain evidence at the time the contract is signed, to verify that the rate agreed can be substantiated at a later date in case the tax authorities questioned the contract.

As discussed above, it is possible to obtain an APA from the Italian tax authorities giving formal clearance in advance on an agreed level of attributed income.

Amortization of Expenditure

Production Expenditure

According to Italian tax law, companies with rights in films are entitled to write off over a prescribed period the expenditures they incur on producing or acquiring those films. No more than one-half of the relevant expenditure can be written off in successive accounting periods.

Other Expenditure

Neither a film distribution company, nor a film production company, has any special status under Italian tax law. Consequently they are subject to the usual rules to which other companies are subject. For example, in calculating taxable trading profits, they may deduct most normal day-to-day business expenditures such as the cost of film rights (as detailed above), salaries, rents, advertising, travel expenses and legal and professional costs normally relating to the business.

Certain other expenditures cannot be deducted, including some expenditures on capital accounts, such as the purchase of land and non-instrumental buildings. Neither can the acquisition of plant and machinery be deducted, although tax depreciation can be deducted at specific rates and in some circumstances these rates can be quite generous. Additionally, certain day-to-day expenditures are not allowable, such as entertainment expenses related to existing or prospective clients, and any other expenditure which is considered to be too remote from any business purpose.

Foreign Tax Relief

If an Italian resident film distributor receives income from unrelated, non-resident companies, but suffers foreign withholding tax, it is normally able to rely on Italy's wide range of double tax treaties to obtain double tax relief for the tax suffered. If no such treaty exists with the other country concerned, the Italian distributor can expect to receive credit for the tax suffered on a "unilateral" basis. In this case the relief for foreign tax suffered would be granted in the year in which the withholding tax was deducted.

Foreign taxes are creditable solely against the Italian tax that should have been paid if the foreign income had been produced in Italy: the credit cannot actually exceed the attributable Italian tax. It is important to note that the Italian tax to consider for the calculation of the foreign tax credit is the tax due on the aggregate income (net of the tax losses of the preceding years). That means that if the Italian tax due was equal to zero, because the company used tax losses from preceding years in order to reduce the aggregate income, the amount of credit for foreign taxes would be equal to zero. A particular procedure is provided in order to carry back and carry forward the amount of the foreign tax exceeding the creditable tax, as calculated above. However, certain specific deductions, which are allowed when computing the Italian tax liability, may be allocated in a beneficial way to improve the relief available.

Indirect Taxation

Value Added Tax (VAT)

General

Italy charges VAT on the sale or supply of goods or services under the harmonized system of VAT applicable in the EU. As a "value added" system, there are certain restrictions that deny companies credit for tax suffered at an earlier stage in the manufacturing or service process. No credit is available in respect of incurring expenses and the purchase of other goods and services, not purchased for business purposes. Nevertheless, the purchase and maintenance of automobiles for business purposes is now tax deductible.

Supply of a Completed Film

Any Italian resident company that delivers a completed film to a company also resident in Italy has to charge VAT at the rate of 20 percent on this supply. Such a sale is regarded as a supply of rights and therefore as a supply of services.

Where an Italian resident company delivers a completed film to a company not resident in Italy but resident in a Member State of the EU, the supply would be zero-rated for Italian VAT purposes (i.e., there would be no Italian VAT charged to the customer but the Italian supplier would be able to recover all the VAT that it had paid). An Italian company delivering the film would need to establish that the customer is receiving the supply in his or her business capacity, usually by showing the customer's own VAT registration number on the invoice. However, the customer in the Member State would have to pay the VAT applicable to the product in that particular country as a "reverse charge" and credit the sum against his or her own VAT liability.

An Italian resident company that delivers a completed film to a company not resident in either Italy or the EU, would not charge VAT at all since such supply would be regarded as being "outside the scope of VAT," but it would be able to recover the VAT incurred in making the film. Such regime requires that the non-EU company will not make use of the film delivered in the Italian territory.

If an Italian company delivers a completed film, the related invoice can be issued within 15 days from the end of the month in which the supply was made. However, the company would account for any applicable VAT to the tax authorities within the month in which the delivery occurred. VAT accounting periods can cover one month or three months. The normal taxable event is the completion of the service. However, if a company receives a payment in advance of delivery of a completed film, or defers a payment to a date subsequent to delivery, the receipt of payment would create a taxable event, if earlier than the normal taxable event.

Pre-sale of Distribution Rights

VAT is charged at the rate of 20 percent on a "pre-sale" of distribution rights to an Italian resident. Generally, a pre-sale to a business entity not resident in Italy but resident in the EU is zero-rated. If made to a person resident elsewhere in the EU, but not in business the rate is 20 percent. On a pre-sale to a person not resident either in Italy or in the EU, the supply is zero-rated.

Royalties

Where an Italian resident company pays a royalty to another Italian resident company, VAT would be charged at the rate of 20 percent. There are no special reporting requirements.

Where an Italian resident company pays a royalty to a company not resident in Italy, but in a country that is a member of the EU, VAT is charged at the rate of 20 percent. The Italian company would be required to operate a "reverse charge" calculation in its own Italian VAT return and the supplier would effectively zero-rate the supply for the purposes of its home country VAT obligations.

If an Italian resident company pays a royalty to a company not resident either in Italy or in the EU, VAT is charged at the rate of 20 percent. The Italian company is required to operate a reverse charge calculation.

Peripheral Goods and Merchandising

VAT on the sale of peripheral goods (such as books, magazines and music publishing), connected with the distribution of a film might be reduced if certain conditions are meet. On the other hand, VAT on the sale of merchandising (such as the sale of clothes, toys, etc.) is normally charged at 20 percent.

Promotional Goods or Services

On the provision of promotional goods or services in Italy, VAT is charged at 20 percent in most cases. The free provision of promotional services is VAT-free, just like the provision of goods. However, in such cases the company cannot deduct VAT charged on the purchase of the goods distributed for free.

Film Crews and Artists

If film crews and artists pay for the catering supplies on location while filming, VAT is payable at the rate of 10 percent. If no payment is made, the crew do not pay VAT. If catering is provided to "front of camera" artists who are not engaged as employees but are self-employed, the paying company may suffer a restriction on VAT recovery.

Imports of Goods

Where an Italian resident company imports goods into Italy from outside the EU, VAT at 20 percent would almost certainly be payable in respect of the goods, as well as Customs duties (see below).

Customs Duties

If goods are temporarily imported into Italy, potentially no tax or Customs duty would be charged if they are subsequently re-exported without alteration, provided a Customs relief such as "Inward Processing Relief" or a duty suspension regime such as Customs warehousing is used.

The following Customs duties are payable in the circumstances stated below:

	Conventional%	Secondary%*
35mm positive release prints	6.5%	EUR5/100 meters
Negatives (including intermediate positive)	Free	
Video masters (positive/35mm)	6.5%	EUR5/100 meters
Films consisting only of soundtracks	Free	
Importation of publicity material, trade advertising, etc.	Free	

* The secondary rate applies if lower than the conventional rate.

Please note that where appropriate all of the above items are "standard rated" supplies for VAT purposes, in respect of which 20 percent is charged on the value inclusive of the Customs duty.

Personal Taxation

Non-Resident Artists (self employed)

Income Tax Implications

Italy taxes the income arising to a non resident artist from a performance in Italy independently of whether or not the individual receives such income outside Italy.

If a non-resident artist receives any payment arising from, or in consequence of, an Italian activity, the Italian payer is obliged to deduct withholding tax and account for this tax to the authorities. However, where a non-Italian payer makes a payment to the non-resident artist in respect of a performance made in Italy, the Italian withholding tax rules are not effective. Therefore, the non-resident artist should file an income tax return in Italy in order to pay the taxes related to the income produced in Italy. Such income would be equal to the difference between the compensation received and the expenses directly sustained by the artist in relation to the activity performed in Italy.

The withholding tax rate is a 30 percent flat rate, subject to any reduced rate negotiated.

VAT Implications

The performance of a non resident artist in Italy is considered as a taxable supply for Italian VAT purposes, and therefore, the individual is obliged to register for VAT purposes unless he or she does not habitually carry out his or her activity in Italy. However, when the non-resident artist renders his or her services to a VAT taxable entity in Italy, he or she is not obliged to register for VAT; thus the VAT taxable entity is required to account for Italian VAT under the reverse charge rule.

Resident Artists (self-employed)

Income Tax Implications

Resident artists are subject to tax on their worldwide income unless exempt under the provisions of a treaty against double taxation.

According to Italian domestic legislation if a resident artist receives any payment for, or as a consequence of, a performance in Italy or abroad, the Italian payer is required to deduct withholding tax and account for this tax to the authorities. The applicable withholding tax rate is 20 percent on account of the tax due on the basis of the income tax return.

VAT Implications

The performance of a resident artist in Italy is considered a taxable supply for Italian VAT purposes. The applicable VAT rate is 20 percent.

Employees

Income Tax Implications

Employers resident in Italy are obliged to make regular, periodic payments to the Italian tax authorities in respect of employees' personal tax liabilities arising from salaries or wages paid to them. Deductions are made under the salary and wages withholding scheme.

Social Security Implications

Employees are liable for personal Social Security contributions in respect of payments of salaries or wages.

Italian based employers are obliged to deduct from their employees' salaries or wages the employees' own personal Social Security contributions and account for them to the Social Security authorities. Employers are also liable to make their own "employer" contributions in respect of emoluments paid to their employees.

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Chapter 19

Japan

Introduction

Film-related industries are expanding their business in Japan. As this occurs, many types of transactions are becoming increasingly more common. It is necessary, however, for overseas investors to consider the Japanese tax implications carefully before beginning their business.

Key Tax Facts

Highest national corporate income tax rate	30%
Highest local income tax rates	
Inhabitant tax (levied on corporation income tax amount)	20.7%
Business tax (deductible for corporate income tax purposes)	3.26%
Special local corporate tax	4.292% (Note)
Effective tax rate	40.69%
Consumption tax rate	5%
Annual consumption tax registration threshold	¥10 million
Normal non-treaty withholding tax rates:	
Dividends	20%
Interest	15% or 20%
Royalties	20%
Tax year-end: Companies	Generally, the accounting year-end
Tax year-end: Individuals	December 31

The business tax rate shown above is applied on its taxable income for a company with paid-in capital of more than ¥100 million. Size-based business tax is also levied on the company, in addition to the income-based business tax. The highest size-based business tax rates applicable to a company based in Tokyo are 0.504 percent on the added-value component tax base (total of labor costs, net interest payments, net rent payments, and income/loss of the current year) and 0.21 percent on the capital component tax base (total paid-in capital and capital surplus).

For small and medium-sized companies with paid-in capital of ¥100 million or less, the highest business tax rate applicable to a company based in Tokyo is 5.78 percent and the highest special local corporate tax rate applicable to a company based in Tokyo is 4.293 percent. Therefore, the effective tax rate is 42.05 percent with no size-based business tax imposed.

The Consolidated Tax Filing System for National Corporate Tax was implemented April 1, 2003. No consolidated tax filing system is applied for local income tax.

(Note) By virtue of the 2008 tax reform, the business tax rates have been reduced and the special local corporate tax has been imposed for fiscal years beginning on or after 1 October 2008. Tax revenue from special local corporate tax is reallocated by the national government to local governments, in order to decrease the gap in tax revenue between urban and rural areas. This is a temporary measure until an overhaul of the tax system is implemented at a future date. The business tax rates before the reduction are almost the same as the sum of the reduced business tax and the special local corporate tax.

Film Financing

Financing Structures

Co-production

A Japanese resident investor may enter into a Japan-based co-production joint venture (JV) with a foreign investor to finance and produce a film in Japan. Although this JVenture is sited in Japan, the transaction would need to be reviewed from each investor's viewpoint to determine precisely the tax position of each party.

As long as the foreign investor cannot be said to be carrying on the trade or business of film exploitation in Japan, Japanese tax is chargeable solely in respect of the Japanese investor's activities and any other trade that the foreign investor may carry on in Japan. The issue is complicated if the foreign investor produces the film in Japan under a production contract. In that case, the foreign investor is likely to be taxed on the basis that business profits arise through a permanent establishment that it operates in Japan. If the foreign investor produces the film in Japan, it is likely that it would have a production office and a permanent establishment in Japan. Its business profits relating to that permanent establishment would be taxed in Japan and it would have to rely on the applicable treaty to obtain relief from double taxation.

Partnership

Current profits or losses allocable to partners under a partnership agreement are treated as income or losses of each partner, which either increases their taxable income or is deductible from their income. Note that there are rules to limit the utilization of losses derived from a partnership. A partnership is not treated as a taxable entity. In other words, the partnership itself is not taxed in Japan. It is impossible for any partnership itself to claim the benefit of a double tax treaty.

Equity Tracking Shares

The Japan Corporation Law has introduced the issuance of "tracking stocks" in Japan. The dividends paid on tracking stocks would not be treated any differently than dividends paid on ordinary shares. Generally the foreign tax withheld on dividends on tracking stocks in foreign countries would be available as a foreign tax credit in Japan.

Lease Transactions

Sale and Leaseback

A sale-and-leaseback transaction (where a lease is non-cancelable and the lessee enjoys the economic benefits arising from the leased property and bears expenses in connection with the property) of property which has been used previously by the lessee, is treated as a loan of funds, in view of its economic reality, as the intention of such a transaction can be seen as that of financing. The lease charges are divided, on a reasonable basis, into payment of the loan principal and interest.

Lease as Sales Transactions (sales-type lease)

A non-cancelable lease, where a lessee enjoys the economic benefits arising from the lease property and bears expenses in connection with the property, is treated as a sales-type lease.

For a sales-type lease, lease charges are recognized as sales revenue upon delivery of the leased property. Under certain conditions, however, the deferral of recognition of profits from sales-type leases is permitted (e.g., there is a method under which profits portion is recognized over the lease period based on an interest method). The lessee is required to treat a sales-type lease as a purchase of the asset, and is able to claim depreciation allowable for tax purposes.

Other Tax-effective Structures
When investors resident in Japan invest outside Japan by way of equity, the investors may take 95 percent income exclusion on certain dividends, while in the case of loan capital, they will only take a tax credit for the tax withheld on the interest received. No indirect foreign tax credit system is in available for the foreign taxes to be payable in the fiscal years beginning on April 1, 2009 or later.

Please refer to the "Foreign Tax Relief" section below for a further explanation of the foreign dividend exclusion system and the foreign tax credit system.

Tax and Financial Incentives
There are no special tax incentives designed solely for film producers or film distributors. However, the following tax incentive might be applicable to the film industry.

Special Depreciation
In addition to ordinary depreciation based on the statutory useful life, which is normally the maximum deduction for a business year, extra depreciation is available as a tax incentive to corporations that meet the specified requirements. This extra depreciation is not an investment tax credit but a type of accelerated depreciation.

Other Financing Considerations

Exchange Controls and Regulatory Rules
A fundamental liberalization of Japanese exchange controls occurred near the end of 1980, and the new Foreign Trade Control Law came into effect as of April 1, 1998. The new law reflects the principle that all international transactions are freely permitted unless specially prohibited. Under certain circumstances, the exchange control law requires a film distributor or a film producer to file a report to the Japanese Government in respect of remittances to foreign countries. The applicability of this reporting obligation is based on the amount and the purpose of the payments.

Corporate Taxation

Recognition of Income
Foreign corporations are only liable for Japanese taxes on income derived from sources within Japan. The scope of taxable income and the manner in which taxes are payable differ depending on how the taxpayer is characterized for Japanese tax purposes. Under Japanese tax law, foreign corporations are classified as those operating in Japan through a permanent

establishment, those not having a permanent establishment in Japan but having income which is subject to corporation tax only, and other foreign corporations whose income from Japanese sources, if any, is subject to withholding tax only.

The definition of a permanent establishment for Japanese tax purposes includes the following:

- A branch, factory or other fixed place of business in Japan
- A construction, installation or assembly project or similar activity in supervising or superintending such a project or activities in Japan, carried out by a foreign corporation for a period of over one year
- A person who has the authority to conclude contracts in Japan for or on behalf of the foreign corporation

Transactions with Foreign Related Persons – Transfer Pricing
When a corporation enters into a transaction in relation to film rights with a foreign related person who has a special relationship with the corporation, and if the consideration received by the corporation is less than an arm's-length price or if the consideration paid by the corporation is in excess of an arm's-length price, the foreign related transactions is deemed to have been conducted at arm's-length prices for the purpose of Japanese corporate income tax law, and an adjustment is included in the taxable income of the corporation.

There are various ways of ascertaining arm's-length prices as follows:

The comparable uncontrolled price method (adopting, with necessary modifications, the uncontrolled market price for the same or similar film right)

- The resale price method (i.e., taking the final selling price and subtracting the cost and an appropriate profit mark-up for the related party receiving the property)
- The cost plus method
- Any other method that is acceptable other than the above three basic methods
  - Methods similar to the three basic methods
  - Other methods prescribed by the Cabinet Order
- The profit split method
- The transactional net margin method

Amortization of Expenditure

The statutory useful life for movie films is two years and a taxpayer can choose the straight-line method or the declining-balance method.

The annual depreciable amount of the films acquired until March 31, 2007 is as follows:

- Straight-line method: Acquisition cost x 90 percent x 0.500
- Declining-balance method: Tax book value at the beginning of the fiscal year x 0.684

Note that, the annual depreciable amount is calculated based on the length of the use in the acquisition year. The above films depreciated to the allowable limit (95 percent of acquisition costs) in a particular business year can be further depreciated down to ¥1 evenly over five years starting from the following business year.

The annual depreciable amount of the films acquired on or after April 1, 2007 is as follows:

- Straight-line method: Acquisition cost x 0.500
- Declining-balance method: Tax book value at the beginning of the fiscal year x 1.000

Note that, the annual depreciable amount is calculated based on the length of the use in the acquisition year.

Also, please note that where the film is screened at two or more theatres, a special depreciation method is allowed by the tax authorities. Under the special depreciation method, the films are depreciated based on the proportion of the accumulated revenue to the total predicted revenue, subject to the following limitation:

Months from date of premiere	1	2	3	4	5	6	7	8	9	10
Special depreciation rate (%) up to that month	60	80	87	91	94	96	97	98	99	100

As all sources of income are generally aggregated in Japan in determining taxable income, other unrelieved expenditures incurred on the film can be offset against other sources of income, even if the company has no other films.

Other Expenditures of a Film Production or Distribution Company

Neither a film production company nor a film distribution company has any special tax status for Japanese corporation tax purposes. Therefore they are liable to tax under the general rules.

In calculating taxable income, it is generally possible to deduct business-related expenditures, except for capital expenditures and certain outlays related to business entertainment. With capital expenditures, for example, the acquisition cost of plant and machinery is not deductible, but depreciation on those assets is available over the useful life of the asset.

Losses

Tax losses can be carried forward by the company for use in sheltering taxable profits of a future tax year. Such losses can be utilized against profits for the seven succeeding years. Thereafter, any unutilized element of loss will expire.

Japanese tax law also provides for a tax loss carry-back system at the option of the taxpayer company. This tax loss carry-back system, under which a company suffering a tax loss can get a refund of the previous year's corporation tax by offsetting the loss against the income for the previous year, has been suspended since 1 April 1992 except for certain limited circumstances, including

- companies having paid-in capital of not more than ¥100 million (excluding when 100 percent of the shares are directly or indirectly held by companies whose paid-in capital is ¥500 million or more for fiscal years beginning on or after 1 April 2010.)
- fiscal years including the date of dissolution
- fiscal years ending during liquidation procedures

Foreign Dividend Exclusion (FDE) System

Under the FDE system, 95 percent of divided received from certain related foreign companies on or after April 1, 2009 is excluded from income.
A certain related foreign company means foreign company which is
(1) owned 25 percent or more by a Japanese company directly and
(2) for 6 months or more before dividend receipt right is effective. Also under the FDE system, dividend withholding tax if imposed is neither tax creditable nor deductible. By the introduction of the FDE, the indirect foreign tax credit system was abolished, although direct foreign tax credit system is still available except for the foreign withholding tax imposed on the dividend which is subject to the FDE system.

Indirect Taxation

Consumption Tax

Almost every domestic transaction in Japan and every transaction for the import of foreign goods to Japan, except for financial transactions, capital transactions, medical services, welfare services and education services, will be subject to this tax at the rate of 5 percent. A Japanese resident company which delivers a completed film to a company also resident in Japan has to charge consumption tax and it has to submit a consumption tax return and remit the amount of output tax on sales less input credits on its own business-related purchases.

However, a film producer or film distributor whose total sales amount to less than ¥10 million in the base period is exempt from consumption tax liability (including the obligation to file a return). The base period is the year that is two years prior to the current year. Consequently, an entity created for the specific purpose of purchasing and distributing a film should begin its activities as a consumption tax-exempt entity.

(However, this tax-exempt status does not apply to a newly established corporation whose paid in capital is ¥10 million or more. Such a corporation is required to file consumption tax returns from the year in which it is incorporated.)

An exempt entity may elect for taxable status. Such an election can be beneficial if the consumption tax paid on purchases is expected to be greater than the consumption tax collected because it is necessary to become a taxable entity in order to get the consumption tax refund. In this case it is important to note that the consumption tax status cannot change for two business years.

Customs Duties

If goods are imported into Japan, Customs duties are generally levied. The tax rates are listed in the "Customs Tariff Schedule of Japan" in accordance with size, usage, etc. However, in principle Japan levies no duty on film importation. For example, the duty on film of a width exceeding 16 mm but not exceeding 35 mm and of a length not exceeding 30 meters is generally free from Customs duties. The duty on negatives of the same specifications as above is also exempt. Prints consisting only of soundtracks are also exempt. Note that the amount of Customs duty is included in the taxable base of the import for consumption tax purposes.

Personal Taxation

Non-Resident Artists (self-employed)

For Japanese tax purposes, the definition of "artist" includes actors, musicians, entertainers, and professional athletes.

If a non-resident artist receives payment arising from a Japanese activity, the Japanese payer is obliged to deduct withholding tax, regardless of the existence of a permanent establishment of the recipient, and remit it to the Japanese tax authorities. The withholding tax rate is 20 percent. The artist's Japanese tax liability is fully satisfied by virtue of this withholding tax. However, many tax treaties with Japan prescribe special tax treatment for artists and it is necessary to review the applicable treaty in advance.

Consumption Tax Implications

If the artist's activity is in Japan, consumption tax is levied on it regardless of whether or not a permanent establishment exists in Japan. If the amount of turnover is less than ¥10 million in the base period, the artist is exempt from submitting a consumption tax return and paying consumption tax.

Resident Artists (self-employed)

When a resident artist receives any payment arising from a Japanese activity, withholding tax is deducted from his or her income at the rate of 20 percent (10 percent up to ¥1 million per payment) and he or she is required to submit his or her tax return to settle his or her tax liability in Japan.

Consumption Tax Implications

The tax treatment is the same as for a non-resident artist.

Employees

A withholding tax system on wages and salaries is operated in Japan, and employers are required to make periodic payments to Japanese tax authorities in respect of employees' personal tax liabilities arising from salaries or bonuses paid to them. The withholding tax system is operated on the basis of a prescribed withholding tax table. If an employee only receives employment income and his or her annual salary is not greater than ¥20 million, a year-end adjustment of the income tax on salaries is made by the employers to help ensure that the tax withheld during the year equals the employee's total tax liability. If the tax already withheld is greater than the total liability then the employee is entitled to a refund.

Social Security Implications

The social insurance program in Japan consists of health insurance, pension insurance, labor insurance and employment insurance. Every individual who meets certain conditions is expected to join in the system regardless of nationality. (At the moment, the position of pension insurance is altered by applicable international social security agreements with Germany, United Kingdom, Korea, the United States of America, the kingdom of Belgium, France, Canada, Australia, the Kingdom of the Netherlands and Czech Republic.) Premiums for health and pension insurance are determined by multiplying the "monthly standard remuneration" and bonuses of the employee by the prescribed premium rate. The premium is shared by the employer and employee in equal portions. Labor insurance premium rates depend on the industry category and the premium is borne solely by the employer. Premiums for the employment insurance system are paid by both the employer and employee.

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Chapter 20

Luxembourg

Introduction[1]

Since the end of 90s, favorable legal measures and various mechanisms have been implemented in Luxembourg to support and encourage audiovisual production in Luxembourg, opening up co-production opportunities with other countries. Consequently, productions have multiplied in Luxembourg due to incentives, excellent technical infrastructure, and growing competence in the local production industry.

The National Fund for Audiovisual Production (the Fund) administers the different incentives available for the development of the audiovisual production sector in Luxembourg. Among the subsidies and incentives provided by the Fund are: audiovisual investment certificates allowing investors to apply for a deduction from taxable income, up to a maximum of 30 percent of taxable income; and selective financial aid (advance payments on receipts income) for the development, production, and international distribution of films.

Key Tax Facts

Corporate income tax rate:	28.80%[1]
Highest personal income tax rate	42.14%
VAT rates	3%, 6%, 12%, 15%
Annual VAT registration threshold	EUR 10,000
Normal non-treaty withholding tax rates: Dividends	15%/0%
Interest	0%
Royalties	0%
Tax year-end: Companies	Financial year-end
Tax year-end: Individuals	December 31

[1] This rate is applicable to companies carrying their activities in Luxembourg city. It may slightly differ for companies carrying all or part of their activities outside Luxembourg city due to different municipal tax rates.

Film Financing

Financing Structures

Co-production

A Luxembourg resident investor may enter into a co-production joint venture (hereafter referred to as JV) with another non-resident investor to finance and produce a film in Luxembourg. The rights of exploitation may be divided among the JV members.

The tax position of each investor has to be determined separately. In the absence of specific tax regulations applicable to the co-production of films, this determination is based upon general tax law principles.

An entity's tax status in Luxembourg depends on whether or not it is incorporated. Corporations ("sociétés de capitaux") such as stock corporations ("société anonyme" – S.A), limited liability companies ("société à responsabilité limité" – S.à.r.l) and partnerships limited by shares ("société en commandite par actions" – SCA) are treated as taxable entities and are subject to corporate income tax ("impôt sur le revenu des collectivités") and to net wealth tax ("impôt sur la fortune"). Other Partnerships or tax transparent entities are not taxable entities for corporate income tax purposes. Each partner is subject to income tax on his or her respective profit share that he or she declares in his or her personal or corporate tax return. For municipal business tax purposes, however, different criteria are applied. Companies as well as partnerships, transparent entities and associations are subject to tax directly if they exercise a business within the territory of Luxembourg.

A company is considered to be resident in Luxembourg if it maintains either its registered seat (as determined by its statutes) or its place of central management in Luxembourg. Conversely, a company is considered to be non-resident if it maintains neither its seat nor its place of central management in Luxembourg. Residence is significant for deciding whether worldwide income or only Luxembourg source income is taxed.

Companies resident in Luxembourg are subject to taxation on their worldwide income (unlimited tax liability), unless exempt under the terms of a double taxation treaty.

Companies not resident in Luxembourg are subject to tax on income from sources in Luxembourg (limited tax liability), which includes:

- Business income derived from a permanent establishment or permanent representative
- Profit from the exercise of an independent activity in Luxembourg
- Rental income from real estate or from rights located in Luxembourg or gains from the sale of real estate
- Gains from the sale of a substantial shareholding (10 percent) disposed of within a six month period, in limited circumstances
- Certain categories of income where tax is withheld at the source
- If the JV's film production activities are performed as a company, the dividend distributions (return on equity investment) are in the absence of tax treaties, subject to 15 percent withholding tax. The double tax treaties may in principle eliminate or reduce the taxation. Exemption of withholding tax is also available under the Luxembourg participation exemption (Luxembourg transposition of EU parent subsidiary directive) and, starting 1 January 2009, Luxembourg has cancelled, under certain conditions, the withholding tax on distributions to companies located in tax treaty countries

Partnership

Financial investors from several territories and the film producers may form a partnership located in Luxembourg. There are two types of tax transparent partnerships in Luxembourg.

The limited partnership ("société en commandite simple" – SECS) is an entity in which some partners "commandités" have unlimited liability while others, "commanditaires," are liable only to the extent of the assets contributed by them in cash or in kind. The active partners are those who have unlimited liability and are entrusted with all powers relating to management.

The partnership ("société en nom collectif" – SENC) is a form of business organization under which, the partners are jointly and severally liable for all commitments entered into in the name of the company. Shares are not normally transferable unless otherwise determined in the articles of incorporation. A SENC is a tax transparent entity.

Each of the partners of a tax transparent partnership is taxable in the relevant country of residence on its share of the results, and according to the system applicable to the specific partner (i.e., personal or corporate income tax).

Additionally, the partnership limited by shares ("société en commandite par actions") is an organization whereby one or more persons with unlimited liability form a partnership with shareholders who are liable only for their contributions. The structure is similar to a limited partnership, except that the interest of the limited partners is represented by freely transferable shares. Unlike other partnership structures, a partnership limited by shares is not a transparent entity for tax purposes.

Tax and Financial Incentives

Investors

In order to develop the audiovisual sector, the government has established incentives to attract investors. Two main incentives are granted to audiovisual investors: audiovisual investment certificates and selective financial aid.

Audiovisual Investment Certificates

Incentives for investors in the audiovisual sector were first introduced by the law of December 13, 1988. The system was adapted in 1993 and the governing legislation was then replaced by the law of December 21, 1998 (which extended the regime to 2008). The law of June 8, 2007 extended the regime of audiovisual investment certificates to 2015.

The main innovation of the law of 1998 was to remove the necessity of having a finance company in the structure as was required under the previous system. Under the new regime of 1998, investment certificates are issued to approved, fully taxable share companies whose main object is audiovisual production. The company holding the certificate at the end of the year may apply for a deduction from taxable income for that year, up to a maximum of 30 percent of taxable income.

In order to obtain the certificates, production companies must first file their application request with the National Fund for Audiovisual Production (a public body created by the law of April 11, 1990). Audiovisual investment certificates are issued by the members of government whose fields of responsibility are finance, the audiovisual sector and culture. Within the meaning of the law, these ministers are called "competent ministers," proceeding by joint decision. The amount of an audiovisual certificate may not be more than the total financial contributions which are made by the applicant company, and which appear in the final finance plan for the audiovisual work for which application is made to benefit from the regime created by this law.

Conditions of Eligibility of Works

A few categories of production companies may benefit from this regime. Prior to 2007 qualifying audiovisual works had to be produced principally on the territory of the Grand Duchy of Luxembourg. In conformity with EU principles of free movements of workers, goods and services in the European Community, the law of June 8, 2007 extended the application of favorable tax regime to works produced within the European Union.

Furthermore, audiovisual works must:

- Contribute to the development of the audiovisual production sector in the Grand Duchy of Luxembourg, "taking into account a reasonable balance between the advantages given and the economic, cultural and social consequences in the long term of the production of these works"
- Be produced or co-produced by the production company, notably through the effective and long-term holding of a significant portion of the rights
- Offer reasonable prospects of return on investment

The following are automatically excluded from benefiting from the regime established by the law:

- Works which are pornographic, incite violence or racial hatred, condone crimes against humanity and, in general, infringe public order and morality
- Works intended or used for advertising purposes
- News programs, current affairs programs or sports broadcasts

Issuing of Audiovisual Investments Certificates

The government's intention was to attract foreign investors, and as the fiscal deduction can only be used against taxable income in Luxembourg, it has been made transferable. Certificates are nominal and may be endorsed only once. They may not be subdivided. The government only issues audiovisual investment certificates for works completed in accordance with the application filed. The application for the granting of audiovisual investment certificates must be made by the applicant company, which shall specify the maximum amount for which application is made, on its behalf and/or on behalf of one or more substitute beneficiaries. The main beneficiary[2], substitute beneficiaries[3] and endorsees[4] of audiovisual investment certificates may only be legal persons incorporated in the form of capital companies and, since 2007, cooperative companies. Cooperative companies are hybrid entities with features of both share capital companies and partnerships. For instance, the associates have the choice between limited and unlimited liability. They can decide whether their shares in the cooperative may be freely transferable or not. Since 1999 a cooperative company may also be created under the form of a stock corporation (société anonyme – "SA"). In this case, the cooperative company is subject partly to the rules applicable to the stock corporation and partly to the rules applicable to the cooperative companies.

As stated above, the company holding the certificate at the end of the year may apply for a deduction from taxable income for that year, up to a maximum of 30 percent of taxable income. No carryforward or carryback is allowed.

Determination of Certificate Amounts

The amount is fixed in accordance with the "reasonable balance between the advantages given and the economic, cultural and social consequences in the long term of the production of these works." It should be highlighted that the condition specifying that the amount of the certificates to be issued may only cover a certain proportion of the stated production costs and related expenses incurred in the Grand Duchy of Luxembourg has been cancelled. Hence, the certificates issued after the entry into force of the law of June 8, 2007, i.e. after June 30, 2007, may also cover the production costs incurred in other Member States T

The Grand Ducal Regulation of July 4, 2007 implementing the law of June 8, 2007 specifies the basis for calculation of eligible expenses and determines lump sums or limits for taking into account certain categories of expenses.

Selective Financial Aid

Luxembourg has created selective financial aid in order to promote cinematographic and audiovisual creation in Luxembourg and in order to encourage the development of the production, co-production and distribution of works in this field. The following works are excluded from the benefit of selective financial aid:

- Works which are pornographic, incite violence or racial hatred, condone crimes against humanity and infringe public or order and morality
- Works intended or used for advertising purposes
- News programs, current affairs programs or sport broadcasts

Financial aid may be granted by the National Fund for Audiovisual Production to corporations or individuals and may take the form of aid to the production or co-production of films.

Such aid is considered as advance payment on receipt income and shall in principle be totally reimbursed. A Grand-Ducal Decree of March 16, 1999 establishes the conditions under which the financial aid may be obtained, the reimbursement conditions and exceptions to this reimbursement requirement.

Other Financing Considerations

Tax Costs of Share or Bond Issues

In the past, contributions made to a Luxembourg company in consideration for shares were subject to a non-recurring capital contribution tax of 0.5 percent. The taxable base was the fair market value of the contributed assets. Any increase of capital by incorporation of reserves was also subject to the 1 percent capital duty.

However, further to EU Commission proposal of December 4, 2006, the capital contribution duty was abolished in Luxembourg effective as from January 1, 2009.

Bond issues to the public are in principle not subject to tax. If bonds are issued to finance participation, a maximum debt equity ratio of 6/1 should in principle be respected (i.e., the participation should be financed with a minimum equity of one and maximum debt of six). Interest paid in excess of the ratio would not be tax deductible (and may be considered a dividend if the bond holders are also shareholders, subject to a 15 percent withholding tax rate, reduced by double tax treaties or Luxembourg participation exemption).

Exchange Controls and Regulatory Rules

There are no specific exchange controls or other regulatory rules for commercial companies in Luxembourg.

Corporate Taxation

Recognition of Income

Taxable income is computed by comparing the net difference between assets and liabilities at the beginning and at the end of the financial year, adjusted for movements on capital accounts and certain non-deductible expenses or tax-free items.

Basically, all income received by a Luxembourg company is fully taxable, unless there is a specific provision to the contrary (e.g., dividends and capital gains benefiting from the participation exemption).

Expenses incurred in the normal course of business are deductible unless there is a specific provision to the contrary (e.g., certain charitable contributions, bribery expenses, non-deductibles taxes (e.g., income tax, net wealth tax), director fees (tantièmes). Other non-deductible expenses include expenses relating to tax-exempt income.

Amortization of Expenditure

Production Expenditure

Depreciation is, in general, allowed in the case of tangible or intangible fixed assets with useful lives of more than one year. Depreciation is based on the acquisition or production costs. Accepted methods are the straight-line method and the declining-balance method (except for buildings and intangibles).

A taxpayer may change from the declining-balance to the straight-line method, but not vice versa. Rates under the declining-balance method may not exceed three times the applicable straight-line rate, or 30 percent.

Other Expenditure

The rules for deduction or depreciation are the usual rules applicable to other companies.

Losses

For both corporate income tax and municipal business tax on profits purposes, net losses may be carried forward indefinitely and offset in future years against taxable income. No carryback is allowed.

Foreign Tax Relief

Internal Rules

Relief is given against Luxembourg income tax on income (e.g., investment income, capital gains on the sale abroad of goods or shares in a company and income arising from a salaried occupation, pension, interest and annuities) which has been subjected to an equivalent tax abroad and which is not covered by a double taxation agreement. The foreign tax to be set off should first be added back to the taxable profit of which it forms a part; this tax should then become a tax credit up to a maximum amount, which is equivalent to the Luxembourg corporate income tax, which would be due on the foreign income in question.

Separate calculations are made for each country in which income arises (the per country method) and the maximum credit may not exceed the Luxembourg corporate income tax on the same portion of income.

It is possible, however, for an annual election to be made which substitutes an overall limitation for foreign interest and dividend income for the per country limitation. When such an election is made, credit relief for foreign taxes is additionally restricted to the lesser of:

- Twenty-five percent of the gross foreign income (on an item-by-item basis)
- Twenty percent of the Luxembourg corporate income tax on the total net taxable income

The portion of foreign taxes not allowable as a credit (set-off) is deductible from Luxembourg income in computing Luxembourg tax.

The internal relief granted refers only to corporate income tax. Entities, which also pay municipal business tax, are at a disadvantage due to the fact that the foreign charge to tax will affect the basis of assessment, which is also the basis for assessment of the trade tax, thereby increasing the trade tax.

Double Tax Treaties

For a company resident in Luxembourg, relief may also be provided under the double taxation treaties concluded by Luxembourg with other countries. Typically, these treaties grant the right to tax the income either to the country of source or the country of residence, while they exempt the income from tax in the other state; or, they provide relief from double tax burden by allowing a foreign tax credit.

In most treaties, the treatment of certain categories of income follows the OECD Model Convention, as outlined below:

- Business profits derived through a permanent establishment in the treaty country are, in general, exempt from tax in Luxembourg
- Dividends paid to a Luxembourg company may be taxed in the other country at a reduced withholding rate of not more than 15 percent, and are taxable in Luxembourg. The withholding tax can be credited against the Luxembourg tax liability. An exemption for dividends paid to a Luxembourg company owning a substantial participation may be granted either under a relevant treaty provision or by the domestic participation exemption
- Interest and royalties, unless they are attributable to a permanent establishment, are usually exempt from tax in the country of source and are taxable in Luxembourg, except that the source country may in certain cases impose a reduced withholding tax

- Capital gains are, in most cases, taxed only in Luxembourg, unless the property sold is attributable to a permanent establishment in the other contracting state

Indirect Taxation

Value Added Tax (VAT)

General

Since Luxembourg is a Member of the EU, the VAT system follows the principles laid down in the relevant EU Directives and in particular those of the Council Directive of November 28, 2006 (2006/112/CE).

Supply of a Completed Film

The VAT treatment applicable to the supply of a completed film depends on the qualification of the transaction for VAT purposes either as a supply of goods or as a supply of services. The qualification of the supply for VAT purposes depends on the terms of the agreement.

Supply of services/goods

If, based on the terms of the agreement concluded between the parties, the supply should be regarded as a supply of services, the VAT treatment is the following, assuming that the supplier is established in Luxembourg:

- If the film is supplied to a Luxembourg recipient, the supply should be subject to Luxembourg VAT. The standard VAT rate of 15 percent should apply. The VAT on the supply is in principle due when the supply is made. There are, however, two exceptions:
  - When the supplier issues an invoice in respect of the supply, the VAT is due on the date of the invoice, but at the latest on the fifteenth of the month following the supply
  - When the supply gives rise to an advance payment before the supply is made, the VAT is due on the date of the receipt of the payment in proportion of that payment
- If the service is rendered to another taxable person (B2B) established and registered for VAT purposes in another EU Member State, the supply should be out of scope of Luxembourg VAT provided that the recipient provides its EU VAT identification number to the Luxembourg supplier. The supply is deemed to be located in the country where the recipient is established and should be subject to the VAT rules applicable in this country (reverse charge mechanism).

- If the service is rendered to a recipient (B2B or B2C) established outside the EU, the supply should be out of scope of Luxembourg VAT. The supply is deemed to be located in the country where the recipient is established.

If, based on the terms of the agreement concluded between the parties, the supply should be regarded as a supply of goods, assuming that the supplier is established in Luxembourg, the supply should either be a local supply subject to Luxembourg VAT or a VAT exempt (zero rated) intra-Community supply of goods or export.

Royalties

The VAT treatment applicable to royalties paid by a Luxembourg taxable person is the following:

- If the royalties are charged by another taxable person established in Luxembourg, the royalties should be subject by the supplier to Luxembourg VAT. The VAT rate applicable should be the standard rate of 15 percent. If however the supply qualifies as a supply of copyright, the VAT rate applicable should be 3 percent.
- If the royalties are charged by a foreign supplier, they should in principle be charged free of VAT by the supplier. The royalties are deemed to be located in Luxembourg and fall within the scope of the VAT rules applicable in Luxembourg (reverse charge mechanism). The VAT due in Luxembourg on the royalties should be accounted for by the Luxembourg taxable person in its periodic VAT return. VAT is then deductible according to the recovery right of the Luxembourg recipient. As mentioned above, the VAT rate applicable to royalties should be 15 percent, except if the royalties relate to copyrights. In such a case, the VAT rate should be 3 percent.

Peripheral Goods and Merchandising

In the absence of specific provisions, general rules and rates apply to the sale of peripheral goods and merchandising. The VAT rate applicable depends on the nature of the goods involved, whether or not they are connected with the distribution of the film. For instance, books and magazines are subject to 3 percent, but toys and clothes (except children's clothes) are subject to the standard rate of 15 percent.

Promotional Goods or Services

In the absence of specific provisions, the general rules and rates apply to promotional goods or services. The VAT rate applicable to the provision of promotional goods and services should be 15 or 12 percent. The free provision of promotional goods and services (i.e. commercial samples or gifts of small value distributed for business use) falls in principle outside the scope of VAT, as there is no consideration paid for the supply. Provided that the expenses incurred in this respect are reasonable, the input VAT incurred on such goods and services should be recoverable.

Film Crews and Artists

The supply of hotel accommodations, food, and non-alcoholic drinks in Luxembourg is taxable at the reduced rate of 3 percent. Supplies of goods or services of a catering company during filming should also be taxable at 3 percent. Provided that the expenses are incurred for business purposes and are not luxury, recreation or entertainment expenses, the VAT incurred in Luxembourg should be recoverable.

Imports of Goods and Customs Duties

If a resident company imports goods from a foreign country VAT, and eventually Customs duties, would be due. The rates for Customs duties depend on the origin and the nature of the goods that are imported. The duty rates are defined in the online Customs tariff database, also called the TARIC. This multilingual database is available online on the Web site of the European Commission, www.europa.eu.int, under Taxation, Tax and Customs on-line databases.

Personal Taxation

Non-resident Artists

A non-resident artist is subject to tax on his or her Luxembourg-sourced income only. The income of artists from independent services performed in Luxembourg, including royalty income on such activities, is subject to a withholding tax of 10 percent.

Resident Artists

The law dated July 30, 1999 (amended by the law dated May 26, 2004) relating to the status of the artist applies to the following population:

- Authors and performers in the areas of graphic and plastic arts, performing arts, literature and music
- Designers, creators and technicians of works of art using photographic, film, audiovisual or other advanced technologies

An individual could be considered an independent professional artist if without any link of subordination, he or she provides his or her artistic services, and bears the social and economic risks. The exercise of any other non-artistic professional activity in addition to this, does not challenge the qualification of the independent artist if the annual income relating to the other activity does not exceed 12 times the minimum social salary for qualified workers.

The individual claiming the status of independent professional artist has to prove that he or she is acting as an artist for a minimum period of three years (reduced to 12 months for individuals having official diplomas in one of the above-mentioned areas), and has to be registered as an independent intellectual worker within a pension insurance scheme. This status is recognized by the authorities during a 24-month period. After this period, it could be renewed by a written request to the Minister competent for culture.

The individual performing his or her activity on behalf of an entertainment company or within the context of a film, theater or musical play and receiving fees as remuneration for his or her activity is considered as an "intermittent du spectacle" (artist with a non-regular activity).

Artists are entitled to deduct up to 25 percent of their professional income with a maximum of EUR 12,395 per annum as professional expenses. Artistic and academic awards are tax-exempted as long as they are not the remuneration of the artist's economic activity. The net profit exceeding the average profit of the three previous years is to be considered as an extraordinary income and taxed at a reduced rate.

In addition, social aids aimed at supporting artists' activities are granted under certain conditions. These social aids are tax-exempted (maximum rate of 23.40% plus contributions to the unemployment fund and crisis contribution).

Employees

Income Tax Implications

Resident and non-resident individuals employed in Luxembourg are normally subject to withholding tax on wages. This withholding tax is withheld at source by the employer and remitted to the Luxembourg tax authorities.

If the employee (single or married with only one spouse working) was subject to withholding tax on wage and his or her taxable income (after deductions) does not exceed EUR 100,000, he or she is not required to file a personal income tax return. In this case, the withholding tax on wage may be considered as his or her final personal income tax.

The tax year corresponds to the calendar year and personal tax returns need to be filed by March 31 of the following year. On request to the competent tax office, an extension of time to file can be obtained.

Tax Rates

Income taxes are levied on taxable income (after deductions) at progressive rates up to 39 percent.

A surcharge amounting to 4 percent of income tax payable is levied as a contribution towards an unemployment fund. Consequently the maximum individual income tax rate is 38.95 percent (for taxable income exceeding EUR 150,000 in tax classes 1 and 1a or EUR 300,000 in tax class 2, the contribution to the employment fund will increase to 6 percent).

The tax rates applicable from 2011 on are as follows:

Taxable Income (EUR)	%
0 – 11,265	0
11,265 – 13,173	8*
13,173 – 15,081	10*
15,081 – 16,989	12*
16,989 – 18,897	14*
18,897 – 20,805	16*
20,805 – 22,713	18*
22,713 – 24,621	20*
24,621 – 26,529	22*
26,529 – 28,437	24*
28,437 – 30,345	26*
30,345 – 32,253	28*
32,253 – 34,161	30*
34,161 – 36,069	32*
36,069 – 37,977	34*
37,977 – 39,885	36*
39,885 – 41,793	38*
Over 41,793	39*

* +4-6 percent for unemployment fund.

+ 0.8% for the crisis contribution.

Taxpayers are divided into three classes:

- Class 2 – Married persons who are jointly taxed in Luxembourg (whether supporting children or not) or resident taxpayers, who were widowed, divorced or separated (judicial separation) during the three preceding tax years and did not benefit from a same measure during the last five years before separation or divorce; non-resident married couples where more than 50 percent of their combined salary or professional income is taxable in Luxembourg; taxpayers living in a registered partnership and taxpayers of the same sex married according to foreign law, on request via the filing of an annual personal tax return. Taxpayers in this category apply the tax rates to one half their income and then multiply the liability by two (i.e., splitting system)
- Class 1a – Taxpayers who are not in Class 2 and who are widow(er)s, persons aged at least 64 at the beginning of the tax year, or taxpayers supporting children; persons who are separated (judicial separation) or divorced for more than three years with children in their household; non-resident married couples where less than 50 percent of their combined salary or professional income is taxable in Luxembourg
- Class 1 – Taxpayers who belong to neither Class 1a or Class 2: i.e. singles, persons who are separated (judicial separation) or divorced for more than three years with no children in their household

Employees who are not required to file a tax return, but have expenses to deduct or paid excess withholding tax, may obtain a refund by filling a tax reclaim ("décompte annuel") with the tax authorities. The deadline to submit the tax reclaim is on December 31 of the following relevant tax year.

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Chapter 21

Malaysia

Introduction

The tax treatment of the film industry falls under the general provisions of the Malaysian Income Tax Act 1967 (Act). There are, however, various tax incentives available for Malaysian companies or Malaysian resident individuals who meet the requisite criteria. These are briefly discussed below.

Key Tax Facts

Corporate income tax rate	25%
Highest personal income tax rate	26%
Service tax	6%
Normal non-treaty withholding tax rates: Dividends	0%
Interest	15%
Royalties	10%
Tax year-end: Companies	Financial year end
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

The financing structures used would depend on the nature of the involvement of parties, legal and commercial considerations. In Malaysia, businesses can be carried out via a company or a partnership.

Company

A company is governed by the Companies Act 1965. A company may be financed by share capital or shareholders' loans or both. A company is taxed as a separate legal entity. After tax profits may be distributed to shareholders in the form of dividends.

Where the share capital is in the form of preference shares, the returns paid to the holder of the preference shares are treated as dividends for tax purposes notwithstanding that preference shares may be classified as debt in the financial statements of the issuing company.

It has to be noted that, for exchange control purposes, Central Bank approval is required for the issuance of redeemable preference shares to a non-resident.

Partnership

A partnership is governed by the Partnership Act 1961 or the partnership agreement, if one exists. A partnership is defined as the relationship between parties carrying on business in common with a view to profit and hence, not a separate legal entity.

A partnership is not taxed but it is required to compute and submit a tax return to ascertain the profit attributable to the respective partners. The partners are to include the profit so ascertained in their tax return.

Joint Ventures

A joint venture may be an incorporated or unincorporated joint venture. An incorporated joint venture is established as a company under the Companies Act 1965. An unincorporated joint venture is akin to a partnership where the rights of the respective parties are documented in the joint venture agreement. The tax treatment of these is as discussed above.

There may be instances where an unincorporated joint venture is based on revenue share and not profit share. Such a joint venture does not have to file a tax return. Joint venture partners must compute any revenue they derive and any expenditure they incur in respect of the joint venture and include these in their respective tax returns.

Other Financing Considerations

Exchange Controls and Regulatory Rules

Malaysia has a limited exchange control regime. Dividends and profits may be repatriated without restriction. However, where the financing is in the form of a foreign currency loan which is in excess of Ringgit Malaysia (MYR) 100 million equivalent (in aggregate), the loan has to be approved by the Central Bank. This restriction does not apply if the loan is from a licensed onshore bank, an international Islamic bank, a resident related company (i.e. ultimate holding company, parent or head office, branches, subsidiaries, associate companies and sister companies) and non-resident non-bank related company.

Where the financing is in the form of a MYR loan, Central Bank approval is required for loans in excess of MYR 1 million. This restriction does not apply if the lender is the non-resident non-bank parent company of the borrower and the loan is used to finance activities in the real estate sector in Malaysia.

Corporate Taxation

Recognition of Income

Malaysia operates a territorial basis of income taxation, where only income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia is subject to income tax. However, income sourced outside Malaysia and received in Malaysia is currently exempt from income tax except for resident companies in the business of banking, insurance, air and sea transport. The corporate income tax rate in Malaysia is 25 percent with effect from the 2009 year of assessment.

Companies with an ordinary paid up share capital of MYR 2.5 million or below at the beginning of the basis period for a year of assessment are subject to income tax at a rate of 20 percent on the first MYR 500,000 of their chargeable income and the balance is taxed at 25 percent. However, such preferential treatment shall not apply if such company is related to a company which has a paid up capital in ordinary shares of more than RM 2.5 million at the beginning of the basis period for a year ofassessment.

Companies undertaking a promoted activity or a promoted product are eligible to apply for tax holidays (known as Pioneer Status) or additional capital allowances on qualifying capital expenditure (known as Investment Tax Allowance). Approval is, however, at the discretion of the relevant authority. At present, production of films or videos and post-production for films or videos are promoted activities.

There is also a statutory order exempting non-resident film companies, actors and film crews who are in Malaysia, from the payment of income tax in respect of income derived from filming activities commencing on or after 31 March 1999 which has been approved by the Jawatankuasa Filem Asing, Ministry of Home Affairs, Malaysia.

Amortization of Expenditure

Deductions

Generally, expenses which are wholly and exclusively incurred in the production of gross income are tax deductible. Such deductible expenses include:

- Interest on loans employed in producing gross income. However, where a loan is employed in business and investments, the interest on the loan would have to be segregated and deducted in accordance with the attributed category, subject to satisfying the wholly and exclusively test.

  With effect from 1 January 2009, the deductibility of interest is also subject to the application of Section 140A(4) of the Act. Section 140A(4) provides that where the value of all financial assistance to an associated person is excessive in comparison to the fixed capital of the recipient of the financial assistance, the interest, finance charge or other consideration payable on the excessive value shall not be deductible.

  Associated person is defined as a person who has control over the recipient of financial assistance or a person who is controlled by the recipient of financial assistance or a person who, together with the recipient of financial assistance is controlled by a third person.

  It is noted that Section 140A(4) requires various rules to be issued including the definition of financial assistance and the permissible debt to equity ratio. Since the rules have not been issued, thin capitalization has not yet been implemented. However, the Ministry of Finance announced that the implementation of the rules has been deferred to the end of December 2012. In view of this, it appears that thin capitalization may become effective in January 2013.

- Rent payable in respect of any land or building or part thereof occupied for the purpose of producing gross income.
- Expenses for the repair of premises, plant, machinery or fixtures.
- Bad and doubtful trade debts that arise during a period. Conversely, debts that had been previously allowed as a deduction but are subsequently recovered are taxable in the year the recovery takes place.
- Compulsory contributions made by employers to an approved pension or provident fund for employees (subject to a prescribed limit).

These expenses need to be incurred, laid out or expended during the basis period to be allowed a deduction. Expenses which are domestic, private and capital in nature are not deductible.

Tax Depreciation/Capital Allowances

Accounting depreciation, being a capital expense, is not deductible. However, tax depreciation (referred to as capital allowances) is granted on qualifying assets used in a business. The prescribed capital allowance rates can be classified as follows:

Type of Asset	Initial Allowance Rate* (%)	Annual Allowance Rate (%)
Heavy machinery and motor vehicles	20	20
Plant and machinery (general)	20	14
Office equipment, furniture and fittings and others	20	10
Industrial buildings	10	3

* Only available in the first year of assessment

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Some assets, such as security control equipment and small value assets that meet certain criteria may be written off in one year. Similarly, information and communication technology equipment including computers and software incurred in years of assessment 2009 to 2013 may be written off in one year (subject to certain exceptions).

Withholding Tax

Malaysian withholding tax is applicable on prescribed payments derived from Malaysia and made to non-residents of Malaysia.

Dividends

Dividends paid are not subject to withholding tax regardless of the place of incorporation and the tax residency of the shareholder.

Interest

Interest derived from Malaysia and paid to a non-resident, except where such interest is attributed to the business of such non-resident in Malaysia, is subject to 15 percent withholding tax unless otherwise reduced by an applicable tax treaty.

- Interest is deemed to be derived from Malaysia if, among others: the responsibility for the payment lies with a Malaysian resident and the loan is laid out on assets used in or held for the production of any gross income derived in Malaysia or the loan is secured by an asset situated in Malaysia
- The interest is charged as an outgoing or expense against any income accruing in or derived from Malaysia

However, certain interest paid to non-residents is exempt from withholding tax, for example, interest paid by a bank licensed under the Banking and Financial Institutions Act 1989 or Islamic Banking Act 1983 or interest paid pursuant to Islamic securities originating from Malaysia, other than convertible loan stocks, issued in currencies other than MYR and approved by the Malaysian Securities Commission.

Royalties

Royalty is defined in the Act to include –

a. any sums paid as consideration for the use of, or the right to use –

    i. copyrights, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks, or tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or reproduced in Malaysia or other like property or rights;

    ii. know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

b. income derived from the alienation of any property, know-how or information mentioned in paragraph (a) of this definition.

Where there is an applicable tax treaty, the definition of royalty as defined in the tax treaty shall prevail.

Royalties derived from Malaysia and paid to a non-resident, except where attributed to the business of such non-resident in Malaysia, are subject to withholding tax at a rate of 10 percent unless otherwise reduced by an applicable tax treaty.

Royalties are deemed derived from Malaysia where:

- The responsibility for payment lies with a resident of Malaysia; or
- The royalty is charged as an outgoing or expense against any income accruing in or derived from Malaysia.

Other Payments

In addition to the above, the following payments, where deemed derived from Malaysia, are also subject to withholding tax:

- Fees for services rendered in Malaysia by a non-resident person or their employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such non-resident
- Fees for technical advice, assistance or services rendered in Malaysia in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme
- Fees for rent or other payments made under any agreement or arrangement for the use of any movable property
- Miscellaneous gains or profits which do not constitute the business income of the non-resident

The payments are deemed to be derived from Malaysia if, among others:

- The responsibility for the payment lies with a Malaysian resident
- The payment is charged as an outgoing or expense in the accounts of a business carried on in Malaysia

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Tax Relief for Foreign Tax Suffered
Where there is an applicable tax treaty, bilateral relief is available to a Malaysian resident in respect of foreign taxes paid. The amount of relief given will be the lower of the tax suffered in the foreign country and the Malaysian tax attributable to the income.

Where there is no applicable tax treaty, unilateral relief is given and this is restricted to the lower of half of the tax suffered in the foreign country and the Malaysian tax attributable to the foreign income.

Indirect Taxation

Malaysia does not have a broad-based VAT/GST regime but it does have single stage consumption taxes known as service tax and sales tax.

Service Tax

Service tax at 6 percent is chargeable on taxable services provided by taxable persons. The production of film or video is not a taxable service.

Sales Tax

Sales tax at rates ranging from 5 – 10 percent is chargeable on taxable goods manufactured in or imported into Malaysia for local consumption. Certain equipment relating to the production of films are given sales tax exemptions.

Personal Taxation

General Taxation Rules

An individual is taxed on income accruing in or derived from Malaysia. Such income will be subject to tax at a rate of 26 percent if the individual is a non-resident or at a graduated scale of 0 – 26 percent if the individual is a tax resident in Malaysia.

An individual would be deemed to be a tax resident of Malaysia for a particular year of assessment if:

- They are in Malaysia for 182 days or more in a basis year
- They are in Malaysia for less than 182 days, however, the period is linked by or linked to another period of 182 or more consecutive days
- They are in Malaysia for 90 days or more, and for three out of four immediate preceding years of assessment, they are either resident of or in Malaysia for periods amounting to 90 days or more
- They are resident in the year following the particular year of assessment and in each of the three years immediately preceding the particular year of assessment

The above is subject to relief which may be available under applicable tax treaties.

Public Entertainers

A public entertainer is a stage, radio or television artiste, a musician, sports person or an individual exercising any profession, vocation or employment of a similar nature. Resident public entertainers are assessed to tax at graduated rates of between 0 and 26 percent. An exemption of MYR 10,000 is, however, available for a royalty or payment in respect of the publication of, use of or right to use any artistic work (other than an original painting) and for a royalty in respect of recording discs or tapes. Limited exemptions are also available for resident individuals receiving income from musical compositions.

Income of a non-resident public entertainer consisting of remuneration or other income in respect of services performed or rendered in Malaysia is subject to withholding tax of 15 percent on their gross income.

However, there is a statutory order exempting non-resident film companies, actors and film crews who are in Malaysia from the payment of income tax in respect of income derived from filming activities commencing on or after 31 March 1999 which have been approved by the Jawatankuasa Filem Asing, Ministry of Home Affairs, Malaysia.

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Chapter 22

Mexico

Introduction

Currently, there are no specific tax laws regulating film financing and television programming in Mexico. A tax incentive to promote national film production was introduced in 2005 and modified in 2007 (this tax incentive has not been subject to any material changes to date). This incentive is available to all entities and individuals and consists of a tax credit equivalent to the amount invested in national cinematography projects against the income tax payable in that same year. This credit shall not exceed 10 percent of the income tax payable in the previous tax year. Starting 2011, a similar tax credit is also available for investments in national theater projects. It is worth mentioning that if the credit is greater to the income tax of the year, the difference may be used to offset income tax of the ten following years until depleted.

Someone undertaking cinematography film production and television programming in Mexico is subject to the general Mexican tax laws in force. This chapter looks at these general laws. Mexico's tax legislation comprises several laws containing provisions relating to each type of tax. Taxes are usually levied on income, capital and certain transactions, as well as on income derived from specific activities.

The fundamental legal structure of the country's taxation system is defined by the Mexican Constitution, which establishes procedures whereby Congress enacts tax laws. In addition to special tax laws, the most important one being the Mexican Income Tax Law, there are some basic laws, which relate the general administration of the system, such as the Federal Revenue Law and the Federal Tax Code. Most of the laws are supplemented by a series of regulations and general rules issued by the tax authorities, which provide more information on specific procedures and interpretation.

The Federal Labor Law and its associated regulations govern labor relations. The law provides for minimum working conditions and rights, which must be borne by the employer, regardless of whether the employees are unionized or not. The employees cannot waive such provisions under any circumstance. The law is applicable to all employees in Mexico, regardless of their nationality.

Regarding the film and television industries, the Federal Cinematographic Law and its regulations, as well as the Federal Radio and Television Law apply to regulate the general framework and functioning of these industries in Mexico.

Key Tax Facts

Corporate income tax rate	30%
Highest personal income tax rate	30%
Value Added Tax (VAT) – general rate	16%
Business Flat Tax (IETU) – rate	17.5%
Social Security Dues	36.15[1]% of salary (up to 25 times minimum salary)
Some minor State and Municipal taxes: Payroll taxes – general rate	2%[2]
Real estate transfer and ownership	It depends on each state
Vehicles ownership	% depending on the value and year of the vehicle
General non-treaty withholding tax rates: Dividends	0%*
Interest	4.9%, 10%, 15%, 21%, or 30%
Royalties for the temporary use or enjoyment of railroad cars	5%
Royalties for the temporary use or advantage of patents or certificates of invention or improvement, trademarks or trade names, and for advertising (payments of any kind for copyrights on literary, artistic or scientific works, including movies and recordings for radio or television, shall be considered as royalties)	30%
Royalties not included above and those for technical assistance	25%

* In accordance with the current tax legislation, no withholding tax applies to any distribution of dividends.

[1] Estimated percentage, it would change depending of the job risk factor

[2] This rate could differ depending on the State

Film Financing

National Film Commission – Mexico

The production, and in recent years, the co-production of motion pictures, television series and international commercials have been important factors in the development of the industry. This has brought about constant expansion and technological evolution in the different service areas.

The filmmakers' demand for specific up to date information and support services for the film, television and video industries led to the creation of the National Film Commission, a nonprofit and specialized organization founded by the Mexican Film Institute and the Churubusco Azteca Film Studios.

With the cooperation of the Federal Government, the States Governments and both public and private organizations and institutions, the National Film Commission and its network of State Film Commissions head the overall efforts to promote the production of films, TV programs and commercials in Mexico, giving assistance to all companies and producers interested in developing their projects therein.

Once it has been decided to film in Mexico, the next step is to negotiate with service providers and unions. Personnel hiring and equipment leasing depend on the size of the project and the bargaining skills of the production representatives.

It is important to count on the assistance of an experienced Mexican producer or a domestic production company when negotiating labor terms with workers, unions and cooperatives. Personnel relationships with workers will lead to a successful project.

Mexican legislation obliges film production companies to hire personnel of unions registered in the Ministry of Labor and Social Security. In the Mexican motion picture industry, there are two production unions: "Sindicato de Trabajadores de la Producción Cinematográfica de la República Mexicana" (STPC) and "Sindicato de Trabajadores de la Industria Cinematográfica" STIC. Both unions have improved their internal policies in order to provide a better service adapting to filmmakers' demands and special needs.

Irrespective of the budget, the National Film Commission is able to provide up to date information and assistance on the following:

- Film and TV industry infrastructure
- Search for locations in Mexico
- Legal matters, and
- Liaison between the Federal and States' government departments and the production companies

The National Film Commission also maintains a permanent dialogue with the Mexican government to formulate fast and easy ways for foreign producers to negotiate their import permits and work visas and also to deal with any other obligation.

It should be noted that foreign productions and co-productions may approach the Commission. The Commission will study each case to see whether they comply with the various requirements stipulated by Mexican laws for the relevant type of film or TV program.

Federal Cinematography Law

Background

The purpose of this law is to promote film production, distribution, marketing and presentation, as well as film safeguard and preservation. It seeks to ensure that, at all times, issues relating to the integration, promotion and development of the national film industry are studied and focused on.

It is the job of the Federal Executive Branch to apply this law and to see that it is enforced through the Internal Affairs Department and the Education Department.

There is freedom under Mexican law to film and produce movies.

Films will be exhibited to the public in their original version and, the case being, subtitled in Spanish. Films classified for children and educational documentaries can be exhibited translated to Spanish.

Producers of films in any form must prove that their productions duly comply with current labor, copyright and actors' rights legislations. To the contrary, they will be subject to corresponding fines.

In complying with the Federal Cinematography Law and its regulations, producers, distributors and film exhibiting enterprises must submit the reports required by the Ministry of Internal Affairs.

A motion picture shall be deemed a co-production when two or more individuals or legal entities participate in its production. The co-production shall be deemed international when it is realized by one or more foreign persons with the intervention of one or several Mexican persons, under the international treaties or conventions subscribed by Mexico. When such international conventions do not exist, the following requirements must be included in the Co-production Agreement:

- The title of the film in co-production
- The name or social denomination and the nationality of the producers, the authors of the film, and the director

- The script of the film
- The clause evidencing and referring to the document that proves the legal acquisition of the copyrights and, the case being, the authorization or license for the corresponding use
- The amounts and characteristic of the contributions made by each party
- The budget of the total production cost of the film
- The clause that establishes the terms and conditions for the distribution of the income generated by the exploitation of the film
- When presenting the co-produced film to the public, it will be expressed at the beginning of the production credits, as well as in the publicity materials for the film, the name of the country of origin of the majority co-producer, without prejudice of the right of the other co-producer(s) which are mentioned as such
- If the co-produced film participates in any of the international film festivals, it will compete showing the nationality of the co-producers or, in their case, in terms established by the regulation of the corresponding festival
- The clause that establishes the guarantees owed by the parties in case it is not possible to complete the film

No film, whether produced in Mexico or abroad, can be distributed, promoted or exhibited publicly without the previous authorization and classification of the Internal Affairs Department granted by means of the General Management of Radio, Television and Film.

Incentives

The Federal Cinematography Law grants incentives to the cinematography industry. These incentives are to be established by the Federal Executive Authority for the following:

- Businesses promoting production, distribution, presentation and/or marketing for national films or short films accomplished by cinema students, as well as businesses promoting exhibitions in non commercial establishments of foreign films with educational, artistic or cultural message, or those carrying out the reproduction, subtitles or translation in Mexico
- Producers participating, themselves or through third parties, in international film festivals and receiving recognition or prizes
- Exhibitors that invest in the construction of new cinemas or that rehabilitate rooms which are no longer in operation, dedicated to national cinema and which help in the diversification of the foreign cinema material offered

A Cinema Investment and Incentive Fund (FIDECINE) exists to promote financial aid, guarantees and investments in favor of producers, distributors, promoters and exhibitors of national films. This Fund is administrated by a Trust, to which the tax authorities will be the sole trustor and the beneficiaries the producers, distributors, promoters and exhibitors determined by the Trust's Technical Committee.

The resources of this Fund will be dedicated to granting risk capital, work capital, credits or economic incentives for achievement, production, distribution, marketing and presentation activities for national films.

Cultural Conventions

The following is a list of cultural conventions entered into by Mexico:

Cultural conventions with:

- Belgium
- Canada
- Korea
- France
- Japan
- Norway
- Paraguay
- Lebanon Republic

Cultural and Scientific conventions with:

- Portugal
- Senegal

Convention for Cultural Cooperation with:

- Germany
- Great Britain
- Iran
- India
- Jamaica
- North Ireland
- Paraguay
- Hungary
- Democratic Republic of Algeria

Convention for Cultural Exchange with:

- Austria
- Belize
- China
- Dominican Republic
- Egypt
- Finland
- Italy
- Philippines
- Serbia
- Slovakia
- Uruguay
- Argentina

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- Granada
- Guatemala
- Honduras
- Israel
- Bolivia
- Panama
- Salvador
- Nicaragua

Convention for Educational and Cultural Exchange with:

- Colombia
- Venezuela
- Honduras

Convention for Cooperation in the Cultural, Educational and Sport Areas with:

- Bolivia
- Russia
- Rumania
- Republic of Lithuania
- Grand Duchy of Luxembourg

Convention for Educational and Cultural Cooperation with:

- Argentina
- Belize
- Brazil
- Bulgaria
- Chile
- Costa Rica
- Cuba
- Czech Republic
- El Salvador
- Greece
- Honduras
- Hungary
- Moldova Republic
- Nicaragua
- Nigeria
- Panama
- Peru
- Poland Republic
- Republic of Armenia
- Republic of Côte d'Ivoire
- Republic of Estonia
- Republic of Latvia
- Republic of Lebanon
- Slovenia Republic
- Socialist Republic of Vietnam
- Spain
- Syrian Arab Republic
- Thailand
- Trinidad y Tobago
- Tunes Republic
- Turkey Republic
- U.K.raine
- Venezuela

Treaty for cultural relations:

- Netherlands

Agreement of Cultural, Educational and Scientific Cooperation:

- Cyprus Republic

Agreement of cultural, scientific and technique cooperation:

- Gabon Republic

Please note that, in general, these conventions are very basic and only provide for cooperation relating to the cultural and educational areas. One of the more elaborate conventions is the one entered into by and between Mexico and Canada, where specific cinematographic provisions are included.

Federal Radio and Television Law

This law provides that the Federal Government holds the rights to radio and television broadcasting in Mexico.

The Communications and Transport Department has to give permission and can grant concessions for the commercial exploitation of television and radio. These permissions or concessions can only be granted to Mexican individuals or companies whose partners or shareholders are Mexican residents.

The duration of the concessions cannot exceed 20 years. This concession can be granted again thereafter and with preference over third parties.

Tax and Financial Incentives

National Film Production

A tax incentive is available to taxpayers (entities or individuals); this incentive entitles the investors to a credit equivalent to the amount contributed to national cinematography investment projects against the income tax payable for the same year. This credit shall not exceed 10 percent of the income tax payable corresponding to the prior tax year. In the event that the creditable amount exceeds the income tax payable, the taxpayers may credit the difference against the income tax payable of the following ten tax years. In addition, the amount of the tax incentive is to be shared amongst all taxpayers in a fiscal year and is limited to MXP 500 million and MXP 20 million per taxpayer and project.

In order to apply this tax incentive, the investments must be made in Mexico and must be specifically for the production of a qualifying national cinematographic film.

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In order for a project to be eligible for the tax incentive, the project must be approved by an interinstitutional committee. The interinstitutional committee must publish at the latest by the last day of February of each year, a report that contains the amount of the tax incentive awarded during the year, as well as publish the names of the persons benefiting from the tax incentive and their corresponding national cinematographic film projects.

Other Financing Considerations

Foreign Debt Financing Structure

In 2005, Mexico introduced thin capitalization rules limiting the deduction of interest generated from debts derived from capital taken on loan in excess of a 3:1 debt-to-equity ratio. This rule will apply when the debts are contracted with foreign related parties. Transitory provisions establish that taxpayers, who upon the effective date of the reform have debts exceeding equity, will have a five-year period to decrease such proportion to the 3:1 ratio allowed. If at the end of the five-year period the amount of debt is greater than the 3:1 limit, the interest accrued thereon in all tax years from January 1, 2005 will be nondeductible.

In addition, interest payments can be recharacterized as dividend distributions, amongst others for:

- Back-to-back loans
- Excess of interest charges over arm's length charges on intercompany loans
- Demand loans

Corporate Taxation

The Federal Tax Code provides the basic tax administration procedures applicable to federal tax laws. Generally speaking, it defines taxes, taxpayers, domicile, residence status and exemptions, as well as rules relating to administrative procedures, litigation before the tax courts, penalties, statutes of limitations, reimbursements and other matters.

The Annual Revenue Law, which is effective from January 1 of each year, establishes the federal taxes, duties, fees and all other types of internal revenues which are payable to the federal government during that calendar year. However, the administration of taxes is in accordance with the applicable tax laws for each specific tax.

Overview of the Mexican Tax System

The Mexican Income Tax Law establishes the following:

Persons subject to tax:		Basis:
Residents	→	Worldwide income
Permanent establishments	→	Attributable income
Non-residents without PE	→	Mexican sourced income

Individuals are considered Mexican residents (solely for tax purposes) when they establish their place of abode in the country. If such persons have their place of abode in another country, they would be considered Mexican tax residents if they have their vital centre of interest in Mexico.

For these purposes, the vital centre of interest is considered in Mexico among others when:

a) 50 percent of the revenue is derived from Mexican sources.

b) Main place of activity is situated in Mexico.

Mexican individuals who change their residence to a country considered as a preferential tax regime would be still considered residents in Mexico for four years from the date in which new residence is established, unless that country has entered into a broad information exchange agreement with Mexico.

Legal entities are deemed Mexican residents when the principal business administration or effective control is established in Mexico.

Mexican residents and permanent establishments pay tax on a calendar year basis. Residents abroad without a permanent establishment in Mexico are, in general terms, subject to withholding tax by the payer of the item of income. Each withholding tax remittance is deemed to be a final payment.

Please note that there is no entity classification for income tax purposes. The most usual entities are the limited liability entities known as "sociedad anónima" or "S.A." and "sociedad de responsabilidad limitada" or "S. de R.L.," which can both take the form of variable capital entities "C.V."

Dividend Payments

Dividends paid out of the previously taxed earnings account (CUFIN) should not trigger any further corporate taxation in Mexico. However, dividends paid out in excess of the CUFIN trigger a corporate tax for the company paying such dividends on the excess amount. The corporate tax on the dividends distributed is determined by applying the corporate tax rate to the grossed-up dividend. For 2011, this factor is 1.4286.

This dividend tax can offset the Company's annual corporate income tax of the year in which it was paid and the monthly or annual corporate income tax of the following two years.

Moreover, dividend payments made in Mexico or abroad to individuals or corporations are not subject to withholding tax.

The following items can be treated as dividends:

- Loans to shareholders that do not comply some specific requirements
- Non-deductible expenses that benefit shareholders
- Off-books income
- Additional income assessed by the tax authorities
- Earnings distributed from a contract joint venture

Foreign dividend income is included in taxable income. However, an ordinary foreign tax credit is allowed, provided certain requirements are met.

Tax Consolidation System

Mexican groups may file consolidated income tax returns for up to 100 percent of profits and losses, if the following requirements are met:

Mexican Holding Company: A Mexican holding company should exist and should own directly or indirectly, more than 50 percent of the voting shares of other companies. Other companies should not own more than 50 percent of the holding company's voting shares, except in the case of shares quoted on the stock market or when the shares are owned by residents in countries with which Mexico has a broad information exchange agreement. The countries having a broad information exchange agreement with Mexico are: Australia, Austria, Bahamas, Barbados, Bermuda, Brazil, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greece, Iceland, India, Italy, Japan, Korea, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Romania, Russia, Singapore, Slovakia, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America, and Uruguay.

- Subsidiary: A company's voting shares are owned directly or indirectly in at least 50 percent by a holding company
- Authorization: The taxpayer shall apply on or before August 15th with the Treasury Department for an authorization to consolidate for tax purposes. Once the election is authorized, the same becomes compulsory for a minimum of five years, starting the following year as from January 1

- Tax Rate: Tax is payable at the flat 30v percent rate on the consolidated net taxable income. Holding companies are required to provide information in the consolidated tax return to allow the determination of their own taxable income or loss, as if they did not consolidate
- All the entities part of the consolidated group must file an individual return as well
- Losses must be used up on an individual basis prior 10 year carry forward expiration

The following companies do not qualify for filing a consolidated tax return:

- Income tax exempt entities
- Financial sector institutions
- Subsidiaries residing abroad
- Companies under liquidation
- Civil law partnerships, civil law associations and cooperatives
- Partnerships
- Companies under simplified tax treatment

As of 2010, there is a particular procedure through which consolidating groups must determine and pay the tax deferred in the sixth previous year to which the payment must be made. Accordingly, every fiscal year, holding companies shall pay the income tax, updated for inflation, that they deferred by reason of the tax consolidation, which was generated in the sixth fiscal year preceding the year in which such payment must be made, and was not paid through December 31 of the year immediately preceding the year in which such payment must be made.

The deferred income tax shall be paid on the same date on which the consolidated tax return for the fiscal year immediately preceding the year in which the deferred tax must be paid has to be filed.

The deferred tax shall be paid in five fiscal years, pursuant to the following:

I. 25% in the fiscal year in which the deferred tax must be paid

II. 25% in the second following fiscal year

III. 20% in the third following fiscal year

IV. 15% in the fourth following fiscal year

V. 15% in the fifth following fiscal year

The amount of the deferred tax to be paid should be restated from inflation and effectively paid each year as stated above. Otherwise, the total amount of the tax due should be paid in one installment, including surcharges.

Inflationary Accounting for Tax Purposes

The Mexican Income Tax Law recognizes the effects of inflation in determining taxable income. Taxpayers shall determine an inflationary adjustment on payables and receivables and may restate tax depreciation and net operating losses for inflation using the National Consumers' Price Index published in the Official Gazette by the Mexican Central Bank known as the "Banco de México".

Inflationary taxable income derives when the annual average of debts exceeds the annual average of assets.

Transfer Pricing Rules

The law establishes the obligation for all taxpayers who conduct transactions with related parties, to determine their taxable income and allowed deductions, considering for those transactions the prices that would have been applied with or between independent parties in comparable transactions. With these provisions, the law includes the arm's length principle. These provisions also empower the Tax Administration Service (SAT) to estimate the profit or prices when they consider that a taxpayer's transactions are not carried out at arm's length.

The law includes the comparability principle, by means of which a transaction with related parties generates an arm's length result when this result is comparable to the ones obtained by independent companies that carry out comparable transactions. Also, it allows making reasonable adjustments when differences that affect the result significantly exist, in order to determine which is the arm's length result.

The law provides arm's length pricing methods, which the SAT may apply for its enforcement. The transfer pricing methods provided by the law comply with the methods contained in the OECD Transfer Pricing Guidelines.

Summarizing, the law recognizes the following methods to determine arm's length prices:

- Comparable Uncontrolled Price Method
- Resale Price Method
- Cost Plus Method
- Profit Split Method
- Residual Profit Split Method
- Transactional Net Margin Method
(similar to the United States' Comparable Profits Method)

Taxpayers must consider first the comparable uncontrolled price method before any other method, because it is the most direct and reliable, in order to determine if the conditions of the commercial and financial relations between related parties fulfill the characteristics of being contracted at market prices. This method will not be applicable when the taxpayer demonstrates that the application of this method is not the most appropriate in the particular case.

Also, the law establishes the obligation to all taxpayers carrying out transactions with related parties abroad, to prepare and maintain documentation supporting that these transactions fulfill the arm's length principle. This documentation consists of the following:

- Name, address and country of residence for tax purposes, of the taxpayer and its related parties with which it carries out transactions, as well as the documentation that supports the direct and indirect relation between them
- Information regarding the taxpayer's functions, assets and risks
- Information and documentation of the transactions with related parties
- The transfer pricing methodology applied according to the law, including the information and documentation of comparable companies

If the SAT concludes that a company underpaid taxes in Mexico because it applied transfer prices that did not comply with the provisions of the law, the taxpayers will be liable for the following:

- Omitted taxes adjusted by inflation
- Interest, and
- A penalty that may range between 55 to 75 percent of omitted income tax or between 30 percent to 40 percent; however, if the taxpayer has supporting documentation, this penalty may be reduced by 50 percent

At the latest by March 31 of each year, an informative return must be filed reporting the operations carried out with related parties residing abroad during the previous calendar year. It must be filed jointly with the annual return.

Under current provisions, it is possible to obtain advanced pricing agreements. They are considered to be in effect for the year in which they are requested, the one immediately preceding and up to three subsequent years.

Additionally, the tax authorities may totally or partially forgive interest arising from adjustments to prices or payments on operations between or among related parties, provided said pardon is given by a competent authority based on reciprocity with the authorities of a country with which Mexico has a tax treaty in effect, and said authorities have refunded the corresponding tax without interest payments.

The foregoing is applicable regardless of the fact that a transfer pricing ruling is requested to the tax authorities to confirm the method used for determining transfer prices in related party transactions.

Tax Havens

As from 2005, the concept of "resident of a tax haven" is amended to "subject to a preferential tax regime" and this means that any location where taxes paid are less than 75 percent of the amount that would be paid in Mexico will be regarded as such. Therefore, if Mexican residents or permanent establishments in Mexico of residents abroad make payments to foreign residents where the amount will be subject to a preferred tax regime, the payment will be subject to a 40 percent withholding tax without any deduction on the gross income received provided the payment in question represents Mexican sourced income subject to tax. In this sense business profits obtained by a foreign resident are not subject to Mexican tax in any form, unless it is attributable to a permanent establishment in Mexico of the foreign resident.

Based on a general rule (annually adopted), the 40 percent withholding would apply only for transactions between related parties, if the related party does not reside in a country with which Mexico has in force a broad information agreement.

If the Mexican residents have investments in entities subject to preferred tax regimes, the income generated through these entities will generally be taxed on current basis in Mexico. Some exceptions may apply and these investments should be reviewed on a case by case basis.

Payment of the Tax

The annual income tax payment is due at the latest by March 31 of the following year for legal entities and by April 30 of the following year for individuals. Monthly estimated payments are due by the 17th day of the following month. Tax payments shall be made electronically. For this purpose, the taxpayer shall open a bank account at any recognized Mexican bank and obtain from the tax authorities a specific operation number and complete the transfer.

The Mexican bank should provide the taxpayer with an electronic transfer code confirmation of the tax payment.

Amortization of Expenditure

Depreciation

The amount of the tax deduction is determined by considering the effects of inflation on fixed asset, deferred expenses and deferred charges investments.

This deduction is computed based on the original amount of the investment, including some expenses incurred to acquire the asset, in accordance with rates provided by law, in proportion to the number of full months during which the asset was used. The resulting amount is adjusted with inflation indices for the period between the month of acquisition and until the last month of the first half of the period during which the asset has been used in the tax year for which the deduction is claimed.

Examples of some of the maximum depreciation percentages allowed are as follows:

- 10 percent for office furniture and equipment
- 25 percent for cars, buses, freight trucks, tractor trailers and trailers
- 30 percent for personal desktop and laptop computers, servers and printers
- 16 percent for radio and television broadcasting companies

In addition, a tax incentive exists that allows taxpayers the option to take an immediate deduction for investment in new fixed assets in the year following the year of acquisition or legal importation instead of taking tax deductions at the regular annual depreciation rates, provided some requirements are fulfilled.

Notwithstanding the above, the maximum amortization rates allowed in respect of deferred expenses and charges, and for disbursements made in pre-operating periods, are as follows:

- 5 percent for deferred charges
- 10 percent for disbursements in pre-operating periods
- 15 percent for royalties, for technical assistance, and for other deferred expenses

In these last two cases, if the benefit of the investment is realized in the same tax year, the total amount can be deducted in said tax year.

Losses

Net operating losses may be carried forward for ten years, and may be restated for inflation. If the taxpayer fails to apply such loss within the ten-year term allowed, the right to apply this loss in future periods is lost. If losses are not applied in a tax year where it could have applied, the portion thereof can no longer be used to offset taxable income.

Net operating losses cannot be transferred to another corporation through merger. In a spin-off, the net operating loss may be transferred only in proportion of the inventories and accounts receivables divided (commercial activities) or fixed assets divided (other activities).

In a merger, the surviving corporation may carry forward its net operating losses to offset the earnings derived from the same line of business activities that gave rise to the loss in question.

Capital losses on company liquidations or mergers are non-deductible. However, capital losses on share transfers can offset capital gains on share transfers only.

With certain exceptions, companies who changed their controlling partners or stockholders and have net operating losses pending to be carried forward may only apply such losses against profits derived from the exploitation of the same lines of business that gave rise to the losses.

Foreign Tax Relief

Mexican residents are entitled to an ordinary foreign tax credit provided that the foreign income is subject to Mexican income tax.

The foreign tax credit limitation for business activities is 30 percent of the tax profit from foreign sources determined in accordance with the Mexican Income Tax Law.

In the case of the underlying tax, the limitation is arrived at by computing the tax profit (net profit) from foreign sources up to the Mexican tax rate. For income tax paid on dividends that are distributed by foreign entities to Mexican residents, the income tax paid abroad is creditable as long as the Mexican holding company has owned at least 10 percent of the stock of the foreign subsidiary for the six-month period prior to the dividend distribution. If the Mexican holding company does not fully own the foreign subsidiary, the foreign tax credit is determined based on a proportion equal to the participation owned by the Mexican holding company.

When a Mexican entity indirectly participates in the dividends or profits of a foreign company, the income tax paid abroad is creditable in Mexico up to the second corporate level as long as the company is a resident of a country with which Mexico has entered into an agreement for broad exchange of information. In addition, the foreign company directly held by the Mexican entity must participate in at least 10 percent of the capital stock of the company which is indirectly held and the indirect participation of the Mexican entity must be at least 5 percent.

When the tax credit allowed cannot be totally applied, the remaining balance may be carried forward for ten years.

Indirect Taxation

Value Added Tax (VAT)

The general value added tax rate is 16 percent. However, a 0 percent rate applies, namely to sales of patent medicines and some food products, as well as to exports of goods and some services. The importation of the products subject to the 0 percent rate is not subject to the payment of tax. As well, a rate of 11 percent applies in border regions. Also, certain activities are considered to be exempted from a VAT perspective.

VAT is generally imposed on the gross income derived from the sale or disposal of property, including conditional sales, the rendering of independent services, the temporary use or enjoyment of property, and the importation of goods or services (technical assistance, fees, commissions, royalties, and certain interest paid abroad), including taxes, duties, interest, and reimbursements. Inventory shortages are also taxable unless the taxpayer can substantiate that such shortages do not involve any transfer or disposal of property.

Any person carrying out taxable transactions in Mexico is subject to this tax.

Legal entities contracting independent personal services are obliged to withhold value added tax when the service provider is an individual.

It is necessary to pay tax on the rendering of independent services when it is partly or entirely rendered in Mexico by a Mexican resident or when the benefit derived from the service is taken advantage of in Mexico. Independent services are understood to be, amongst others, services rendered by individuals or corporations, including the transportation of persons or goods, the granting of insurance and bonds, commissions, technical assistance and the transfer of technology.

Until December 31, 1998, the Value Added Tax Law established that circus and movie theatre tickets were exempt from this tax. As from 1999, the Value Added Tax Law provides that tickets for the exhibition of films will be subject to this tax at the rate of 16 percent.

In the case of the importation of tangible goods, tax is payable as soon as the goods are available for the importer at the customs or tax building; in the case of temporary imports, tax is payable when the imports become final. Importation of intangible goods arises when: a) a Mexican resident purchases the intangible from a non-resident; b) when the temporary use or enjoyment of the intangible supplied by a non-resident takes place in Mexico. The obligation to pay the tax arises at the time the payment is effectively made.

Likewise, services provided by foreign residents are considered imported when they are enjoyed in Mexico. However, in this situation, the Regulation to the Value Added Tax Law establishes that an amount equivalent to the VAT paid thereof can be credited in the same monthly return, hence resulting in a virtual value added tax, provided the Mexican entity's credit factor is 1 (only has taxable activities)

In this sense, activities subject to a VAT rate of 0 percent are treated the same as activities subject to the normal 16 percent rate, meaning that the VAT paid on any inputs in a month may be credited against the 0 percent rate and a refund of the VAT paid on the inputs can be requested.

Taxpayers carrying out exempted activities may not be able to credit its virtual VAT as mentioned above, when importing services.

The exportation of goods and services, as defined by law, is subject to the 0 percent tax rate; consequently exporters can offset or claim a refund of the taxes passed on to them by their suppliers of goods and services.

Business Flat Tax

Derived from the 2008 tax reforms, starting January 1, 2008, the Asset Tax was abrogated, and instead the New Business Flat Tax (IETU) entered into force.

This tax is considered of an alternative nature, that must be compared to the income tax and the highest is payable.

In this sense, the IETU is assessed on individuals and legal entities residing in Mexico, as well as non-residents with a PE in Mexico as a result of performing the following activities:

- Alienation of goods
- Rendering independent services
- Granting temporary use or enjoyment of goods (leasing)

In order to establish the proper definition of the above mentioned concepts, the IETU Law (LIETU) references to the provisions of the Value-added Tax Law (VAT Law).

The tax will be computed by applying the rate of 17.5 percent to the amount resulting from deducting the expenses related to the deductions authorized by the law from total income earned in the year. This tax applies on a cash flow basis and hence, contrary to the income tax, expenditures on investments on fixed assets, deferred expenses and deferred charges are fully deductible for IETU purposes in the year they are incurred.

It is worth mentioning that royalties (except for the leasing of industrial, commercial or scientific equipment or goods) paid to related parties are non-deductible expenses for IETU purposes. In the same manner, they would not trigger IETU taxable income for the Mexican taxpayer receiving this income. Royalty payments may be deductible when they do not represent the use or enjoyment of intangible assets, but they do represent the actual purchase of the asset.

Furthermore, some expenses are disallowed as operating costs but can be computed as credit applicable against the IETU, such as wages and salaries.

It should also be noted that any interest paid should not be considered deductible unless it is part of the price or unless the financial intermediation margin is applicable to the entity. Likewise, these interests would not be taxable.

In addition, the IETUL provides tax credits against IETU, such as income tax paid, dividends income tax, income tax paid abroad, pending balance to be deducted from investments, if deductions are higher than income, and pending balance from inventories, among others, complying with some specific requirements.

Upon the enactment of the IETUL, several transitory rules were provided for taxpayers already performing taxable activities before January 1, 2008. Specific rules were established for inventories, fixed assets, among others.

Asset Tax

As mentioned, starting 2008, the Asset Tax was abrogated. Transitory rules were provided to recover the previously tax on assets paid, under certain requirements.

Personal Taxation

Non-resident Artists

Residents abroad who have no permanent establishment in Mexico or having such an establishment, the income is not attributable thereto, are required to pay tax on income obtained from sources of wealth located in Mexico. Tax rates, modes of payment, and exemptions are defined for each type of income obtained from sources of wealth located therein.

Taxable income includes any payment generating a benefit to the foreign resident and made for acts or activities mentioned below. These include the avoidance of a disbursement and the payment of tax on their behalf (except value added tax passed on by such a resident under the terms of the law), as well as income determined by the tax authorities in cases covered by law (e.g., transfer pricing, etc.).

When payments to a resident abroad are made in a foreign currency, for withholding tax purposes, the tax is determined by converting the payment into Mexican currency at the exchange rate prevailing on the date on which payment is due.

Personal Services Provided by a Foreign Resident

As a general rule, wages, salaries, and income obtained from rendering of personal services in a subordinate or independent capacity is considered to be located in Mexico when the related services are performed therein.

For salaries and wages, the tax is determined by applying the following rates to the income obtained during the calendar year:

• Up to	MXP 125,900.00	Exempt
• From	MXP 125,900.00 to MXP 1,000,000.00	15%
• Over	MXP 1,000,000.00	30%

The law exempts wages and income obtained by non-residents rendering personal services, provided that the services rendered have a duration of no more than 183 days in a 12-month period, and the related payments are made by residents abroad who have no permanent establishment in Mexico or if they have such an establishment, the services performed are not related to activities of the establishment. This treatment does not apply when the payer has an establishment in Mexico, even if it does not qualify as a permanent one and the services performed are related to such establishment, as well as those situations when the provider of the services to such an establishment receives supplementary payments from residents abroad for the services rendered.

Independent Personal Services

It is assumed that services rendered in an independent capacity are performed in their entirety in Mexico when there is evidence that a portion of such services are rendered in the country, unless the provider can demonstrate that they were partially rendered abroad. In the latter case, the tax is computed on the portion corresponding to the services rendered in Mexico. In addition, services are deemed to be rendered in Mexico unless otherwise proven, when the payments for such services rendered are made by a Mexican resident or a Mexican permanent establishment of a foreign resident to a foreign resident that is a related party. The tax is computed by applying a rate of 25 percent on the total income obtained, with no deduction allowed.

The persons obtaining income from the rendering of independent personal services are required to issue receipts that meet requirements stipulated in the regulations.

The law exempts independent personal services from Mexican taxation when a foreign resident, without a permanent establishment or having any kind of establishment in Mexico the service is not related thereto, pays the service and provided the stay of the foreign service provider is less than 183 days, consecutive or not, in any 12-month period.

Artistic Activities or Public Shows

Foreign residents who receive income from artistic activities or public shows are taxed in Mexico when the artistic activity is carried out or when the show is presented in Mexico.

It is assumed, except when proven otherwise, that artists or whoever presents a public show participates either directly or indirectly in the profits obtained by the service provider who grants the temporary use or enjoyment or sells assets related to the presentation of the show.

The tax is determined by applying the rate of 25 percent to the total income obtained, with no deduction is allowed.

Other Services

Fees paid to board members are considered to be located in the country whenever such fees are paid by a company that is a resident of Mexico. In this case, the tax payable is determined by applying 25 percent to the total income obtained, no deduction allowed.

Royalties, Technical Assistance, and Advertising

Income from royalties, technical assistance or publicity is taxable in Mexico when the rights or goods for which the payments are made are taken advantage of therein or when they are paid by a Mexican resident or a foreign resident with a permanent establishment in Mexico.

The following rates apply:

- Royalties for the temporary use or enjoyment of railroad cars – 5 percent
- Royalties for the temporary use or enjoyment of patents or certificates of invention or improvement, brand and trade names, as well as publicity – 30 percent
- Royalties different than those provided above and those for technical assistance – 25 percent

It is worth mentioning that some of the aforementioned withholding tax rates for payments made abroad may be reduced by application of tax treaties to avoid double taxation.

Resident Artists

Personal Services

In general, individuals who receive salaries, wages and payments for personal subordinated services are taxed on all amounts received for such items.

The taxable amount received provides the basis for determining the taxable income for the year. The monthly and annual tax is determined by applying a graduated scale, with a maximum rate of 30 percent in 2011. The tax is withheld and paid by the employer or the person making the payment on a monthly basis. The employer computes the annual tax for its employees unless the employee finds itself in one of the following situations: i) when he/she obtains taxable income that differs from that previously mentioned; ii) when he/she informs the employer that he/she will file the tax return; iii) when he/she stops working before December 31 of the year in question or when he/she rendered services to two or more employers at the same time; iv) when he/she obtained salary income from foreign sources or from persons not obligated to withhold; and v) when his/her annual income exceeds MXP 400,000.

Annual Taxable Income MXP for 2010 and 2011 tax year

Exceeding	Not Exceeding	Marginal Rate	Tax on Lower Level
0.01	5,952.84	1.92	—
5,952.85	50,524.92	6.40	114.24
50,524.93	88,793.04	10.88	2,966.76
88,793.05	103,218.00	16.00	7,130.88
103,218.01	123,580.20	17.92	9,438.60
123,580.21	249,243.48	21.36	13,087.44
249,243.49	392,841.97	23.52	39,929.04
392,841.97	and on	30.00	73,703.40

The corresponding tax rates are adjusted for inflation when the inflation exceeds 10 percent since the last adjustment. Generally, married persons are taxed separately, not jointly, on all types of income.

A subsidy to employment against monthly tax payments may be applied. The purpose of the subsidy to employment is to reduce the tax burden of lower income taxpayers.

The following is the monthly subsidy to employment table:

Taxable Income MXP for 2011 Tax Year

Exceeding	Not Exceeding	Applicable Monthly Subsidy to Employment Amount
0.01	1,768.96	407.02
1,768.97	2,653.38	406.83
2,653.39	3,472.84	406.62
3,472.85	3,537.87	392.77
3,537.88	4,446.15	382.46
4,446.16	4,717.18	354.23
4,717.19	5,335.42	324.87
5,335.43	6,224.67	294.63
6,224.68	7,113.90	253.54
7,113.91	7,382.33	217.61
7,382.34	and on	0

The tax credit that the Mexican employers could apply against monthly withholdings was abrogated starting January 1, 2008.

Professional and Independent Personal Services

Professionals, artists, and others rendering professional or independent services are taxed on all amounts received as fees for these personal services. Individuals residing abroad with a Mexican permanent establishment are subject to tax on income from personal services attributable to such establishment. To compute their taxable income, these taxpayers may deduct all ordinary and necessary expenses for obtaining such income, including depreciation and amortization under the straight-line method on the cost of tangible assets used in obtaining income, together with installation expenses. If a tax loss is incurred in a tax year, it can be carried forward for the following ten years.

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The taxable amount received less the above-mentioned allowable deductions, deductions for medical and funeral expenses, and authorized donations, give the basis for determining taxable annual income for professional and independent personal services subject to tax. The annual return must be filed by April 30th of the following year. Such taxpayers are required to make monthly estimated tax payments at the latest by the 17th day of the following month according to the fees received less allowable deductions by applying a graduated rate scale with a maximum rate of 30 percent. These estimated tax payments are offset against the final tax.

Employees

Social Security Implications

Social security includes insurances covering accidents, diseases, invalidity and life (26.65 percent), nursery (1 percent), and retirement and old-age fund (6.275 percent). The employer portion for the social security contributions ranges between 30 and 36 percent of the salary, depending upon the risk of the work performed. The employee portion is approximately 5.4 percent.

The social security monthly base is capped at 25 times the general minimum wage. The minimum wage for 2011 in Mexico City is MXP 59.82 per day (or approximately US$5.02 at the rate of 11.92 Mexican pesos per U.S. dollar). Additionally, a housing fund (5 percent) and state payroll taxes, which rate usually is 2 percent of the payroll depending on the state, apply.

Employee Profit Sharing

As from the second year of operations, Mexican companies are required to pay a mandatory employee profit-sharing of 10 percent of its profits. The profit for this purpose is the taxable income for income tax purposes adjusted to eliminate any inflationary items included in such income.

The profit-sharing should be paid to the employees at the latest during the month of May of the following year.

Beginning for profits generated in 2005, employee profit-sharing paid may be of a deductible effect for income tax purposes for the fiscal year in which it is paid. Any profit-sharing paid may also be added to any tax loss incurred.

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Chapter 23

The Netherlands

Introduction

The Netherlands has long been considered the most favoured location for the establishment of holding, financing, and licensing companies. It continues to hold substantial advantages over its competitors due to advantageous local tax legislation and an extensive and expanding tax treaty network.

Key Tax Facts

Highest corporate income tax rate	25%
Highest personal income tax rate	52%
VAT rates	0%, 6%, 19%
Annual VAT registration threshold	No minimum threshold
Regular non-treaty withholding tax rates:	
Dividends	15%
Interest	0%
Royalties	0%
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

Co-production

A Dutch resident investor may enter into a co-production joint venture (JV) with a non-resident investor to finance and produce a film in The Netherlands. The exploitation rights may be divided worldwide among the JV members or each investor may retain exclusive media rights in its own jurisdiction with an appropriate income share to be derived from the remaining jurisdictions. Alternatively, the JV partners could allocate specific jurisdictions to specific investors.

Who is a tax resident?

Such an arrangement does not make the investors subject to tax in The Netherlands. The position of each investor must be determined separately. In the absence of specific film rules, this determination must be based upon generally accepted tax principles.

A foreign investor is only subject to corporate income tax (CIT) in The Netherlands if they are engaged in a trade or business in The Netherlands and if they conduct this trade or business through a permanent establishment.

Generally, to be engaged in a trade or business requires active participation in an economic activity in order to obtain a profit in excess of an ordinary return on passive investments. In other words, if the foreign investor only invests cash in order to obtain a normal return on capital, they will not generally be regarded as being engaged in a trade or business. If, on the other hand, they actively take part in the economic activity, i.e., production, in order to increase their investment income, they will be considered to be engaged in a trade or business. A loan to an active enterprise, i.e., apparently earning passive income, can under specific circumstances be reclassified as an equity investment. The fact that the investor's ultimate return is not fixed, but depends on the successful exploitation of the film rights, is a strong indication that they are engaged in a trade or business.

When drafting a JV agreement, attention should be given to the qualification "passive investor" versus "entrepreneur."

If the activities of the foreign investment company become more active, the company also risks being regarded as a Dutch tax resident as it then meets the "management and control" criteria. The foreign company would therefore be subject to tax in The Netherlands on its worldwide income. It would only be able to claim treaty or unilateral relief in order to avoid double taxation. In that case, foreign income could be exempt or a credit for foreign income could be obtained.

Once it has been established that the investor is involved in a trade or business, it must be determined whether their film exploitation activity is attributable to a Dutch permanent establishment. As a general rule, The Netherlands follows the definition of a permanent establishment included in the OECD Model Tax Treaty. There is one major exception that may be important. Under the OECD Model Tax Treaty a fixed geographical location is necessary in order to be considered a permanent establishment. Under Dutch domestic law, it is sufficient if there is a permanent link to Dutch territory. For example, if location shooting takes place for about 11 months in 11 different locations within The Netherlands and the set is moved regularly between those locations, this will constitute a permanent establishment under Dutch domestic law, but not under the tax treaties which follow the OECD Model Tax Treaty definition.

Provided that the exploitation can be kept separate from the production, and the film exploitation activities are exercised outside The Netherlands, foreign investors should not be subject to Dutch tax on their income.

If a link can be established between the exploitation of a film and the actual production activities performed through a Dutch permanent establishment, the income will be subject to Dutch personal income tax (PIT) or CIT. If the JV is set up as a BV, NV, an open limited partnership, or a similar foreign entity, a passive investment, e.g. a loan, may be reclassified as equity. The consequences of this are set out below.

PIT and CIT on business profits are imposed on net profits determined at arm's length based on the accrual method of accounting. This method provides the necessary flexibility in establishing the appropriate allocation of the JV's net income to all participants.

Since all Dutch treaties provide for full tax liability in The Netherlands, if trading income is allocable to a Dutch permanent establishment (as defined under the tax treaty), any relief for double taxation should be obtained abroad under the applicable tax treaty. In this case, Dutch income should not be taxable in the foreign investor's state of residence.

If the foreign investor is a resident of the United States, the United Kingdom, Australia or Japan, Dutch income will not be exempt in all cases. Under certain conditions, the foreign investor will be entitled to a foreign tax credit, for Dutch tax paid, against the domestic tax liability, pursuant to articles 22, 23, 24, and 25 of the respective tax treaties with The Netherlands. In this respect, it should be noted that the tax credit reclaim may cause a cash-flow disadvantage.

If the JV's film production activities are performed as a company, e.g., a BV or NV, the dividend distributions (return on equity investment) are, in the absence of tax treaties, subject to 15 percent dividend withholding tax. In other words, with respect to passive income, such as dividends, a reduction of withholding tax has to be applied for in The Netherlands, whereas double tax relief for active income allocable to a Dutch permanent establishment and subject to PIT or CIT must be obtained in the foreign investor's state of residence. The 15 percent dividend withholding tax rate is reduced under many tax treaties with The Netherlands.

As of January 1, 2007, the dividend withholding exemption applicable to EU based parent companies is granted for a shareholding of 5 percent or more. The exemption also applies to 5 percent shareholdings in open limited partnerships and common funds. Therefore, distributions to foreign investors with a shareholding of 5 percent or more who are resident in The Netherlands are not subject to dividend withholding tax.

Moreover, dividend withholding tax can be avoided if structured properly. In this respect, interposing a Dutch Cooperative should ensure that withholding tax will not be withheld on distributions from the Cooperative to a foreign investor. It should be noted that a tax ruling can be obtained from the Dutch tax authorities.

Partnership

Foreign investors and foreign producers may set up a Dutch partnership to finance and produce a film. If the type of partnership (see below) allows a distinction between limited and general partners, the passive investors are generally limited partners and the active producers are the general partners. The partnership may receive royalties under distribution agreements from both treaty and non-treaty territories, proceeds from the sale of any rights remaining after exploitation, and a further payment from the distributors to recoup any shortfall in the limited partners' investment. Such proceeds may initially be used to repay the limited partners, perhaps with a premium, e.g., a fixed percentage of the "super profits".

There are two types of partnerships in The Netherlands: general partnerships and limited partnerships. A general partnership does not have limited partners and is fully transparent, i.e., a proportionate share of all income and expenses is directly allocated to each partner. In addition, all partners are fully liable for all obligations of the entity. A limited partnership (CV) is a partnership with limited partners and general partners. The general partners are fully liable. Limited partners are only liable to the extent of their capital investment. However, limited partners are not allowed to carry on the business of the CV in which they participate. If they do, they lose limited partnership status and are regarded as general partners and therefore fully liable.

Under Dutch law there are two types of limited partnerships: the open limited partnership and the closed limited partnership. The basic difference is the transferability of the partnership interest. Strict rules apply to the transfer of interests in a closed limited partnership, whereas an interest in an open limited partnership is more freely transferable. From a tax perspective it should be noted that only the open CV is a taxable entity subject to normal CIT rates.

Limited partners in an open limited partnership are more or less treated as shareholders, i.e., profit distributions to the limited partners are treated as dividends and therefore subject to dividend withholding tax.

Limited partners in a closed limited partnership and general partners are taxed directly on the net income attributable to them. For non-resident limited partners it needs to be established whether the income so attributable is trading income, and if so, whether it can be allocated to a Dutch permanent establishment.

As noted earlier, trading income is only taxable in The Netherlands if it is attributable to a Dutch permanent establishment. The Supreme Court ruled that if:

- A closed limited partnership is engaged in trade or business in The Netherlands through a permanent establishment
- The non-resident limited partner's participation is attributable to their trade or business in their state of residence
- The non-resident limited partner is entitled to profits, but not necessarily liquidation proceeds, of the closed limited partnership,

then the non-resident limited partner is deemed to be engaged in a trade or business in The Netherlands through a permanent establishment.

As indicated above a passive investor generally participates as a limited partner, i.e., receiving income from capital. If the JV is a partnership, but not a taxable entity, the foreign investor (limited partner) is not subject to Dutch tax, unless they actually receive trading income allocable to a deemed permanent establishment in The Netherlands. Double tax relief has to be obtained in the state of residence (see above).

If the JV is a taxable entity under Dutch law, tax may be payable twice: CIT on worldwide net income at the JV level, subject to proportional tax relief for income allocable to foreign permanent establishments of the JV. Thereafter distributions are subject to 15 percent dividend withholding tax, again subject to treaty relief (see above).

A Dutch resident limited partner in a foreign transparent limited partnership is taxed on their worldwide income, including their share of the partnership's worldwide business profits. The Dutch tax authorities only provide tax relief to Dutch residents for profits directly attributable to the permanent establishment of the foreign partnership outside the Dutch tax jurisdiction.

Equity tracking shares

Equity tracking shares (ETS) have the same rights as ordinary shares but provide for profit-linked dividend distributions as well as preferential rights to assets on liquidation of the company.

ETS can legally be structured as preference shares, or by creating separate classes of ordinary shares. Additional profit rights, etc., may be granted to one or more separate classes of shares.

Any dividend paid on the ETS is non-deductible for Dutch CIT purposes.

From a Dutch tax perspective, no distinction is made between ordinary shares and ETS. Subject to reduced tax treaty rates, a 15 percent withholding tax is due on dividend payments in respect of ETS, and the Dutch resident investor receiving foreign dividends on ETS is to be granted tax relief under the appropriate tax treaties. No withholding tax should be due if a Cooperative is used. Although Dutch resident individuals are generally granted a tax credit for foreign withholding tax under the appropriate tax treaty, no such credit is available to most corporate investors resident in the Netherlands. This is due to the fact that Dutch companies resident in The Netherlands normally benefit from the participation exemption, i.e., foreign dividends are not taxable, with the result being that no relief is given for foreign withholding taxes suffered.

Profit shares in a Dutch film production company (Dutch Company), or a film produced by such a company may also be granted without being linked to shares. In principle, any payments made by the Dutch Company to the owners of such profit sharing rights would be treated as a dividend, e.g., the payment would not be tax deductible for CIT and would be subject to a 15 percent dividend withholding tax, although a lower rate may apply on the basis of the EU-Parent-Subsidiary Directive or a tax treaty.

However, if the profit sharing right is granted to creditors or suppliers who are not shareholders in the Dutch Company, an arm's length consideration for any loans granted or supplies made to the Dutch Company would be tax deductible for CIT purposes. Also, no dividend withholding tax would be due on the payments.

Yield adjusted debt

A film production company may sometimes issue a debt security to investors. Its yield may be linked to revenues from specific films. The principal would be repaid on maturity and there may be a low, or even zero, rate of interest stated on the debt instrument. However, at each interest payment date, a supplemental, and perhaps increasing, interest payment may be due if a predetermined target is reached or exceeded, such as revenues or net cash proceeds.

As a rule, profit-linked interest payments are, in principle, fully tax deductible for the Dutch Company, and no dividend withholding tax would be due if the creditor does not hold any shares or similar interests in the Dutch Company. In this respect it should be noted that even without a formal shareholder relationship between a creditor and the borrowing Dutch Company, the conditions of the loan may be such that the loan is reclassified as equity.

As of January 1, 2007, only if a loan qualifies as a profit participation loan within the meaning of Dutch Supreme Court case law, will the interest on the loan be non-deductible. A statutory restriction continues to apply to certain long-term loans between affiliated parties for which no remuneration, or remuneration lower than arm's length, has been agreed on.

In The Netherlands, the classification of debt versus equity is based on all the facts and circumstances. Profit-linked debt is not automatically classified as equity. According to civil law, debt is generally also considered to be debt for tax purposes. However, Dutch case law indicates that under certain conditions a loan can be considered equity rather than debt.

The conditions under which a loan qualifies as a participating loan are as follows:

- The interest on the loan depends on profits; and
- The loan is subordinated; and
- The loan has no fixed term, but becomes eligible only in the event of bankruptcy, suspension of payment, or liquidation.

Under these conditions certain loans, which are treated as loans under civil law, may be treated as equity for Dutch tax purposes. Such reclassification may sometimes be invalid for tax treaty purposes.

Assuming that none of these conditions are met, the investors are treated as receiving ordinary interest payments and no Dutch withholding tax is imposed. If the loan is reclassified as equity, the payments are treated as dividends and are subject to 15 percent withholding tax, unless this is reduced by a tax treaty or if a Cooperative is used.

If the interest payments are not linked to the profit of the Dutch Company, but for example to gross income, or specific types of income, such as royalty income, the interest payments are tax deductible, even if the creditor is also a shareholder in the Dutch Company. Nevertheless, this type of yield-adjusted debt may be reclassified as equity depending on the other conditions of the loan.

Sales and leaseback

On August 26, 1994, the Dutch Ministry of Finance issued a decree on the tax effectiveness of certain sale and leaseback structures between a film production company seeking to avoid cashflow problems and investors in a partnership. This decree was in reaction to press coverage of possible tax abuse under such structures involving major Dutch-based multinational enterprises.

According to the decree these types of transactions will only be recognized if two requirements are met:

- The sale should be "realistic," i.e., all ownership rights should effectively be transferred to the buyer; and
- The main aim of the overall transaction should not be the reduction of the tax liability of those involved.

Other tax-effective structures

From a tax perspective, a Dutch resident investor company may favor an equity participation in the production entity, since debt financing is, generally speaking, only beneficial if the production entity has sufficient profits to absorb the deductible interest expense.

In doing so, the investor company would convert taxable interest on excess cash into non-taxable dividend receipts, if the participation exemption applied.

Another possibility is the use of a partnership, as this would allow the investor to make an immediate deduction for start-up losses.

A wide variety of methods are available to cash in on profits allocable to, for example, a U.S. investor. If payments can be structured as royalties or interest, payments can be made without any Dutch withholding tax being owed.

Tax and Financial Incentives

Investors

Until 2007, Dutch tax law contained a special tax incentive for the film industry. The incentive consisted of a system of discretionary depreciation and an investment allowance (55 percent in 2006 and 2007) for investments in films. The incentive was abolished as of July 1, 2007.

There are still tax incentives for investments in The Netherlands that may be applied by film companies. However, actual production and exploitation is required. Tax facilities are not applicable if a film was not produced.

Investment incentive

The *small-scale investment tax incentive* provides for a tax deductible allowance if specific circumstances are met. A taxpayer may apply the deduction if they make an investment of between EUR 2,200 and EUR 301,800 in certain fixed assets during the tax year. The deduction varies from 1 – 28 percent of the total investment.

The investment deduction requires that the film be considered a business asset.

To apply the small-scale investment deduction, the investments made by the partners in a joint venture will be combined.

Free depreciation and accelerated depreciation

As a reaction to the recent global financialcrisis, the Dutch government announced a package of tax measures. The measures are intended to provide a positive impulse to the economy and prevent further economic stagnation. One of the tax measures involves accelerated depreciation on certain assets.

In order to ease the need for liquid funds and financing by companies who will be replacing or expanding their investments, a one-time reintroduction of free depreciation or accelerated depreciation took effect as of January 1, 2009.

The measure allows companies that invest in tangible assets between January 1, 2009, and December 31, 2011, to depreciate them over two years, up to a maximum of 50% in 2009, 2010, or 2011, with the other 50% being depreciated in the following years.

The measure is limited to investment commitments made in the 2009, 2010, or 2011 calendar year or development costs incurred in 2009, 2010, or 2011. The amount of the free depreciation cannot exceed the amount paid in 2009, 2010, or 2011 with regard to the commitments or the amount of development costs incurred in that year. Furthermore, the measure only applies to new assets. Secondhand assets are excluded.

Free depreciation or accelerated depreciation is available both to enterprises subject to corporate income tax and to those subject to personal income tax.

The measure will apply to all new purchased business assets, except:

a. real estate;
b. houseboats;
c. motorbikes;
d. motor vehicles;
e. cars (exemptions are made for extremely fuel-efficient cars);
f. intangible fixed assets (including software);
g. animals;
h. public works assets such as land, road, and water management facilities;
i. company assets that are primarily made available to third parties;

Furthermore, it will not be possible to combine the new temporary measure with free depreciation for new businesses subject to personal income tax, as well as environmentally friendly business assets.

The free depreciation regulation is only applicable to tangible business assets in use before January 1, 2014.

The free depreciation regulation is not applicable to films, because films are regarded as intangible fixed assets.

However, the development costs of intangible fixed assets can be depreciated immediately in the calendar year in which the costs were incurred. This regime is advantageous for the productions of films.

From patent box to innovation box

Profits from self-developed innovations (product innovations, process optimizations/software development etc.) are subject to favourable tax rates if the taxpayer qualifies for the innovation box tax incentive. The innovation box was initially known as the patent box.

This tax incentive for research and development (R&D) and other intangible assets took effect as of January 1, 2007. In the optional patent box, the income from R&D was taxed at an effective rate of 10%. Intangible assets developed after 2006 with respect to which patent rights (or plant variety rights) had been granted are eligible for allocation to this box. Assets developed or patented outside The Netherlands may also qualify. Allocation of intangible assets acquired from third parties is limited. Income will be

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allocated to this box only to the extent that it exceeds the development costs. In addition, the taxable profit will comprise the income, less amortization and any other attributable costs. This means that both income and cost items are subject to the effective rate of 10% (as of 2010: 5%). Up to and including 2009 a fixed limit applied to the amount of income that could benefit from the 10% rate. The limit was set at four times the total amount in development costs ("box range"). The amount exceeding the box range is taxed at the normal rate. As of January 1, 2010, this limitation has been abolished. All the income can now benefit from the lower tax rate. The effective tax rate was also amended from 10% to 5% and the tax facility's name changed from patent box to innovation box. The scope of the innovation box is broader than that of the patent box, it also covers income from non-patented R&D that meets certain procedural requirements.

Currently, the innovation box allows the income derived from qualifying intangible assets to be taxed at an effective tax rate of 5% in comparison to the standard corporate tax rate of 25%. An asset will qualify for this relief if it has been granted a patent, or if it is derived from qualifying R&D.

In order to apply the low effective tax rate, the taxpayer must have obtained:

– A Dutch or foreign patent for one or more elements of the innovation in question ("patent option"); or,

– An R&D certificate from the Dutch government in respect of the time spent on developing the innovation ("R&D certificate option"). The certificate relates primarily to another incentive - a reduction of payroll tax otherwise due on qualifying R&D salary costs (see below). However, it can now also be used as an "entry ticket" for the innovation box.

Payroll tax
As mentioned above, another specific tax incentive provides for a reduction of payroll tax due by companies engaged in qualifying research and development activities.

In February 2011 it was announced that a tax shelter for film financing, similar to that applying in Belgium, is under consideration. Such a facility does not yet exist in The Netherlands.

In the absence of any further specific tax incentives, any possible tax benefit must be derived through the application of general legal tax principles. Under these principles relatively small acquisition costs, but not the purchase price, of investments may be tax deductible. It should also be noted that debt is rarely

reclassified as equity, as a result of which interest payments are generally tax deductible. As of January 1, 1997, specific anti-avoidance legislation applies to certain shareholder and intra-group loans. Interest costs for legitimate loans to finance shares in qualifying foreign participations are, contrary to the general rule, non-deductible.

As the rule for qualifying participations only applies to legal entity investors, this limitation on the tax deductibility of interest expenses does not apply to individual investors. Of relevance for individual investors is whether the loan is related to the financing of a taxable source of income. If not, the interest deduction is limited.

Finally, it is possible to make tax deductible allocations to general and specific bad debt provisions.

Producers
Several quasi-governmental agencies, private trusts, and institutions, for example *Het Nederlands Filmfonds* http://www.filmfonds.nl, provide a number of subsidies, although the provision thereof is subject to certain conditions. The factors most commonly taken into account in establishing the applicant's entitlement to grants/subsidies are: the length of the film (a film shorter than 1.5 hours is considered a short film), the type of content (artistic, entertainment, etc.), the number of actors involved, location, budget, duration of shooting, etc.

Distributors
No specific tax or other incentives are available to distributors of film rights. In addition, The Netherlands does not distinguish between royalty payments made to holders of copyrights resident within The Netherlands or to those resident outside The Netherlands, i.e., no withholding tax is due on royalty payments.

Actor and artists
Generally speaking an artist is treated as any other employee. See below under "Personal Income Tax".

Other Financing Considerations

Tax costs of share or bond issues
There is no capital tax in The Netherlands.

Exchange controls and regulatory rules
There are no specific exchange controls or other regulatory rules in The Netherlands.

Corporate Income Tax

Recognition of Income

Film production company – production fee income

Dutch resident companies as defined above and non-resident companies with a Dutch permanent establishment producing a film in The Netherlands without obtaining any rights in that film, i.e., "a camera-for-hire" company, are required to report an arm's length profit on the production. The tax authorities can question the level of taxable income reported if they consider that it does not reflect an arm's length situation; however, prior agreement can be reached in order to prevent this issue from arising.

Whether or not a non-resident company has a permanent establishment in The Netherlands is determined based on all the facts and circumstances of the particular case (see above). It is unlikely that the film set will qualify as a permanent establishment. In particular, the fact that such an establishment is permanent may be difficult to prove. It may even be difficult to argue such a case for a production office.

Film distribution company

Dutch resident companies and Dutch permanent establishments of non-resident companies are required to report income on an accruals basis.

As such, lumpsum payments for the acquisition of intangibles are amortized over time, whereas royalties are generally deductible when due. In the absence of a distinction between regular income and capital gains, both amortized payments and deductible royalties reduce trading income. However, under the flexible principle that governs the determination of taxable income, i.e. sound business practice, accelerated amortization may be allowed, as a result of which taxation may be deferred.

If the distribution company also exploits the licenses in another jurisdiction and does so through a permanent establishment, part of the expenses may be allocable to the foreign branch and therefore reduce the double taxation relief.

A distribution company must act in accordance with arm's length principles. Transactions between unrelated parties are generally deemed to be at arm's length.

The pricing of transactions between related parties must be substantiated on the basis of the pricing of third party transactions.

The policy under which the Dutch tax authorities accept standard royalty spreads for back-to-back transactions has been withdrawn. As of January 1, 2006, the income to be reported in respect of intra-group back-to-back transactions must be determined on a case-by-case basis and can be lower or higher than required under the former policy.

As of January 1, 2006, distribution companies entering into back-to-back transactions with related parties need to assume some risk in respect of the back-to-back transactions in order to be regarded as beneficial owners of the royalty receipts for Dutch tax purposes. If the distribution company qualifies as a beneficial owner of the royalties received, withholding tax levied on that royalty income can be set-off against the tax due on the royalty income.

It may be possible to claim an informal capital contribution, if the film rights are contributed to a Dutch Company at a low value. As a result of such an informal capital contribution, the film rights can be capitalized and amortized on the basis of their estimated fair market value. In that case, only a proportion of the income is subject to Dutch CIT.

Rates

The top corporate income tax rate is 25percent, levied on taxable profits, including capital gains, in excess of EUR 200,000. The tax rate applicable to the first EUR 200,000 of taxable profits is 20 percent (rates for fiscal year 2011).

Amortization of Expenditures

Production expenditures

If the production of a film results in the creation of a capital asset, and possibly involves additional substantial expenditures in respect of such an asset, the overall expenditures can be written-down in accordance with the principle of sound business practice.

The development costs for intangible fixed assets can be depreciated immediately in the calendar year in which the costs were incurred.

The principle of sound business practice allows amortization in conformity with the expected revenue flow, i.e., if a substantial amount of income is expected to be received in the year after the creation of the fixed asset, a substantial part of the overall write-down could be allocated to that year.

Factors taken into account in determining the actual annual amortization include the expected economic life of the film, the continuity of the film production process, and the existence of contracts to guarantee minimum payment by third parties, including government subsidies.

Other expenditures

With respect to the deductibility of expenses, film distribution companies and film production companies have no special status under Dutch tax law, unless a ruling has been obtained. Consequently, they are subject to the same rules as other companies. All non-capital business expenditures can be set off against current income, whereas capital assets can normally be depreciated over their economic lives. Since land is unlikely to depreciate as a result of being used by a company in the performance of its business activities, no depreciation is generally available for the purchase price of land.

Losses

Since no distinction is made between capital gains, trading profits, and other income, all such income is aggregated. This means that unrelieved losses incurred in the production or exploitation of one specific film can be set off against other income. The remainder of the loss can be carried back one year and carried forward nine years.

A temporary extension of the loss carry-back regime applies for 2010 and 2011. For losses up to a maximum of EUR 10.000.000 per year, the period will be extended for one to three years, subject to conditions. This is a temporary measure taken as a result of the global financial crisis.

The set-off must follow an obligatory sequence. A loss suffered in 2011 will first be set off against the 2008 profit, and only thereafter against the profits for 2009 and 2010. If the temporary extension of the loss carry-back regime is used, the period for the loss carry-forward will be decreased from nine to six years.

If the loss cannot be set off against the profit from preceding years, then the loss can be carried forward. The loss carry-forward period is limited to nine years. A transitional rule applies to losses suffered in 2002 and earlier and not set off. These losses can be set off through 2011. This also applies to loss carry-forward for the purposes of personal income tax.

For limited partnerships, the loss is capped at an amount equal to the limited partnership share.

However, this is conditional on actual production taking place. If a film is not exploited, the limited partners cannot deduct their losses.

Foreign Tax Relief

Producers

Dutch resident producers are taxed on their worldwide income. To the extent that income can be allocated to a foreign permanent establishment, proportional relief is available under the applicable tax treaty or the Dutch Unilateral Decree for the Avoidance of Double Taxation.

Non-resident producers who derive income from a Dutch permanent establishment are taxed in The Netherlands on their Dutch source income and have to claim relief abroad.

Distributors

Unless a treaty provides otherwise, withholding tax imposed by developed countries can only be taken into account as a deductible expense. However, many of the tax treaties concluded by The Netherlands substantially reduce foreign withholding taxes. In addition, the withholding tax imposed on passive income (dividends, royalties, and interest) received from less developed countries or countries with which The Netherlands has concluded a tax treaty, are generally creditable against the recipient's Dutch income tax liability. Moreover, several tax treaties concluded by The Netherlands provide for tax sparing credits, i.e., a tax credit for foreign withholding taxes even if no actual withholding tax is imposed in order to promote inward investment.

Foreign distributors receiving interest and royalties from The Netherlands are able to benefit from the favorable Dutch investment climate which does not impose withholding taxes on such payments.

Indirect Taxation

Value Added Tax (VAT)

The Netherlands, and all European Union Member States, imposes VAT on the sale or supply of goods or services. The VAT paid by an entrepreneur to its suppliers is generally deductible against the entrepreneur's VAT liability. However, the credit is denied for input tax on services and goods used for exempt supplies of goods or services to recipients within the European Union. Furthermore, credit is denied for VAT on goods and services used for certain non-business purposes.

Three rates apply: the standard rate is 19 percent, e.g., for supplies of completed films; a reduced rate of 6 percent that applies to certain goods, e.g., food products, and certain services; and the zero rate that applies mainly to exported goods and services and intra-EU transactions.

Entrepreneurs are obliged to register as a taxpayer if they supply goods and services taxable within The Netherlands for which a reporting obligation exists.

A partnership can be considered a taxable person if it acts as such towards third parties. Also a permanent establishment in The Netherlands of a foreign company can be considered an entrepreneur for the purposes of VAT. Consequently, also partnerships and permanent establishments of non-resident companies should register for VAT in respect of the goods and services they supply and their intracommunity transactions in The Netherlands.

According to a decree from the Dutch Ministry of Finance – the Printing Price Decree – the taxable amount is limited to the printing price, if the following conditions are met:

- The decree is only applicable on the supply of a fully completed film or video production by an entrepreneur for its own business purposes or a third party whereby the entrepreneur is acting under orders of that principal.
- The entrepreneur must intend the film to be produced for its own use or that of the principal, if the production is being produced for a third party.
- The entrepreneur or principal must have the first right of showing or distributing the film or video.
- The decree is only applicable to films or video for use on professional equipment.
- The taxable amount for the supply of these films or videos is the printing price, fixed at EUR 0.34 (excluding VAT) per meter.
- The printing price resolution is also applicable on live television programs. The taxable amount is fixed at EUR 5 (excluding VAT) per minute.

If a film is supplied from The Netherlands to a recipient in another EU Member State, the supply is subject to a zero VAT rate, provided that the recipient has an EU VAT identification number in the country of arrival and the supplier can provide proof of transport to another EU Member State. Such a transfer is referred to as an intra-community supply. The supplying company should report its intra-community supply in its quarterly listing and its periodic VAT return, and the supplier should retain proof of the export, e.g., transport documents, etc. No intra-community supply is performed, if the film is transported to another EU Member State under a license which permits the exhibition of that film in that EU Member State.

If a film is supplied to a non-EU country, this supply is also zero rated if the supplier can provide proof of the export, e.g., customs documents.

The company must account for VAT in the periodic VAT return. The VAT return should in principle be filed on a quarterly basis. It is also possible to file returns on a monthly or yearly basis, depending on the VAT due. In the VAT return, the company accounts for VAT due and recoverable in the applicable period.

VAT is generally due at the moment an invoice is or should be issued or at the moment the consideration is received if prior to the invoice date. An invoice should be issued before the 15th day after the month in which the goods or services were supplied.

In general, the company that is the supplier should charge VAT. The supplying company should file this VAT in its VAT return covering the period in which the pre-payment is received or when an invoice is or should be issued, whichever is the earlier. However, if a foreign entrepreneur without a Dutch permanent establishment supplies goods or services to a Dutch entrepreneur or legal entity/non-entrepreneur, the recipient of the goods or services is liable for Dutch VAT under the "reverse charge" mechanism.

The supply of distribution rights is also taxable at the general rate of 19 percent. The supply of distribution rights to foreign resident entrepreneurs or to non-entrepreneurs resident outside the EU is taxable in the country where the recipient is established, or in the country where the recipient has a permanent establishment if the rights are supplied to that permanent establishment. As of 2010 the supply of distribution rights is also taxable in the country where the recipient is established if the recipient is a foreign company that does not qualify as a VAT entrepreneur, but that does have a VAT registration in another EU Member State. In the case of a supply to a third party resident in The Netherlands, the supplier is liable for Dutch VAT if the supplier is resident in The Netherlands or has a Dutch permanent establishment for VAT purposes. In all other cases, the Dutch recipient company or legal entity is liable for the VAT due under the reverse charge mechanism.

No Dutch VAT is due on the sale of distribution rights to persons outside the EU. Please note that the supplier will retain his right to claim a refund of input VAT, accountable to that supply. Royalty payments are regarded as payments for services and are in principle taxable at the standard rate of 19 percent, provided that both parties reside in The Netherlands. As of January 2010 special reporting rules, i.e. listing, apply for cross-border supplies of services on which the reverse charge rule is applicable, i.e. special reporting rules for cross-border supplies of goods are already applicable.

If a Dutch resident company pays royalties to a company resident in another country, including EU Member States, in respect of the supply of copyrights, patents, licenses, trademarks or similar rights, the service is taxable at the standard VAT rate of 19 percent in The Netherlands, i.e., the VAT liability is shifted to the recipient (Dutch resident company or legal entity/non-entrepreneur) under the reverse charge mechanism.

With respect to paid downloads, web-broadcasting, video and audio on demand and other internet services to private individuals by a non-EU resident company we note that the local VAT liabilities must be determined in the private individual's EU Member State. VAT registration requirements may apply. Until 2015 a non-EU country may register in one of the EU Member States and charge local VAT to the private individual. Having a permanent establishment in one of the EU Member States may influence the VAT treatment. As of 2015 companies residing in and outside the EU should determine their local VAT requirements in each EU Member State where a private individual is resident. It may be possible to charge the local VAT rate applicable in the private individual's EU Member State, but account for the charged VAT through one VAT registration in one of the EU Member States, i.e. the "mini one-stop-shop". In this respect attention should also be paid to the VAT treatment of telecommunication, radio and TV broadcasting services as of 2015.

If festivals, concerts, and other cultural, artistic, sporting, scientific, educational, and entertainment activities are organized in The Netherlands, a requirement to register for VAT purposes in The Netherlands may apply.

It should be noted that the general rules and rates apply to all supplies unless the reduced rate or zero rate applies. In the absence of specific provisions, the general rules apply to the sale of peripheral goods connected to the distribution of a film as well as to promotional goods or services.

Please note that promotional services may be taxable in the country where the recipient is established, if the recipient is a non-entrepreneur outside the EU or an entrepreneur.

If there is no consideration payable for the supply of promotional goods or services other than samples or gifts of little value, VAT may be due on the purchase price or the cost price at the time of supply.

In The Netherlands, the supply of hotel accommodation, food, and non-alcoholic drinks is taxed at the reduced rate of 6 percent. Other supplies and services provided by a catering company during filming will be taxed at the standard rate. Please note that there is no credit for input VAT paid on

food and drinks in hotels and restaurants. A company cannot recover the input VAT on supplies of goods or services which are not supplied to that company but to its staff or third parties, if the company reimburses the costs of those goods or services.

Various taxes apply to imports of goods from outside the EU: VAT, import duty, excise duty, agricultural levy, anti-dumping duties and other duties, depending on the type of imported products.

Customs Duties

The following customs duties apply:

Type of goods	Customs duty rate
Cinematographic film, exposed and developed, whether or not incorporating a soundtrack, of a width of 35 mm or more Negatives and intermediate positives 37.06.109100	Duty free
Cinematographic film, exposed and developed, whether or not incorporating a soundtrack, of a width of 35 mm or more Other positives than intermediate positives 37.06.109900	6.5%, with a maximum of **EUR 5 per 100 meters**
Video masters (85.23 293900):	3.5%
Prints consisting only of a soundtrack 37.06.901000	Duty free
(Soundtrack film produced solely by processes other than photo electric, e.g., by mechanical engraving or magnetic recording is excluded)	
Publicity material (printed matter) 49.11.109000 Photo's illustrations 49.11.910090	0%
Temporary imports may be exempt from import duty and VAT for two years. Generally, a deposit and a license are required, apart from other applicable conditions.	

VAT is also due on imports. The taxable amount is the print price which is standardized depending on the type of film/video (see above).

Personal Income Tax

Non-Resident Artists

In The Netherlands, payroll tax is levied on artists in various ways. Artists may be employed under an employment contract, may choose to perform their activities in an employer-employee relationship, or may qualify for the special regime for artists.

Artist-employee

An artist who is employed by a principal is subject to the general Dutch payroll tax rules and is treated the same as other employees. In that case, the artist will not be entitled to deduct expenses. However, certain expenses specified in the law may be reimbursed or paid by the principal as tax-free allowances.

The person paying the artist is responsible for withholding and remitting payroll tax, national insurance contributions, social security contributions and income related contributions under the Health Care Insurance Act. This is usually the principal.

Payroll tax must be withheld at the time the wages are paid. Payroll tax is an advance levy of personal income tax. The payroll tax and national insurance contributions withheld may ultimately be credited against the personal income tax. The payroll tax rates are, in principle, equal to the personal income tax rates.

The following tax rates apply for 2011:

Taxable income	Payroll tax
EUR 0 to EUR 18,628	1.85%
EUR 18,629 to EUR 33,436	10,80%
EUR 33,437 to EUR 55,694	42,00%
EUR 55,695 and higher	52,00%

In addition, the artist may be obliged to be insured under a national insurance scheme. This is the case if the insurance obligation has been allocated to The Netherlands under international treaties. National insurance contributions are levied simultaneously with payroll tax.

The following national insurance contributions apply in 2011:

Old age pension	(AOW)	17.9%	on a maximum amount of EUR 33,436
Surviving dependents benefits	(ANW)	1.1%	on a maximum amount of EUR 33,436
Exceptional medical expenses insurance	(AWBZ)	12.15%	on a maximum amount of EUR 33,436

If both payroll tax and national insurance contributions are due, the combined rate for the first bracket is 33.00 percent and that for the second bracket is 41.95 percent.

In addition to remitting payroll tax and national insurance contributions, employed persons insurance contributions must be remitted for artists working under an employment contract. No employed persons insurance contributions are due if the insurance obligation has been allocated to another country under an international treaty.

The following social security contributions apply for 2011:

Unemployment insurance contributions	(WW)	4.20%	On a maximum amount of EUR 16,965
Health Care Insurance Act	(Zvw)	7.75 %	On a maximum amount of EUR 33,427
Invalidity Insurance Act (WAO)/Work and Income Capacity for Work Act (WIA)	(WAO/ WIA)	5.10%	On a maximum amount of EUR 49,297
Differentiated Invalidity Insurance Act contribution	(WAO/ WIA)	Variable per employer	On a maximum amount of EUR 49,297

Opt-in

If not all the conditions for an employer-employee relationship are met, the artist and the principal may choose to qualify the employment relationship as an employer-employee relationship. They must inform the competent tax inspector of their choice by submitting a joint statement. In that case, the normal payroll tax rules apply.

Work-related costs rules

As of January 1, 2014, the work-related costs rules are mandatory for all employers. The work-related costs rules took effect on January 1, 2011. They form part of the Tax Simplification Act 2010, which passed into law at the end of 2009. These rules extensively change the current system of tax exempt allowances, reimbursements, and similar benefits for employees. For 2011 through 2013, an employer may opt to continue applying the old system of reimbursements, allowances, and similar benefits at the beginning of the calendar year. This also applies if the obligation to withhold taxes commences during the course of a year.

Artist regime

A special regime exists in The Netherlands for artists who do not work in an employer-employee relationship and perform in The Netherlands under a short-term agreement or temporarily for other reasons. In this respect "short term" is understood to mean no longer than three months. The regime does not apply to foreign artists that perform in The Netherlands and are resident or based in a country with which The Netherlands has concluded a double taxation treaty, or in Aruba, Curaçao, Sint Maarten or the BES islands.

The artist regime only applies to persons engaged in an artistic performance intended to be listened to and/or watched by an audience. Examples include pop musicians, orchestra members, DJ's, or actors. Technicians do not fall under this definition. The person paying the artist's fees is obliged to withhold payroll tax on the fees. A foreign principal is only obliged to withhold payroll tax if it has a permanent establishment or permanent representative in The Netherlands.

The foreign artist's fees are subject to a 20 percent tax rate. Fees consist of the artist's total remuneration, including expense allowances, tips, and benefits in kind. Subject to specific conditions, allowances and benefits relating to consumption and meals, and travel and accommodation expenses do not form part of the fees.

An expense deduction decision (*kostenvergoedingsbeschikking* "KVB") can be used to qualify a portion of the fees as a tax-free allowance. The artist and the principal must submit a joint request to the Dutch Revenue's tax inspector for the issuance of such a decision. If the principal is not in the possession of such a decision, EUR 163 per performance may be exempted for the purposes of the tax levy.

Generally, payroll tax is the final levy for foreign artists because such artists are not required to file a personal income tax return. Nevertheless,

foreign artists may choose to do so. If the foreign artists are not insured in The Netherlands for social security purposes, tax rates of 1.85 and 10.8 percent apply to the first and second tax brackets, respectively. In addition, foreign artists will be entitled to deduct the expenses they incurred.

When a foreign group performs in The Netherlands and its members qualify as artists within the meaning of the special regime for artists, the group qualifies as a taxpayer for payroll tax purposes. In this respect, the rules that apply to individual artists will also apply to the group.

Employer obligations

Performing activities or having activities performed in The Netherlands which are aimed at having artists perform is considered a permanent establishment. It is possible to transfer the obligation to withhold payroll tax. The person to whom the obligation to withhold payroll tax is transferred must be in possession of a withholding agents statement. Several administrative obligations apply to the foreign artist's withholding agent.

A withholding agent is obliged to verify an artist's identity based on a valid and original identity document. The identity document must be photocopied, and the photocopy must be kept with the payroll accounts for at least five years. The artist must file a payroll tax statement before commencing the activities.

The withholding agent must ensure that the artist fills in their name, address, place of residence, and national identity number (BSN number). The artist must sign the payroll tax statement. If the artist fails to provide this information, the employer is obliged to impose a penalty and withhold payroll tax at the anonymity rate of 52 percent.

If an artist has a certificate of coverage for social security purposes, i.e. formerly E-101 or E-102, now A1, this must be kept with the payroll accounts. This certificate exempts social security contributions from having to be paid.

The payroll tax and social security contributions withheld must be remitted to the Dutch Revenue on a monthly basis. Together with the remittance of the payroll tax due, a payroll tax return must be filed electronically. If the payroll tax due is not paid on time or if the payroll tax return is incorrect, an assessment and a penalty will be imposed. The payroll tax due can be paid using the collection slip attached to the payroll tax return or by transferring the amount to the Dutch Revenue's bank account.

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Chapter 24

New Zealand

Introduction

Once called "one of the wonders of the world" the New Zealand film industry has continued to blossom as a popular filmmaking destination for international film production companies. This has been driven by New Zealand's remarkable and remote landscapes and the wealth of experience and comparatively cheap costs it can offer. The success of *The Lord of the Rings* trilogy (currently the fourth, sixteenth and twenty fourth highest grossing films of all time), has been followed by a string of other films, including *The Lovely Bones*, *District 9* and *Boy*, with *The Hobbit* and *Tintin* soon to be released.

New Zealand is particularly reknowned for its leading post-production and digital work. The digital effects in all three of the *Lord of the Rings* films, *King Kong* and *Avatar* received both Academy Awards and BAFTAs for Best Visual Effects.

The New Zealand Government is committed to the continuing development of a vibrant New Zealand film industry, and supports the industry through a variety of financial incentives. This includes funding from the New Zealand Film Commission (NZFC), the Large Budget Screen Production Grant (which provides a 15 percent government grant to assist large budget productions that meet certain "New Zealand spend" criteria) and the recent addition of a Post, Digital and Visual Effects Grant.

New Zealand is now well-positioned to offer a diverse variety of skills and expertise as well as facilities built to worldwide leading practice specifications.

Key Tax Facts

Highest corporate income tax rate	28%
Highest personal income tax rate	33%
Goods and services tax rate	15%
Annual GST registration threshold	NZ$60,000
Normal non-treaty withholding tax rates:	
Dividends	30%, 15% or 0%
Interest	15% or 0%
Royalties	15%
Tax year-end: Companies	March 31
Tax year-end: Individuals	March 31

Film Financing

Financing Structures

Co-production

New Zealand has entered into a number of co-production treaties with other countries. Currently New Zealand has full co-production agreements with the following countries:

- Australia
- Canada
- China
- France
- Germany
- India
- Ireland
- Italy
- Republic of Korea
- Singapore
- Spain
- United Kingdom

The NZFC is authorized by the New Zealand Government to deal with film and television co-production issues. If a co-production is appropriately structured, it is eligible for certification as a New Zealand film by the NZFC and may also be eligible for funding from the NZFC. This requires a producer in each of the co-producing countries and a minimum of 20 percent funding contribution or 30 percent creative contribution by New Zealanders. Unlike other countries, New Zealand does not operate a formal points system when calculating key creative positions. As a minimum, the writer or director must be a New Zealander, and a New Zealand actor must be chosen for one of the major roles.

Partnership

At present, New Zealand has two forms of partnerships—general and limited liability partnerships.

General partnerships are not tax paying entities in their own right—partnership income is attributed to individual partners based on the partnership profit sharing arrangements. Partners return the partnership income in their individual income tax returns, and the income is taxable at the individual's marginal tax rate.

All partners will be subject to New Zealand tax on their share of the partnership profits, as the carrying on of a business by the partnership gives each partner a permanent establishment in New Zealand. As partnership income is taxable in the partners' own hands, and general partnerships have unlimited liability, they are not commonly used in any investment structure.

The new limited partnership rules have been in force since 1 April 2008 and provide that a limited partnership is a separate legal person from its partners.

Limited partnerships must have at least one general partner who carries on the partnership's business and one limited partner who may provide capital to the partnership but is not permitted to participate in the management of the limited partnership. General partners are jointly and severally liable for any debts or liabilities of the limited partnership to the extent that the limited partnership itself cannot meet these. Limited partners have limited liability except in some situations where they have participated in the management of the limited partnership.

General partners are able to claim a full deduction for their share of limited partnership tax losses but limited partners can only claim tax losses to the extent of their economic loss. The limited partnership rules calculate this by limiting a limited partner's losses to the amount of the tax book value of their investment into the limited partnership. If in any year a limited partner was left with losses that they could not utilize, then these can be carried forward to a future year.

Non-resident partners are only subject to New Zealand tax on their New Zealand sourced income. This is because limited partnership income still flows through to the partners.

Unincorporated joint venture

A New Zealand resident investor may enter into a New Zealand-based unincorporated joint venture ("UJV"), also known as a contractual joint venture, with a foreign investor to finance and produce a film in New Zealand. The rights of exploitation may be divided worldwide amongst the UJV members, although the New Zealand company may retain exclusive media rights in New Zealand.

Difficulties often arise in determining whether the arrangements entered into are UJVs or partnerships. The legal documentation is critical and needs to be carefully drafted to avoid unintended consequences. If the agreement created a partnership then all activities carried on in New Zealand would be on behalf of the partnership and is likely to create a taxable presence in New Zealand for the foreign investor (subject to any relevant tax treaty).

If a UJV is established, provided that the exploitation of the film can be kept separate from the production, the foreign investor should not be subject to New Zealand tax on the income it receives from exploiting the film in the overseas territories. This is because the investors are not sharing overall revenues, but take various worldwide rights to exploit from within their own home territories. As long as the foreign investor cannot be said to be carrying on a trade in New Zealand of film production or exploitation, New Zealand tax would be solely chargeable in respect of the New Zealand investor's activities and any other trade that the foreign investor may carry on in New Zealand.

The issue is more complicated if the foreign investor produces the film in New Zealand under a production contract. The foreign investor is likely to be taxed on the basis that business profits arise in respect of a permanent establishment that it operates in New Zealand. New Zealand's tax rules require an arm's-length level of profit be returned in New Zealand. In these circumstances, it may be more appropriate to create a separate, New Zealand-incorporated, special-purpose company to undertake the production and set an appropriate market rate for the production fee so that this risk is lessened.

The New Zealand company would be taxed on profits arising from its exploitation of the film. The foreign investor would only be taxable when it carried out the production of the film, provided the correct structure was in operation.

New Zealand branch

If the foreign investor produces the film in New Zealand, it is likely that it would have a production office and hence a permanent establishment in New Zealand. The business profits relating to that permanent establishment would be taxed in New Zealand and the foreign investor would have to rely on an applicable double tax treaty to obtain relief.

New Zealand's tax treaties generally provide that New Zealand tax on business profits is creditable against the tax in the foreign jurisdiction. New Zealand currently has tax treaties with the following countries:

- Australia
- Austria
- Belgium
- Canada
- Chile
- China
- Czech Republic
- Denmark
- Fiji
- Finland
- France
- Germany
- India
- Indonesia
- Ireland
- Italy
- Japan
- Malaysia
- Mexico
- Netherlands
- Norway
- Philippines
- Poland
- Republic of Korea
- Russian Federation
- Singapore
- South Africa
- Spain
- Sweden
- Switzerland
- Taiwan
- Thailand
- United Arab Emirates
- United Kingdom
- United States of America

New Zealand subsidiary

A New Zealand subsidiary would provide foreign filmmakers with the greatest flexibility. To the extent that funds are required in New Zealand, the subsidiary could obtain a limited license from a foreign copyright holder and make the film in New Zealand under that license. The fee to the production company can be structured on a cost-plus basis.

Equity tracking shares

The term "equity tracking shares" is not commonly used in New Zealand. The term internationally refers to shares that provide for dividend returns dependent on the profitability of a film production company's business. These shares have the same rights as the production company's ordinary shares except that dividends are profit-linked and have preferential rights to assets on a liquidation of the company.

If the production company is resident in New Zealand, these tracking shares would be regarded as preference shares. The dividends paid on the tracking shares would be treated in the same way as dividends paid on ordinary shares.

If the tracking shares are acquired by a New Zealand resident investor, but the production company is resident elsewhere, any dividends received on the tracking shares would be treated in the same way as dividends received on ordinary shares. Any tax withheld would be dealt with according to the dividend article of the appropriate double tax treaty. Alternatively, where no double tax treaty exists, a unilateral foreign tax credit is likely to be available under New Zealand domestic law.

Yield adjusted debt

A film production company may sometimes issue a "debt security" to investors. Its yield may be linked to revenues from specific films. The principal would be repaid on maturity and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplementary (and perhaps increasing) interest payment may be

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paid where a predetermined target is reached or exceeded (such as revenues or net cash proceeds).

For New Zealand tax purposes, this "debt security" is likely to be treated as equity ("a section FA 2 debenture"). Further, any "interest" paid on the security would not be tax deductible and would be treated as a taxable dividend.

Sale and leaseback

New Zealand has tax legislation to help ensure that taxpayers entering into transactions involving the sale and leaseback of certain property are not entitled to deductions for the lease payments, which Inland Revenue describe as "in substance repayments of loan principal."

Tax and Financial Incentives

Investors

There are no specific tax incentives in New Zealand for investors in the film industry. However, the Government has introduced several funding schemes to encourage the production of New Zealand films.

Government funding schemes

Large Budget Screen Production Grant

In 2003, the New Zealand Government introduced a Large Budget Screen Production Grant ("LBSPG"), which currently provides eligible applicants a tax-exempt grant of 15 percent of Qualifying New Zealand Production Expenditure ("QNZPE").

QNZPE is expenditure on goods or services provided in New Zealand, and includes expenditure for the use of land in New Zealand.

Productions need to have QNZPE of at least NZ$15 million to qualify. For television series, individual episodes that have a minimum average spend of NZ$500,000 per commercial hour may be bundled to achieve the NZ$15 million threshold. Other productions may also be bundled if they meet certain criteria, being that the QNZPE is at least NZ$30 million for the bundle and NZ$3 million for each individual production; all the productions in the bundle have completed principal photography within a 24 month period; and the applicants for each individual production are related to each other by having a common shareholding of at least 50 percent.

Applicants for the grant must be either a New Zealand resident company or a foreign company with a fixed establishment in New Zealand for the purposes of lodging an income tax return.

Successful applicants are not eligible for any other New Zealand Government film finance contribution or tax incentive in relation to the production (see discussion under corporate taxation below) or funding through other government agencies.

The screen production must be a feature film, a television movie, television drama series or mini-series. Applicants can submit an application for the grant once the screen production is completed (but within 90 days of the completion date) or once the QNZPE has exceeded NZ$15 million (or where the NZ$30 million bundle threshold will apply, when the first individual production has reached QNZPE of NZ$15 million), or each time a production reaches a QNZPE of NZ$50 million.

Changes were made to the LPSBG in October 2010 to improve New Zealand's competitiveness as a film destination for very large budget films by creating a new additional grant of up to $9.75 million for expenditure that is excluded under the standard grant. The additional grant is only available for productions that spend over $200 million in New Zealand.

Post, Digital and Visual Effects Grant (PDVG)

To qualify for the PDVG, the QNZPE for a production must be between NZ$3 million and NZ$15 million and be spent on or necessarily related to specified post, digital and visual effects work which are listed in the PDVG criteria. As for the LBSPG, the the QNZPE is expenditure on goods or services provided in New Zealand, including expenditure for the use of land in New Zealand.

Criteria relating to residency and exclusion from other grants are the same as for the LBSPG. The timeframe for submitting an application is after the NZ$3million threshold has been reached but within 90 days, as applies to the LBSPG.

New Zealand Film Commission (NZFC)

The NZFC has the responsibility to "encourage and participate and assist in the making, promotion, distribution and exhibition of films made in New Zealand by new Zealanders on New Zealand subjects", both domestically and internationally.

The NZFC provides financial assistance for New Zealand feature film projects and New Zealand filmmakers, by way of loan or equity financing. Loans are available for development costs and are repayable only if the film is actually produced. Equity financing is available for films which have past the development stage and are being produced. The NZFC has a total annual investment budget of approximately NZ$13 million, which it allocates across a minimum of four feature films and nine short films in any one year. These films usually fall within a budget range of NZ$1 million to NZ$5 million.

Approximately 84 percent of the NZFC's annual expenditure is committed to feature film production and development financing, although the NZFC's investment in a single project generally does not exceed NZ$150,000.

Screen Production Incentive Fund (SPIF)

The SPIF was set up in July 2008 and is administered by the NZFC. It provides funding in the form of a grant to eligible New Zealand feature film, television, single episode programme, documentary; series of programme and short form animation deemed to have significant New Zealand content.

A grant of 40 percent of the QNZPE is available for eligible feature films and a grant of 20 percent of the QNZPE is available for other format screen productions. The maximum grant payable is NZ$6 million per individual project.

The minimum QNZPE for an eligible feature film is NZ$4 million, whereas for a series of programmes or a single episode programme the minimum QNZPE is NZ$1 million and it is NZ$250,000 for a documentary or short form animation. Official co-productions are able to include Total Production Expenditure (as defined in the SPIF criteria) rather than just QNZPE to meet the required QNZPE thresholds.

The key difference between the LBSPG and the SPIF grant is that in order to be eligible for the SPIF grant productions must have significant New Zealand content as provided for in legislation, whereas the LBSPG criteria focuses on QNZPE only and does not have such a requirement. Accordingly, while it may be financially advantageous for large budget productions to apply for the SPIF grant, they may not meet the significant New Zealand content criteria and will therefore only be able to apply for the LBSPG.

When determining if a production has significant New Zealand content, factors such as the subject and location of the films; nationalities and places of residence of key crew, cast, investors and copyright owners; sources funding; ownership and location of equipment and technical facilities; and any other matters the NZFC deems relevant will all be considered.

If a film is made pursuant to any agreement between the New Zealand Government and the Government of any other country, then it is deemed to have significant New Zealand content.

As for the LBSPG, applicants for the grant must be either a New Zealand resident company or a foreign company with a fixed establishment in New Zealand for the purposes of lodging an income tax return.

Feature films which have received other government funding are still eligible for a SPIF grant whereas other screen productions which have received other government funding are not eligible. All productions are ineligible for receiving both a SPIF grant and a LBSPG or PDVG.

Applicants can apply for Provisional Certification of QNZPE or New Zealand content at any time before or during the production, however, this does not guarantee payment of the SPIF grant. After completion of the production, applicants have six months to apply for a Final Certificate which would grant the funding if accepted.

NZ on Air

NZ on Air provides funding to producers of television programs for broadcast on New Zealand free-to-air television channels. Approximately $80 million of contestable funding is allocated annually.

The aim of NZ on Air is to help ensure that New Zealand-made programs and broadcasts that would otherwise not be provided in a commercial market are made.

NZ on Air considers certain factors when considering a program for funding, including the production budget, the level of funding from other sources and whether the program reflects the diverse nature of New Zealand's population and its culture. NZ on Air also requires producers to have a commitment from a major New Zealand free-to-air broadcaster before it considers a program for funding.

Other Financing Considerations

Tax costs of share or bond issues

No tax or capital duty is imposed in New Zealand on any issue of new ordinary or preference shares. Nor does New Zealand impose stamp duty.

Exchange controls and regulatory rules

There are no specific exchange controls or other regulatory rules in New Zealand. There is therefore nothing to prevent a foreign investor or artist from repatriating income arising in New Zealand back to his or her own home territory.

No changes are expected to be made in the foreseeable future to reintroduce such controls.

The New Zealand Government, through the Overseas Investment Commission, maintains a low level of controls over "significant" foreign investment to help ensure investment that is inconsistent with government criteria is discouraged, particularly in relation to certain land. Under the Overseas Investment Act an "overseas person" must obtain consent to acquire or take "control" of 25 percent or more of a New Zealand business worth more than NZ$100 million.

Corporate Taxation

Recognition of Income

Film production company – production fee income

New Zealand Resident Company

If a special purpose company is set up in New Zealand to produce a film without acquiring any rights in that film, i.e., a "camera-for-hire" company, the tax authorities may query the level of attributed income if they believe that there is some flexibility in the level of production fee income that may be attributed to it such that it is below a proper arm's-length rate.

It is possible to seek a binding ruling in the form of an Advance Pricing Agreement from the New Zealand tax authorities to confirm an acceptable level of attributed income.

Non-New Zealand Resident Company

If a company is not resident in New Zealand but has a production office to administer location shooting in New Zealand, the tax authorities may argue that it is subject to tax in New Zealand by reason of having a permanent establishment in New Zealand, subject to specific exemption under an applicable double tax treaty.

If the New Zealand tax authorities attempt to tax the company on a proportion of its profits on the basis that it has a permanent establishment in New Zealand, they would first seek to attribute the appropriate level of profits that the enterprise would be expected to make if it were a separate enterprise operating on an arm's-length basis. It is likely that the New Zealand tax authorities would measure the profit enjoyed by the company in its own resident territory and seek to attribute a specific proportion of this, possibly by comparing the different levels of expenditure incurred in each location or the periods of operation in each territory.

If a company is not resident in New Zealand and does not have a production office in New Zealand, but undertakes location shooting in New Zealand, it

is unlikely that it would have a New Zealand tax liability since it would not be regarded as having a permanent establishment.

The New Zealand tax authorities would determine whether or not a "permanent establishment" exists by applying the appropriate article in the relevant double tax treaty, i.e., locations such as a branch, office, factory, workshop or similar site. If no treaty exists, New Zealand sourced income would be subject to New Zealand tax.

Payments to a non-New Zealand resident company performing services in New Zealand are subject to a 15 percent non-resident contractors' withholding tax. However, an exemption is available if the company can show that it does not have a tax liability in New Zealand (for example, if the non-resident company is not subject to New Zealand tax under a double tax agreement due to not having a permanent establishment). Application for the exemption must be made to the New Zealand Inland Revenue Department.

Film Production Company – Sale of Distribution Rights

If a New Zealand-resident production company sells (i.e., licenses rather than assigns) distribution rights in a film to an unconnected distribution company, in consideration for a lump-sum payment in advance and subsequent periodic payments based on gross revenues, the sale proceeds would normally be treated as income arising in the trade of film rights exploitation. The same rules would apply to whatever type of entity is making the sale.

The acquisition of such rights is treated as film expenditure and is tax deductible in the same manner as non-New Zealand film production expenditure (discussed below under "Amortization of Expenditures").

The receipts by the New Zealand production company would be regarded as royalties and the profits would be subject to corporate tax as profits arising from a trade. These rules apply whether or not the acquiring party is resident in a country with which New Zealand has a double tax treaty.

If intangible assets such as distribution rights are transferred from New Zealand to a connected party in a foreign territory, the tax authorities would seek to ensure an arm's-length consideration is provided.

Film Distribution Company

If a New Zealand resident distribution company acquires rights by way of a lump-sum payment for distribution rights from an unconnected production company, the payment for the acquisition of the rights is tax deductible in the same manner as non-New Zealand film production expenditure (discussed below under "Amortization of Expenditures"). The expenditure is regarded as a royalty payment rather than as the purchase of an intangible asset, unless the New Zealand company acquires all rights to the film. This would be the case whether the company exploits the rights in New Zealand or worldwide, and whether or not the production company is resident in a country that has a double tax treaty with New Zealand.

Where the recipient of the payments is non-resident and not subject to tax in New Zealand, the royalties are subject to New Zealand withholding tax.

The New Zealand withholding tax regime does not discriminate between royalty payments for films or other intellectual property. In the absence of a double tax treaty all royalties are subject to a withholding tax of 15 percent.

Examples of the relevant royalty rates under New Zealand's double tax treaties are as follows:

- U.S. — 5%
- Australia — 5%
- Netherlands — 10%
- U.K. — 10%
- Singapore — 5%
- Malaysia — 15%
- Thailand – dependent on type of royalty — 10% or 15%

The income arising from exploiting such rights is normally recognized as trading income. The distribution company would be taxed on the income derived from the exploitation of any of its acquired films, wherever and however these are sublicensed, provided that the parties are not connected. If they were connected, the tax authorities might question the level of income returned. For New Zealand taxation purposes, income in this case is normally recognized when the right to be paid has been irrevocably determined.

Transfer of Film Rights Between Related Parties

Where a worldwide group of companies holds rights to films and videos, and grants sub-licenses for exploitation of those rights to a New Zealand-resident company, care needs to be taken to help ensure that the level of

profit returned in New Zealand is based on arm's-length principles. The New Zealand tax authorities apply standard OECD principles in determining whether income is being returned on an arm's-length basis.

It is possible to obtain formal clearance of the attributed income in advance from the New Zealand tax authorities by way of an Advance Pricing Agreement.

Amortization of Expenditures

New Zealand tax legislation contains detailed rules regarding the timing of deductions that may be claimed when producing a film or acquiring rights to a film. In addition, there is a general rule that where expenditure (including film expenditure) has been financed by way of a limited recourse loan (i.e., a loan where repayment is conditional on the venture producing interest or an event occurring), no deduction may be claimed for deductible expenditures arising under the loan until such time as the borrower is personally at risk. Outside of this situation, the principles governing deductibility of expenditures are outlined below.

Production Expenditures

The costs of producing a New Zealand film (that has been certified as such by the NZFC) can be deducted in the year of completion. In addition, any costs incurred in later years are deductible in the year in which they are incurred. As noted above, the NZFC certifies a film as a New Zealand film where it has significant New Zealand content.

For non-New Zealand films, the deduction for film production expenditure is spread over two income years, beginning in the year of completion. In general, 50 percent of the production expenditure is deductible in the year of completion and the remainder is deductible in the following year. An exception to this applies where the income from the film derived in the year of completion exceeds the 50 percent deduction. In this case, the deduction in the year of completion is the minimum of the total production expenditure or the income derived from the film. Any remaining expenditure is deductible in the following income year.

There are also spreading rules in relation to expenditure incurred in acquiring film rights. Where the film is a feature film (a film that is produced primarily and principally for exhibition in a cinema), the deduction is pro-rated over the 24-month period beginning in the month in which the film was completed. Where the film is a non-feature film, 50 percent of the production expenditure is deductible in the year of completion and the remainder is deducible in the following year. The aforementioned exception also applies to this rule, where income from the rights in the film derived in the year of completion exceeds the 50 percent deduction.

The above rules do not apply to advertising films or commercials. In these circumstances, the production expenditure is deductible when incurred.

Other Expenditures

Certain other expenditures cannot be deducted, for example, any expenditures on capital account, such as the purchase of land, goodwill and investments. Neither can the acquisition of plant and machinery be deducted, although tax depreciation can be deducted at specific rates. Additionally, certain day-to-day expenditure is not fully deductible, such as business entertainment, or not deductible at all, such as expenditure that is too remote from any business purpose.

Losses

To the extent that a production company has incurred tax losses, those losses can only be carried forward and offset against future income. The losses cannot be offset against prior period income.

Unlike certain other territories, there is no time restriction for utilizing such trading losses, although there are rules that restrict the availability of loss relief following a change in ownership of a company.

Foreign Tax Relief

Producers and Distributors

There are no special rules for producers and distributors when it comes to foreign tax relief. They are treated as ordinary taxpayers.

If a New Zealand resident film distributor/producer receives income from unconnected, non-resident companies, but suffers overseas withholding tax, it is normally able to rely on New Zealand's wide range of double tax treaties to obtain relief for the tax suffered. If no such treaty exists between the territories concerned, it could expect to receive credit for the tax suffered under domestic law.

Indirect Taxation

Goods and Services Tax (GST)

GST is a broad based consumption tax payable on most supplies of goods and services at 15 percent. However, certain supplies (e.g., exports) are zero-rated, while others (e.g., financial services) are exempt.

Most supplies and purchases of goods and services made by film producers and distributors are taxable at the standard rate. However, credits are available for GST paid on goods and services purchased for business purposes, provided that the film producer/distributor is registered for GST in New Zealand. Supplies of goods and services to persons outside New Zealand can often be zero-rated (i.e., GST charged at 0 percent)—this may appeal to foreign companies producing films in New Zealand as this allows GST incurred in New Zealand to be recovered without a flow-through cost to the offshore party.

Customs Duties

The New Zealand Customs Service, rather than the Inland Revenue Department, levies and collects GST on imported goods and goods liable to excise duty (currently, only fuel, alcoholic beverages and tobacco products are subject to excise duty). The New Zealand Customs Service collects the GST as if it was Customs duty and the tax is imposed irrespective of whether the importer is registered for GST.

The New Zealand Customs Service also levies and collects Customs duty, which is levied on an ad valorem basis on certain imports.

Personal Taxation

Non-Resident Artists

New Zealand's tax treaties generally provide that non-resident artists are only taxable in New Zealand to the extent to which they perform services in New Zealand. The tax authorities would also seek to tax income received outside New Zealand in connection with a New Zealand performance, unless it relates to services carried on outside New Zealand.

If a non-resident artist receives any payment arising from or as a consequence of a New Zealand activity, the New Zealand payer is obliged to deduct withholding tax and account for this tax to the authorities. The rate of withholding tax varies depending on whether the artist is a non-resident entertainer (20 percent) or a non-resident contractor (15 percent).

Non-resident artists are only taxable on remuneration received in respect of services performed in New Zealand. Provided that genuine services are performed outside New Zealand and an arm's-length fee is payable for those services by the production company, no tax would be levied in New Zealand on those payments.

Fringe benefit tax (FBT) is levied at 42.86 or 49.25 percent on the employer in respect of benefits such as employer-provided cars, free or low interest

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loans, goods and services sold at a discount or provided free by an employer, and expenses paid on behalf of an employee. However, the use of certain commercial vehicles where private use is restricted, residential accommodation provided to an employee living away from home and a number of other minor items are not subject to FBT or withholding tax.

The employer is entitled to an income tax deduction for FBT against its assessable income.

Resident Artists
Resident artists are treated either as employees or independent contractors, depending on how the arrangement is structured. Film production workers are, by default, independent contractors unless engaged under a written employment agreement that provides that the person is an employee.

Independent Contractors
If the resident artist contracts through a company, he or she is subject to the ordinary company tax rules. However, if more than 80 percent of the company's income is derived from a single source for services provided by a single individual and the income derived is more than NZ$70,000, the income is attributed to the individual and taxable at the individual's marginal tax rate.

Where a payment is made to a resident artist or a "behind-the-camera" person (e.g., directors or behind-the-scenes support staff) who is not an employee, the payer is obliged to deduct withholding tax at 20 percent and account for this tax to the authorities.

Employees

Income Tax Implications
Film producers/distributors who have employees performing services in New Zealand are obliged to make regular, periodic payments to the New Zealand tax authorities in respect of the employees' personal tax liabilities arising from salaries or wages paid to them. Deductions are made under the "pay as you earn" system (PAYE). New Zealand employers deduct PAYE based on tax tables supplied by the tax authorities. These are designed to approximate the rates applicable on annual salaries.

Social Security Implications
Employers are not liable for superannuation contributions in respect of payments of salaries or wages. However, where the employer makes contributions to a superannuation scheme, they are required to deduct

specified superannuation contribution withholding tax in the same manner and at the same rates as PAYE.

Employers of New Zealand employees are obliged to deduct from their employees' salaries and wages the employees' Accident Compensation Corporation (ACC) levy. The rate is currently $2.04 per $100 of the employee's earnings, but capped at NZ$2,278.04. The levy is deducted in accordance with the PAYE system.

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Chapter 25

Norway

Introduction

The Ministry for Cultural and Church Affairs on July 1, 2001 established a foundation as a civil executive body under its auspices. The Norwegian Film Fund (the Film Fund) is charged with administering all national support for film production in Norway. According to its Statutes, the Film Fund shall also advise the Ministry for Cultural and Church Affairs on film policies. The Norwegian representation at Eurimages and the Norwegian MEDIA Desk is furthermore affiliated with the Film Fund.

The film industry is also trying to gain some tax concessions for the industry to attract private capital, but this work is still in its early stages. However, the Norwegian Government has issued a decree (Soria Moria-erklæringen) stating that Norwegian film activity shall be given a high priority in the future.

With regard to income tax, most film and theatre activities in Norway are directly subordinated municipal administration and, as a consequence, box office receipts are tax-free. However, for those who operate as privately owned corporations (very few), taxes have to be paid on company profits.

In 2004/2006 a comprehensive corporate tax reform was implemented in Norway. For personal shareholders income tax on dividend receipts above a basic allowance has been introduced. More importantly, an exemption regime for companies for dividends and capital gains/losses on shares and parts in partnerships has come into force. However, from 7 October 2008, 3 percent of exempted income under the exemption method must be added back to taxable income. Also, under this regime, there is no withholding tax on dividend payments to corporate shareholders within the EEA provided that a substance requirement is met.

Key Tax Facts

Corporate income tax rate	28%
Highest personal income tax rate, employee	47.8%
Highest personal income tax rate, self-employed	51%
Annual VAT registration threshold	No minimum threshold
This includes: ordinary/capital income rate	28%
Taxes levied on gross wages, etc.: Surtax varies from	9% to 12%
Social security contribution for self-employed:	11%
For employed	7.8%
VAT rate	25%
Normal non-treaty withholding tax rates: Dividends	25%
Interest based on commercial terms	0%
Royalties	0 %
Tax year-end: Companies	December 31
Tax year-end: Individuals	December 31

Film Financing

Financing Structure

Co-Production

A Norwegian investor may enter into a Norwegian based co-production (joint venture) with a foreign investor to finance and produce a film in Norway. The film rights may be divided worldwide among the joint venture members although the Norwegian company may retain exclusive rights in Norway. It should be noted that the entity subject to taxation normally would not be the joint venture itself, but each investor in the joint venture. Normally, the joint venture would be considered to be a partnership under Norwegian law if the participants under the agreement jointly form a business activity of some duration, sharing the profits and losses, and at least one of the participants has unlimited liability for the debts of the joint venture. A joint venture agreement where the purpose of the business activity is limited to a particular project would thus in many cases be a partnership. The fact that a co-production arrangement has been agreed does not necessarily mean that a partnership profit sharing arrangement exists. The arrangement would need to be reviewed from each investor's viewpoint to determine precisely the tax position of each party.

As long as the foreign investor cannot be said to be carrying on a trade or business in Norway in order to exploit film rights, Norwegian tax would be chargeable solely in respect of the Norwegian investor's activities and any other trade that the foreign investor may carry on in Norway. Consequently, it is vital that the joint venture legal agreement cannot be construed in such a way that the foreign investor can be regarded as carrying on a film production business in Norway or exploiting film rights. Unless the transaction is carefully structured, the foreign investor may be taxed on the full amount of its profits arising from film production and exploitation. The investor would need to help ensure that his or her film rights do not form a Norwegian activity.

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It is likely that a film production project lasting for some months may infer that a permanent establishment is being established in Norway. This may cause some discussions with the Norwegian tax authorities. If the foreign participants are treated as having a permanent establishment in Norway, they are taxable on the basis of the income attributable to the permanent establishment. Assuming that the film rights are deemed to be allocated to such a permanent establishment, there is a risk that worldwide income from the rights would be taxable in Norway. Where a foreign investor receives royalties from Norway in such a case, there is a risk that the income would be classified as business income and not royalties, depending on the circumstances. Where such income is regarded as business profits it depends on the tax treaty whether or not the recipients can obtain deductions in their resident country.

Partnership

A more formal arrangement than the co-production joint venture described above, is a partnership. Norwegian law provides for several kinds of partnerships, all of which are treated as transparent for tax purposes, as the partnership is not treated as a tax entity and partners are taxed on their respective shares of the partnership profits. The partners are taxed in accordance with the ordinary rules applying to business activities. When a partnership is set up under Norwegian law, the tax authorities would normally consider the partnership resident in Norway and liable to Norwegian taxation. It is more likely to be advantageous to carry on the Norwegian activities through a separate partnership.

Profit Taxation

From 2006 the split model is replaced by additional taxation on distributed profit to personal partners as general income. Thus, the partners are still subject to 28 percent taxation on all income irrespective of distribution, supplemented by 28 percent additional taxation on distributed profits to personal partners. In order to compensate for the initial 28 percent taxation, only 72 percent of the distributed profit would be taxable.

Distribution of Profits

To avoid chain taxation when shares are owned by limited companies, the taxation of companies' income from shares has been abolished. Such tax exemption applies both to distribution of business profits and to capital gains, except for a claw back of 3 percent on net gains and dividend. Correspondingly, capital losses on shares are no longer deductible.

For personal participants in partnerships and other transparent entities, the Government has decided to shield income in order to achieve equal treatment of partnerships and limited companies. In such companies, there would be reduced tax on a deemed risk free return on capital (basic allowance), whilst other income would be taxed as earned income.

Such partnership taxation would help ensure the same level of taxation on both retained and distributed profit as in limited companies and the maximum marginal tax rate of distributed income would be 48.16 percent (0.28+0.72*0.28).

This model implies that:

- There is no formal difference in treatment between active and non-active participants
- There is no significant difference in treatment between the professions and other businesses
- There is no limitation on deemed earned income
- There is no reduction for salary expenses in the deemed earned income
- The amount that is taxed as investment income would equal the dividends for shareholders

Surtax

A partner or shareholder working for a partnership or limited company may also be subject to surtax. The basis for the surtax calculation is the same as contributions to NSSS, (National Social Security System, see section on "Employees") gross salary, including benefits in kind, and net profit on any expenses remunerated by the employer.

In the surtax calculation a base amount is deductible. The deductible amount depends on which tax class the person belongs to. In Norway there are two tax classes. Single parents that are responsible for children below the age of 18 (or in fact support children above the age of 18) are taxed in class two. All others are taxed in class 1.

The surtax is calculated as follows in 2009:

Class 1 and 2:

Salary income up to NOK 441,000	0%
From 441,000 to 716,600	9%
Above NOK 716,600	12%

Limited Company
A shareholder's contribution to a limited joint stock company is not deductible for tax purposes. Thus, repayment of a shareholder's contribution is normally tax free.

For corporate shareholders an exemption system applies to all investments within the EEA. Under new rules, applicable from 2008, the exemption method, in relation to companies resident in low tax countries (i.e. the level of taxation is equal to 2/3 or more of the Norwegian tax if the foreign company had been resident in Norway) within the EEA, will only apply if the company invested in fulfils certain substance requirements. In the language of the legislation, it applies only if such a company is properly established in and performs real economic activity in the relevant country. The fulfilment of this criterion is based on the particular facts and circumstances.

For investments outside the EEA, the exemption method applies only if the shareholder holds 10 percent or more of the share capital and the voting rights of the foreign company. The shares must be held for a period of two years or more. Further, the distributing company must not be lowly taxed (i.e. the level of taxation is equal to 2/3 or more of the Norwegian tax if the foreign company had been resident in Norway). For investments outside the EEA not qualifying for the exemption, dividends and gains will be taxable and losses will be deductible.

However, from 7 October 2008, 3 percent of the exempted income under the exemption method must be added back to taxable income.

Companies may continue to deduct interest on debt incurred in order to finance acquisitions of shares from other taxable income.

Acquisition of Distribution Rights
Investors who do not enter into a co-production venture with a production company may possibly finance a film to an agreed proportion by acquiring certain distribution rights in the film. They may decide to retain such rights as profit. The tax treatment of the expenditure depends on whether or not rights are retained (see below under "Amortization of Expenditure – Depreciation").

Equity Tracking Shares
These shares provide for dividend returns dependent on the profitability of the film production company's business. Equity tracking shares have the same rights as ordinary shares, but provide for profit linked dividend distribution equated to the tracking shares. The investor acquires such shares in the company producing or holding rights in the film. These shares may have the same rights as the production company's ordinary shares/common

stock. For Norwegian tax purposes the dividend paid on the tracking shares is treated in the same way as dividends paid on share capital. There is no difference in the treatment of a dividend paid by a Norwegian resident company on ordinary and equity tracking shares.

The company is not entitled to deduct distributed dividends and dividends received by an individual shareholder are taxed at the ordinary rate, but an amount equal to a risk-free return on the invested capital is exempt from tax. The rate at which the deemed return is determined by the Ministry of Finance and corresponds to the interest rate for 3-month government loans after taxes (3.8 percent for 2008; the rate for 2009 will be published in January 2010). Any tax-free amount in excess of dividends received may be carried forward and set against future dividends or capital gains. The tax-free amount is computed separately for each share. The regime is applicable to all investments in shares both in Norway and abroad and also applies to investments in CFCs (under a complicated technical formula).

If dividend received is liable to withholding tax, a resident individual shareholder is entitled to foreign tax relief, cf. below.

Yield Adjusted Debt
A film production company may sometimes issue a debt security to investors where the yield may be linked to revenues from specific films. The principal may be repaid on maturity and there may be a low rate of interest stated on the debt instrument. However, at each interest payment date a supplemental payment may be paid if a predetermined amount is reached or exceeded. For Norwegian tax purposes, this predetermined amount would probably be classified as debt. The classification of the amount for tax purposes would depend on the terms of the agreement.

The conditions which determine whether or not it is treated as a dividend, royalty or interest are highly complex. The loan should in all circumstances be based on commercial conditions. With regard to taxation, a question of thin capitalization may arise, which may result in the tax authorities refusing to accept a deduction for the payment. As a general rule, the tax authorities would normally accept deductible interest on loans if such loans could have been obtained from a third party or a financial institution, etc.

Sale and Leaseback
In order to avoid cash flow problems and match investment expenses with future income receipts, a film production company may sell a film to a partnership, which then licenses the film rights back to the production company. As to contracts for cross-border leasing, hiring out, loan

arrangements and purchases on credit, the tax assessment and tax base may vary according to the contract in question. It is important that the wording of the contract is in accordance with its realities.

There are two different types of leasing arrangements: operating leases and finance leases. With regard to film, operating leases are the most common.

Operating leases are considered as ordinary hire. The lessor acquires an object and lets it out to another person for a certain consideration for a certain period of time, which may be extended. The lessor is the owner of the object and remains so. Usually the lessor has the right to perform maintenance on the object in question. A contract for an operating lease is often valid for a period of one or two years at a time, and often extended automatically for a new period if not terminated by any of the parties within a certain time limit before the expiry date. This type of contract is often used for machinery that is easily outdated and where the producer or the lessee wants the product to be exchanged for newer models. An operating lease can include an option for the lessee to buy the object at a reduced price after a certain period of time.

There is no statutory legislation to levy withholding tax on lease payment out of Norway.

If the contract in reality is a purchase agreement, and where the lessee has the right to test the object for a short period, then the leasing contract may be considered by the authorities to be a sales contract right from the beginning.

Finance leases are normally considered as sales arrangements. Under a Norwegian finance lease, the lessee would normally have the option to buy the asset after a period of time, when the accrued rent has financed most of the expenses. If the contract states that the lessee has an obligation to buy the asset at the end of the leasing period, the finance lease agreement would be considered as a sales agreement by the tax authorities.

Other Tax-Effective Structures

Where a foreign company decides to set up a Norwegian subsidiary to produce the film in Norway, the investor may prefer an equity investment. The dividend contributed to the foreign parent company resident within the EEA would not be taxed because of the new tax exemption regime. However, applicable from 2008, the exemption method will, in relation to shareholders resident within the EEA, only apply if the shareholder fulfils certain substance requirements. Furthermore, special rules still apply for "group contributions," although consolidated tax returns are not allowed under Norwegian tax law.

A general arm's-length rule is laid down in Section 13-1 of the General Tax Act 1999 (the GTA). This provides that, where the income or wealth of a Norwegian resident company is reduced due to transactions with a related party, the authorities are empowered to estimate the amount of the shortfall in income or wealth and assess this to Norwegian tax.

By virtue of the amendments effective from 1 January 2008, the GTA provides explicitly that the OECD Guidelines (Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations) must be taken into consideration when applying the Norwegian arm's-length principle between Norwegian and foreign-related entities.

Transfer Pricing Documentation Requirements from 1 January 2008

As of 1 January 2008, new reporting requirements and transfer pricing documentation rules apply to companies that own or control directly or indirectly, either alone or together with a related party, at least 50 per cent of another legal entity.

According to the new rules, taxpayers must prepare transfer pricing documentation. The scope of the documentation required will vary according to the type of controlled transactions, the complexity of the transfer pricing issues and volume of intra-group transactions. Nevertheless, the tax authorities point out that some aspects are common for all transfer pricing matters and that they will expect these elements to be covered in any transfer pricing documentation presented to them. These main items include:

- Descriptions of the organization, the company and the industry
- Descriptions of the controlled transactions
- Functional and risk analysis
- Comparability analysis
- Choice of transfer pricing method(s) – reasons (and rejection reasons)

Tax and Financial Incentives

General Conditions for Public Support

Financial assistance for short and feature films is limited to films of Norwegian origin which:

- Are made by a Norwegian producer, individual or company
- Contribute significantly to national cinematographer art and culture
- Are made in either the Norwegian or Lapp language

Co-productions with foreign producers are eligible and/or are entitled to government monetary support in proportion to the capital allocated to its Norwegian co-producer, provided that the film is made with dialogue in either the Norwegian or Lapp language and a reasonable balance exists between national and foreign investment in terms of capital, labour, artistic contribution, profits and rights.

Production Support

Production support is given mainly by three national institutions, either individually or in combination. For the project to qualify for production support, an application must be approved by production executives and the governing boards of these institutions. The support is granted at the pre-production stage and paid in installments linked to the progress of the production process. Production support does not have to be repaid. The recipients must submit, inter alia, audited accounts of production costs to the Norwegian Film Institute (NFI). The NFI distributes and supports feature films, fiction films and documentaries through the Feature Film Commissioning Executive at the NFI.

The Film Fund supports feature length films, fiction, documentaries and shorter fiction according to certain requirements. The Film Fund aims to support the production of Norwegian quality films, especially films for children.

Available support totals approximately EUR 30 million annually. Within the legal framework of the Regulations for Support for Audiovisual Production, issued by the Ministry for Cultural And Church Affairs on August 8 2007, the Film Fund operates eight different schemes:

- Support for production of feature-length films (national films and majority co-productions)
- Support for production of short films
- Support for production of minority co-productions
- Support for production of television series
- Support for development of interactive productions
- Support for production of films on commercial criteria
- Box-Office bonuses (automatic support in proportion to ticket sales)
- Development support for film production companies

In addition, the Film Fund may provide development grants and marketing (P&A) support upon application.

Support is available to professional, independent audiovisual production companies registered in Norway, for the production of films in the Norwegian or Lapp languages. However, there is a new proposal including EEA resident companies and companies resident in Switzerland shall be entitled to apply for support. This is as a result of the EOS legislation. A ceiling of NOK 30 million (CPI-adjusted annually) applies to support of any one, single project (production support and automatic support combined). Support is provided as conditionally repayable loans.

Norsk Film AS provides support for the in-house production of feature films.

The drama department of the Norwegian Broadcasting Corporation (NRK/TV) may also provide production financing.

In addition, production support may also be available for European co-productions. The Nordic Film and TV Fund supports Nordic co-productions, while Eurimages is a support vehicle of the EU Commission, for film productions where more than three of Eurimages's Member States are involved in a co-production. Eurimages's funding is normally given through loan agreements.

Other feature film support is script development and project development.

For short films as well as for feature films, production support is granted at the pre-production stage and paid in installments linked to the production process. The production support is not repayable, but recipients must submit audit accounts of production costs to the civil management section of the Norwegian Film Institute for scrutiny, on completion of the production.

Norwegian feature films in Norwegian cinemas are normally entitled to a bonus of 55 percent of the gross box office receipts. Films for children are entitled to a 100 percent bonus. The box office bonus has an upper limit, based on the amount of financial risk taken by the producer. The higher the producer's financial share in the production, the higher the subsidy's ceiling. The Norwegian Film Institute fixes the bonus before production starts, based on the calculations and projected costs reported by the producer, and on the amount of public support granted.

According to the Regulation on support for film production companies, issued by the Ministry for Cultural and Church Affairs on August 21 2007, it is also possible for the film production companies to apply for support. The support may be given for development of business opportunities within audiovisual production or development of film projects.

Support is available to companies registered in Norway, branches and companies within the EEA.

Investors

There are as of yet no special tax incentives designed solely for film producers or film distributors in Norway. The following tax incentives might be applicable to individuals involved in the film industry.

Any loss on an investment in shares can be deductible against capital income for personal shareholders, provided that the person has adequate taxable income in Norway. As capital gains are not taxable for corporate shareholders, these are neither entitled to tax deduction for loss on disposal of shares.

In a partnership, the partners share pro rata in the underlying assets and loss, if any. For personal partners, distributed amounts can be taxed as capital income to the extent they exceed a basic allowance.

Companies regularly obtain relief for production costs incurred (see above) as their investments are automatically treated as business assets and therefore any decrease in value is tax deductible.

Actors and Freelancers

There are particular incentives available for actors and artists engaged in film production in Norway. Read more under "Personal Taxation" below.

Other Financing Considerations

Tax Costs of Share or Bond Issues

No capital duty tax is imposed in Norway on any issue of shares or loan capital.

Exchange Controls and Regulatory Rules

There are no specific exchange controls or other regulatory rules relating to the restriction of currency movements in Norway except for reporting obligations to the Central Bank of Norway. The Central Bank of Norway has a control function and a statistical reporting obligation (cash exceeding NOK 25,000 should be declared).

Corporate Taxation

Recognition of Income

Film/Television Program Production Company – Production Fee Income

Norwegian Resident Company

If a single purpose company is set up in Norway to produce a film, video or television program without acquiring any interest in the product, e.g. a "camera-for-hire" company, the tax authorities might query the level of attributed income if they believe it is below a proper arm's-length rate, cf. the transfer pricing rules. It is difficult to be specific about which level will

be accepted, but the lower the rate, the more likely an inquiry. In any case, the basis for the level of fee which is set should be clearly documented. The production company's accounts must be drawn up in accordance with generally accepted Norwegian accounting principles.

Foreign Company

If a foreign company is treated as having a permanent establishment in Norway, the Norwegian tax authorities would probably seek to attribute to it a share of the total profit related to the Norwegian activity, by establishing an arm's-length consideration for the activities performed by the Norwegian branch. The permanent establishment is taxed under the ordinary corporate income tax rate at 28 percent. Please note that there is no statutory legislation to levy branch tax in Norway.

Film Production Company – Sale of Distribution Rights

If a Norwegian resident company sells distribution rights in a film or television program to another company in consideration for a lump-sum payment in advance and subsequent periodic payments based on gross revenues, the sales proceeds would normally be treated as ordinary business income. There are no special rules covering the transfer of intangible assets, but see above concerning the differences between leasing and selling.

Film/Television Program Distribution Company

If a Norwegian resident company acquires rights in a film or television program from another company, the payment for the acquisition of the rights is normally treated by the distribution company as an expense deductible for Norwegian tax purposes.

Related Parties: Transfer of Film Program/Rights; Distribution as Sales Agent

Where a worldwide group of companies holds rights to films, videos or television programming, and sublicences these rights to a related Norwegian company, it needs to help ensure that the level of licence payments and commission income to be earned by the Norwegian company is justified. Any transaction within a worldwide group of companies is liable to be challenged by the Norwegian tax authorities since they would seek to apply an open-market third-party value to such transactions.

The Television Broadcaster

The television broadcaster, the cable channel provider and the satellite channel operator are like the cinema exhibitor, the last link in the production chain. Unlike the cinema exhibitor they are often a vital resource in the financing process for films and programming.

The Norwegian public broadcaster, NRK, derives a substantial amount of its income from a statutory license fee payable by each Norwegian home, but also covers an increasing proportion of its costs by selling its programs, entering into co-productions and making advances to producers to help fund films and programming in return for first transmission rights and a share of any subsequent profits. As far as we know, the principal source of income for non-public broadcasters in Norway is advertising income, but the publisher can also derive income from the sales of its own product to third parties.

Amortization of Expenditure

Depreciation

Assets with costs exceeding NOK 15,000 and with an estimated useful life of at least 3 years in a Norwegian business, may normally be depreciated according to the declining balance method. Assets costing less than NOK 15,000 may be taken as expenditure in the year of the acquisition. Assets are divided into different groups with different depreciation rates, varying from 2 to 30 percent. In general, depreciation may start in the year of delivery. An asset that has previously been used abroad may be depreciated in Norway provided that the asset is intended to be used in a permanent business activity in Norway. The depreciation may start when the asset is transferred to Norway.

Time-limited rights may be depreciated over the life-time of the right. For intangibles other than goodwill, the assets may be depreciated only if there is a substantial decrease of the value of the intangible.

From the viewpoint of capital gains generally, the taxpayer may choose to deduct all or part of the proceeds from disposal of the depreciated assets from the asset balance instead of treating it as taxable income in the year of sale. If the deduction of disposal proceeds results in a negative balance in a category, the negative balance must be written down by an annual amount that equals the net balance multiplied by the depreciation rate for the category for the same year. This amount must be treated as ordinary business income for the year. However, gains/losses arising from the disposal of ships, aircraft, industrial and commercial buildings, etc., must be transferred to a special gain and loss account. At least twenty percent of the net balance of these accounts must be treated as ordinary business income (or not more than 20 percent of the loss) each year.

For the depreciation of the film master tape, it is important to determine whether the product is to remain with the producer or if it is going to be sold.

According to the Norwegian Ministry of Finance it must be determined for tax purposes whether or not the "master tape" (the very first sample of the film) is to be used as a business asset in the producer's activity. If the producer wants to sell the film including the master tape straight away, the master tape would be considered as "goods" and the taxation of the expenditure to acquire the film would follow the tax rules applying to the acquisition of goods. Similarly, if the producer intends to hire out copies of the master tape, the master tape would also be considered as goods for income tax purposes.

If the film production is considered as a business asset under the rules mentioned above, the expenditure must be capitalized. The master tape is considered as an intangible asset and does not follow the declining balance method mentioned above. Instead there are two different methods of depreciation for Norwegian tax purposes.

The first method, the most common method, is an "expected income/cost recovery" method. The method involves an expected income basis. Under this method, at the end of each accounting period a comparison is made between the amount of income that has actually been received in the period and an estimate of the income that is expected to be received over the remaining life of the film. A proportion of the expenditure is then permitted to be written off by reference to that calculation. These rules are designed to help ensure that the tax depreciation more closely follows the accounting and commercial reality.

The other method which is also accepted by the tax authorities is to write down the expenditure over the remaining life of the film.

Gains on the sale of intangibles would be recognized as regular income at the time the contract payment becomes enforceable, irrespective of when payment is received.

Television Broadcasters etc., Film Program Acquisition Expenditure

No special tax rules apply to program acquisition expenditure besides the rules set out above. Neither a film distribution company, a film production company nor a television broadcaster has presently any special status under Norwegian tax law. Consequently, they are subject to the ordinary rules to which other companies are subject. For example, in calculating taxable trading profits, they may deduct, for tax purposes, most normal day-to-day business expenditure such as salaries, rent, advertising, travel expenses and professional costs normally related to the business.

Losses
Companies may set off trading losses against any taxable profits they receive in the same period. Net operating losses which cannot be offset in the current year may be carried forward without time limitation, irrespective of termination of the business in Norway. In the case of liquidation, such losses can be carried back two years. The right to carry forward losses is not lost even if all the shares are sold or if the company is merged with another company, unless the tax position is the only incitement for the acquisition.

Loss on disposal of shares from a company shareholder is not deductible under the tax exemption regime. However, companies may continue to deduct interest on debt incurred to finance acquisition of shares from other taxable income in Norway.

Due to the impact of the financial crisis on the Norwegian economy, companies are given a temporary possibility to set off losses in 2008 and 2009 against taxed profit in the preceding years. Hence, the tax value of the losses will be paid to the companies at the final assessments for the income years 2009 and 2010, instead of being carried forward. However, there is a cap on the loss carry back of NOK 20 mill per annum.

Foreign Tax Relief
A Norwegian film production or distribution company which receives income from abroad should in many cases be able to avoid double taxation. As a unilateral measure (i.e. under domestic legislation) to avoid double taxation, Norway grants to its residents an ordinary foreign tax credit for income tax paid abroad. Foreign tax on business income may be deducted as an alternative to taking a tax credit.

The foreign tax credit is calculated based on a basket system. The system contains three baskets: (1) income from CFCs and foreign partnerships, (2) income from foreign petroleum activities and (3) other foreign income. Under the basket system, the taxpayer will only be granted a credit for foreign tax calculated on income in one basket against Norwegian tax calculated on income in the same basket.

Excess tax credit may be carried forward for 5 years. Under certain circumstances, foreign tax may also be carried back 1 year insofar as the taxpayer does not incur a tax liability in Norway against which the credit could be set off during the following 5 years.

Where a tax treaty applies, the taxpayer may, in general, choose between unilateral and treaty relief. Thus, if the treaty provides for the exemption method, the foreign income will be exempt from taxation in Norway. However, although the tax treaty applies for an exemption method, the foreign tax relief is normally shifted to a credit method when it comes to withholding tax on dividends, interest and royalties.

Indirect Taxation

Value Added Tax (VAT)
Where a film producer makes an agreement, for example, with a broadcasting company to make a film in Norway, he or she would be charged VAT on the production. The producer is obliged to register in the VAT register and file the appropriate VAT returns. According to the main rule in the Norwegian Value Added Tax Act, Section 3-1, VAT has to be charged on the sale of all goods and services. From 1 July 2001, the right to cinematographic film is considered as a service.

According to the Norwegian Directorate of Taxes, the expression "cinematographic film" includes every feature film ready for showing without further sound setting or cutting before it is finished. However, a film is considered as finished if only the translation into another language remains to be done.

The Norwegian Ministry of Finance has defined "rights" as the right to show the film to a public audience. The sale and rental of rights to cinematographic films, other than advertising films, is liable to VAT at a rate of 8 percent according to the VAT Act section 5-6.

Please note that the sale or hiring out of rights to an advertising film is liable to VAT according to the main rule, section 3-1. An advertising film is defined as a film which promotes or draws the public's attention to business goods, services, etc.

Furthermore, public-relation films which promote specific companies or activities may also be considered as advertising films in this context.

If there is information at the beginning or the end of a film, stating that the film is sponsored by specific organizations, companies, etc., this does not mean that the film is an advertising film liable to VAT.

The low rate does not apply to a film which is only meant for private use. In this situation, the seller or lessee should be treated in the same way as the producer of an advertising film, and would have to charge VAT at the ordinary rate of 25 percent.

A film producer would be entitled to deduct the VAT incurred at an earlier stage in the manufacturing or service process to the extent the costs have a "natural and close" connection with the VAT chargeable activity.

Individuals providing services for the project may be considered as self-employed if they have several principals are registered for VAT for the services provided.

For instance, the following film related services would be considered as liable to ordinary VAT rate:

- Photographing
- Developing, copying, cutting and setting
- Recording, editing and mixing the tape
- Light setting, decoration, hiring out of movie products, etc. However, according to the VAT Act Section 3-7), authors might, through their exploitation of the copyright to their own literary or artistic works, not be liable to VAT (i.e., this is outside the VAT scope)

Film Laboratories

Film laboratories delivering the finished copies to the film producer would not be considered as selling the rights to cinematographic film. The film laboratory has to calculate VAT at 25 percent on the invoice to the producer.

Accordingly, the producer may reclaim the VAT charged by the film laboratories.

Import of Cinematographic Films for Public Presentation

Import of cinematographic films or master-film meant for public presentation and news bulletins are subject to import VAT at a rate of 25 percent. Any remuneration, such as royalties and licence fees, paid separately for the right to show the film, is also liable to calculation of import VAT to the Norwegian Customs Authorities, cf. below regarding DVDs.

The Norwegian Film Supervision Authority (Medietilsynet) reviews all cinematographic films for public presentation in order to state the age limit, etc. The Film Supervision Authorities charge a fee for the preview and authorisation of the film.

Import of Film on Videocassettes and DVDs, Not for Public Presentation

Importers of videocassettes/DVDs have to pay 25 percent import VAT to the Customs Authority. The import VAT may be deducted by importers registered for VAT liable turnover in Norway. The Customs value of the film forms the basis for calculation of the import VAT. All costs incurred outside Norway relating to the reproduction of the film copies, including subtitling, covers, freight, etc., have to be included in the Customs value.

In accordance with the Customs valuation regulations, the right to sell or hire out/show the film in Norway should be included in the basis for calculation of import VAT, provided that the seller of the videocassette/DVD is also the licensee, or payment of the licence fee is a condition for the export sale of the film copies to Norway.

The importers of the videos/DVDs have the editorial responsibility for the films themselves, thus the videos and DVDs are not subject to a preview by the Film Supervision Authority (Medietilsynet). All videos/DVDs must be registered with the Film Supervision Authority, and marked in accordance with the registration. The Film Supervision Authority charges a fee for the registration.

Pornography

The importation of soft (not objectionable) porn material is now considered legalized according to the so-called "Flirtshop-case" in the wake of the "Aktuell Rapport-case."

Special Taxes

The Film and Video Bill puts 2.5 percent tax on the gross sale and hiring out of theatrical home and commercial video for the Norwegian Cinema and Film Foundation (Norsk Kinoog Filmfond).

Personal Taxation

Non-Resident Artists

Income Tax Implications

The Norwegian authorities tax the income of non-resident artists/entertainers for any performance in Norway according to special legislation (The Foreign Artists' Taxation Act). The artists covered by the act are entertainers, such as artists and musicians with theatres, motion pictures (including commercials), radio and television artists.

If someone resident abroad performs or participates in events as an artist for less than six months in Norway, on a Norwegian vessel or on the Norwegian

Continental Shelf, this person is liable to tax according to the Foreign Artists' Taxation Act on the fee received.

The fee received for an event or performance in Norway is taxable even when the payment is received by the artist's group, an enterprise, or a representative or commission agent. However, the Norwegian tax liability may be limited by a tax treaty between Norway and the artist's resident country.

All economic remuneration earned in connection with activities as an artist in Norway is taxable here. This also applies to benefits in kind. All payments covering expenses must be included in the tax base, apart from payments covering documented travelling expenses and board and lodging expenses in connection with the event in Norway. This also applies to payments covering these particular expenses for foreign co-workers travelling with the artist. If the artist is covering these particular expenses him/herself, the tax base is reduced by the total sum of documented expenses. The tax base is also reduced by the commission the artist has paid to the agent who has established the direct contact with the Norwegian event organiser. No other expenses are deductible.

When the artist or a foreigner organizes the event and the artist him/herself is paying the tax, the income is based and calculated on the ticket sales or on any other performance compensation.

The tax rate is fixed once a year. For the income year 2009 the rate is 15 percent. The rate is the same whether the artist is employed or performs activities of an independent nature.

The event or performance must be reported on a special form to the Central Office – Foreign Tax Affairs at the latest three weeks before it is due to take place. The obligation to file the report lies with the person who has engaged the artist or the person organizing the event. In some cases, it is the person who makes a site/venue available for the event who must file the report. If no other person is obliged to report the event, the artist must report this to the Central Office – Foreign Tax Affairs.

Special rules apply to cultural exchanges between Norway and other countries.

Resident Artists

Income Tax Implications

Individuals are regarded as being resident in Norway when they take up residence other than temporary residency. In any case, individuals are regarded as tax residents of Norway when they have stayed in Norway for more than 183 days during any 12 month period, or 270 days during any 36 month period.

Norwegian resident artists are taxable in Norway on all profits arising in respect of their profession, wherever the income arises. If any income is received after deduction of overseas withholding tax, tax on such income is normally creditable against Norwegian tax computed by reference to the same income.

In calculating the taxable profits arising in respect of a profession, most normal day-to-day expenditure may be deducted, such as salaries, rent, advertising, travel expenses and legal and professional costs, etc.

Please note that in Norway there is no principal difference between residence and domicile.

Employees

Income Tax Implications

Employers resident in Norway are obliged to make regular periodic payments to the Norwegian tax authorities in respect of employees' personal tax liabilities arising from salaries or wages paid to them.

Social Security Implications

The Norwegian Social Security System (NSSS) is based on the principle that everyone who is a member pays contributions for cover and is entitled to benefits. Membership is obligatory for Norwegian residents. Membership for expatriates may be either voluntary or obligatory.

Expatriate personnel temporarily assigned to employment in Norway may be partly or totally exempted from the NSSS under a reciprocal Social Security agreement or on application to the National Office for Social Insurance Abroad. Exemption under a reciprocal agreement may be given retroactively and is, like an individual exemption, based on application to the National Insurance Institution.

Obligatory Membership

Every person resident in Norway is a member of NSSS regardless of nationality. Persons taking up residence in Norway for twelve months or more are considered residents in this respect. The obligation to be insured arises from the time of arrival in Norway.

As a general rule, any person is insured when employed in another person's or company's service on Norwegian territory for pay or other remuneration, even if the person so employed is not resident in Norway and the stay is to last less than twelve months. The obligatory insurance commences as soon as employment in Norway commences and does not depend on the length of employment. This applies regardless of whether the employee is taxable in Norway. The employee must pay a full member contribution during his or her stay, unless specially exempted.

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Contributions

The Norwegian Social Security System is supported by two obligatory contributions, one payable by the employer and one payable by the employee.

The employer's contribution is levied as a fixed percentage on all remuneration paid for work done and is due even for work performed abroad, unless the employee is not a Norwegian citizen and not a Norwegian resident. The only exception applies to self-employed persons. The rates range from 0 percent to 14.1 percent of gross payable wages depending on the district of residence of the employee. The standard rate for densely populated areas is 14.1 percent (2009). The payroll tax paid is deductible for income tax purposes.

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Chapter 26

Philippines

Introduction

Recognizing the need to promote and support the development and growth of the local film industry, the Philippine Congress enacted into law Republic Act No. 9167, "An Act Creating the Film Development Council of the Philippines", to formulate and implement policies and programs to upgrade the art and craft of film making and encourage the production of films for commercial purposes. The Film Development Council of the Philippines (FDCP or the Council) is a government agency under the Office of the President of the Philippines, replacing the Film Development Foundation of the Philippines, Inc. and the Film Rating Board.

The key goals of the Council are to establish and implement a Cinema Evaluation System; to develop and implement an incentive and reward system for the producers based on merit; to encourage the production of quality films; to establish, organize, operate and maintain local and international film festivals, exhibitions and similar activities; to encourage and undertake activities that will promote the growth and development of the local film industry and promote its participation in both domestic and foreign markets; and to develop and promote programs to enhance the skills and expertise of Filipino talents necessary for quality film production.

In order to encourage (i) foreign movie and television makers to produce their films in the country and (ii) the use of the Philippines as a location site for international movie and television making, the Philippine President, in Executive Order No. 674, ordered the creation of the Philippine Film Export Services Office, which operates under the administrative and technical supervision of the FDCP.

The Philippine Film Export Services Office is a "one-stop-shop" for foreign film/television production. Its goal is to facilitate the use of the Philippines as the preferred location for the production of international films and television programs; to formulate incentive packages for foreign film/television companies interested in shooting films/television programs in the country; to assist foreign film companies in processing pertinent documents and various requirements relative to the production of international films/television programs in the country; and to coordinate with various government agencies in assisting the entry and exit of foreign film/television producers, artists and production crew.

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Key Tax Facts

Corporate income tax rate	30%
Highest personal income tax rate	32%
Value-added tax rate	12%
Normal non-treaty withholding tax rates: Dividends	30%
Interest	20%
Royalties	30%
Tax year-end: Companies	Companies may choose their own tax year-end
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

Co-Production

For the purposes of Philippine taxation, a co-production venture is akin to a taxable joint venture and it is consequently taxed as a corporation. A joint venture is generally referred to as an association of persons with the intent, by way of a contract, express or implied, to engage in and carry out a single or joint business venture to which purpose the parties combine their efforts, properties, money, skills and knowledge, without creating a partnership or a corporation, pursuant to an agreement that there shall be a community of interest among themselves as to the purpose of the undertaking and that each joint venturer shall stand in relation of principal, as well as agent, as to each of the other co-venturers, with an equal right of control of the means employed to carry out the common enterprise.

Philippine tax authorities have ruled that a group of individuals who pool their resources to form a joint venture with a film production company for the purpose of undertaking the production of a movie come within the purview of a corporation subject to corporate income tax. Each of the parties to the joint venture is liable for the payment of individual income tax and corporate income tax on the profits distributed to them by the joint venture.

Partnership

Under Philippine law, a partnership is defined as a contract whereby two or more persons bind themselves to contribute money, property or industry to a common fund with the intention of dividing the profits among themselves.

For the purposes of limiting the liabilities of partners, a partnership may either be a general partnership or a limited partnership. In a general partnership, all of the partners are liable up to the extent of their personal property, while in a limited partnership, limited partners are liable only up to the extent of their personal contribution. However, there must be at least one general partner in a limited partnership.

Under the Philippine Tax Code, partnerships, no matter how they are created or organized, fall under the definition of a corporation subject to corporate income tax (except for general professional partnerships).

A 10 percent final tax is imposed on the share of an individual's distributable net income after tax of a partnership (except a general professional partnership) of which he/she is a partner, whether actually or constructively received.

Equity Tracking Shares

The equivalent term of "equity tracking shares" in the Philippines is "preferred shares". Preferred shares entitle the shareholder to certain preferences over holders of common shares. Preferred shares of stock are usually given preference in the distribution of the assets of the corporation in the case of liquidation and in the distribution of dividends.

Dividends paid out of preferred shares are taxed in the same manner as those of common shares.

Cash or dividends in the form of property received by resident citizens, resident aliens, and non-resident citizens from a domestic corporation are subject to a final tax of 10 percent, while those received by non-resident aliens engaged in trade or business or non-resident aliens not engaged in trade or business are subject to a final tax of 20 percent and 25 percent respectively. The applicable rate is lower if they are residents of a treaty country subject to compliance with the filing of the mandatory Tax Treaty Relief Application (TTRA).

Dividends received by a domestic corporation from another domestic corporation are not subject to tax. The final withholding tax on payment of dividends from a domestic corporation to a non-resident foreign corporation is 30 percent. The withholding tax is reduced to 15 percent if the country in which the non-resident is domiciled does not subject such dividends to taxation, or allows a tax sparing credit equivalent to 15 percent. The withholding tax on dividends may be further reduced to as low as 10 percent under existing double tax agreements (DTA's), subject to qualifying conditions and compliance with TTRA.

Yield Adjusted Debt

The use of revenue-linked debt securities is not commonly practiced in the Philippines. However, for Philippine taxation purposes, the interest paid on the debt securities shall form part of the taxable income of the Philippine taxpayer.

Debt securities issued by non-resident foreign corporations will be classified as foreign loans, and interest paid thereon is subject to a 20 percent final withholding tax. The rate of withholding may be further reduced to a range of 10 percent to 15 percent under existing double taxation agreements, subject to qualifying conditions and compliance with the TTRA requirement.

Investment Structures

Philippine Subsidiary

One of the most common ways of establishing a business presence in the Philippines is through the incorporation of a Philippine subsidiary. The principal advantage of a subsidiary over a branch office is that a subsidiary has a separate and distinct juridical personality from its parent corporation, so that the liability of the parent corporation to creditors of the subsidiary is limited to its shareholdings in the domestic subsidiary. The parent foreign corporation is thus fully protected from the liabilities of the subsidiary in excess of its shareholdings in such subsidiary.

For a domestic corporation with more than 40 percent foreign equity, the minimum paid-up capital requirement is US$200,000 for a domestic market enterprise and Filipino Peso (PhP) 5,000 for an export market enterprise. The Foreign Investment Negative List (FINL) may limit the form of business foreign investors may engage in. For example, the FINL does not allow for foreign equity in mass media, except recording, in accordance with Sec. 11 Art. XVI of the 1987 Philippine Constitution.

For tax purposes, a Philippine subsidiary is treated as a domestic corporation and is therefore taxed on income derived from all sources.

Philippine Branch

A Philippine branch office of a foreign corporation carries out the business activities of the head office and derives income from the host country. For legal purposes, a branch has no independent existence but is considered a mere extension of its head office. A branch office is required to put up a minimum paid-up contribution of US$200,000, which can be reduced to US$100,000 if it either engages in an activity which involves advanced technology or employs at least 50 direct employees.

A foreign corporation may set up a branch in the Philippines by obtaining a license to transact business with the Securities and Exchange Commission (SEC). It may engage in exactly the same activities as its parent company. Further, the parent corporation may be held responsible for any liability of the branch in excess of its investment.

For tax purposes, a branch office is taxed only on income sourced from within the Philippines. If the head office of the branch is a resident of a tax treaty country, it may reduce Philippine withholding tax and still be allowed to deduct interest and royalty expenses at the same time, which may otherwise not be permitted under Philippine tax laws, by applying the relevant tax treaty provisions.

Profits of a Philippine branch remitted to its parent company are subject to 15 percent branch profits remittance tax. A lower rate may be provided under the applicable DTA subject to compliance with the mandatory TTRA.

Philippine Representative Office

A Representative Office is a foreign corporation organized and existing under foreign laws. It is fully subsidized by its head office and thus does not derive income from the host country. It is created to undertake activities such as information dissemination, acting as a communication center and promoting company products, as well as quality control of products for export for the parent company. An initial minimum inward remittance of US$30,000 is required to cover its operating expenses.

Tax and Financial Incentives

Investors

An investor in film or television production who wishes to utilize the fiscal and non-fiscal incentives under the Omnibus Investments Code may register with the Board of Investments (BOI). Among the incentives granted are as follows:

- An Income tax holiday for four years for projects with non-pioneer status and six years for projects with pioneer status
- An Income tax holiday for three years for expansion projects to the extent of actual increase in production
- Within five years of registration, an additional deduction for labor expenses from taxable income, equivalent to 50 percent of wages, corresponding to the increment in the number of direct labor for skilled and unskilled workers subject to certain conditions
- Tax credit for taxes and duties on raw materials used in the manufacture, processing or production of export products

- For those located in less developed areas, an additional deduction of necessary and major infrastructure expenses from taxable income
- Access to bonded manufacturing/trading warehouse system
- Tax-free importations of required supplies and spare parts for consigned equipment subject to certain conditions
- Simplification of customs procedures
- Unrestricted use of consigned equipment
- Employment of foreign nationals
- Exemption of exports from wharfage dues and export tax, duty fee, and impost

Under Memorandum Order No. 20, otherwise known as the 2011 Investment Priorities Plan and its General Policies and Implementing Guidelines applications for registration for film and TV productions must be endorsed by the Film Development Council of the Philippines on a project-by-project basis. The BOI may consult and/or require an endorsement from other concerned government agencies such as the National Historical Institute (NHI) and the National Commission for Culture and Arts (NCCA).

An income tax holiday is available for income derived from box office returns, royalties including publication rights, and rentals for special showings earned by the producer within the incentive period. Furthermore, those projects with at least 50% of revenues derived from exports may qualify for pioneer status.

Government Funding Schemes

FDCP Film Fund

The Film Development Council of the Philippines manages a revolving fund intended to assist qualified producers. The financing will be in the form of an investment in a co-production venture which shall be up to the lower of 40 percent of total project cost (including costs for print and advertising but excluding distribution/booking fees) or PhP 5,000,000.

The fund is only available to Filipino producers. The films must be shot mainly in the Philippines and the cast and staff should be substantially composed of Filipino actors and craftsmen (i.e. at least 90 percent of cast and crew are Filipinos). Preference is given to film companies who have not produced 35 mm films for the last twelve months. Funds are intended for 35 mm feature films or for blowing up of digital films into 35 mm celluloid film as long as the latter is shot in High Definition.

As of May 2011, the FDCP film fund is on hold as this program is being revised to better address the concerns of potential film producers. FDCP is considering converting this program from a "loan" to a "grant."

FDCP Film Grants

The Film Development Council of the Philippines provides grants to filmmakers invited to international film festivals. The grant includes subsidies for items such as sub-titling, cost of print, air fare and per diem. The purpose of the grants are to provide filmmakers exposure to the global market and to encourage joint ventures and co-productions.

Details of the FDCP film fund and film grants are available at the FDCP website (http://fdcp.ph/)

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed on any issue of common or preferred shares of stock or bonds.

Stamp Duties

The documentary stamp tax (DST) is an excise tax and is imposed on documents, instruments, loan agreements and acceptances, assignments, sales or transfers of obligations, rights or property and other business instruments. The rate of tax depends on the nature of the document and transaction.

DST applies to transactions effected and consummated outside the Philippines and documents signed abroad where the obligation or right arises from Philippines sources or the property is located within the Philippines.

DST of PhP 1 for every PhP 200 is imposed on the original issuance of shares of stock and PhP 0.75 for every PhP 200 on any agreement to transfer shares of stock. On every original issue of a debt instrument, including bonds, DST of PhP 1 for every PhP 200 is imposed, provided that for debt instruments with a term of less than one year, the DST imposed shall be in proportion to the ratio of its term (in number of days to three hundred and sixty-five days).

Exchange Controls and Regulatory Rules

The Philippines has liberalized foreign exchange controls. Generally, foreign exchange receipts, acquisition or earnings may be sold to or outside of the banking system, or may be brought in or out of the country.

In the case of foreign loans or foreign investments, for foreign exchange purposes and in order for the repatriation of profits and capital to be serviced through the Philippine banking system, it is required that prior approval is obtained for the loan and the foreign investments registered with Bangko Sentral ng Pilipinas (BSP), the Philippines equivalent of the government central bank.

Domestic contracts entered into by Filipino citizens can be settled in any currency. This is in line with the governments program to liberalize economic policies, attract foreign investments, and liberalize foreign exchange control.

Authorized Agent Banks (all categories of banks except OBUs authorized to trade foreign exchange) may sell foreign exchange for non-trade current account transactions without a need to obtain prior approval from BSP. If the amount does not exceed USD 60,000.00, the buyer should submit an application in the required format. If the sale exceeds USD 60,000.00, the application should be notarized, and the supporting documents, depending on the purpose of the purchase should also be submitted (for example, in case of a payment of royalties, a copy of the royalty agreement).

All foreign exchange purchases for non-trade current account transactions shall be directly remitted to the intended non-resident beneficiary's account (whether offshore or onshore). Exceptions to this rule include travel funds, medical expenses abroad not yet incurred, and sales proceeds of emigrant's domestic assets if emigrant is still in the country.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Philippine-Resident Company

Domestic corporations (i.e., corporations created and organized under Philippine laws) are taxed on income derived from all sources, while resident foreign corporations (i.e., foreign corporations engaged in trade or business in the Philippines) are subject to tax only on income from Philippine sources.

The regular corporate income tax rate for domestic corporations and resident foreign corporations is 30 percent of taxable income (i.e. gross income less allowable deductions). On the fourth year of operations of the company, a Minimum Corporate Income Tax (MCIT) is imposed where a domestic or resident foreign company's regular corporate income tax liability is less than 2 percent of its gross income. MCIT is imposed at a rate of two percent of

gross income. Where MCIT is paid, the excess MCIT over the normal tax that would otherwise have been paid shall be carried forward and offset against the normal tax liability for the three succeeding taxable years.

Non-Philippine Resident Company

Non-resident foreign corporations (i.e., foreign corporations not engaged in trade or business in the Philippines) are subject to 30 percent withholding tax on its gross income sourced within the Philippines, except for certain passive income which are subject to a lower withholding tax rate.

Film Distribution Company

Royalties and other fees received by a Philippine-resident film distribution company, whose primary purpose is licensing and sub-licensing entertainment content such as motion pictures and television programs, are subject to the regular corporate income tax of 30 percent as they received in the nature of ordinary business income derived or generated from activities that are in accordance with its primary purpose. Otherwise, royalties and other fees received by domestic and resident foreign corporations are subject to the 20 percent royalty tax on certain passive income.

Income payments to resident individuals and corporate cinematographic film owners, lessors or distributors are subject to a creditable withholding tax at 5 percent of gross payments.

Non-resident cinematographic film owners, lessors or distributors are subject to a 25 percent final withholding tax on their gross income from Philippine sources. However, if the non-resident foreign corporation is a resident of a country with an existing DTA with the Philippines, the royalties paid to the non-resident foreign corporation by virtue of a distribution agreement may be reduced further to the preferential treaty rates of 15 percent to 25 percent subject to compliance with the TTRA requirement.

For example, royalties paid by a Philippine corporation to a resident of the United States of America is taxed at the lowest rate of the Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State. Article 12 of the RP-Denmark Tax Treaty provides that royalties paid by a Philippine resident to a resident of Denmark for the use of or the right to use cinematographic films and films and tapes for television locally is subject to the rate of 15 percent of the gross amount of royalties, the lowest of the same kind paid under similar circumstances among Philippine tax treaties.

Transfer of Film Rights Between Related Parties
The Philippines currently have no specific transfer pricing laws or regulations. However, Section 50 of the Philippine Tax Code gives the Commissioner of Internal Revenue the power to allocate income and expenses, between or among related parties in order to prevent the evasion of taxes or to clearly reflect the income among related parties. Thus, where a worldwide group of companies holds rights to films and videos, and grants sublicenses for the exploitation of those rights to a Philippine-resident company, the terms of the transaction must be at "arm's length."

Under Section 50, in respect of the "allocation of income and deductions In the case of two or more organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion or allocate gross income or deductions between or among such organization, trade or business, if he determines that such distribution, apportionment, or allocation is necessary to prevent evasion of taxes or clearly to reflect the income of any such organization, trade or business."

Amortization of Expenditure

Production Expenditure
Ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to the development, management, operation and/or conduct of the trade or business are generally deductible from gross income. However, no deduction from gross income shall be allowed unless the expense is substantiated with sufficient evidence, such as official receipts or other adequate records, to establish the amount of the expense and the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade or business.

In lieu of the itemized deductions provided under the Tax Code, corporate taxpayers classified as domestic corporations and resident foreign corporations, may claim up to 40 percent of its gross income as an Optional Standard Deduction (OSD). Gross income is calculated as gross sales less sales returns, discounts and allowances and cost of goods sold or cost of services. Individuals classified as resident citizens, non-resident citizens, resident aliens and taxable estates and trusts may claim up to 40 percent of his or her gross sales or receipts as an OSD.

Other Expenditure

Interest
Subject to certain limitations, interest is deductible if it is paid or incurred on indebtedness in connection with the taxpayer's trade or business.

Taxes
All taxes related to the business of the corporation and paid or incurred within the taxable year are deductible, except income tax, foreign income tax, transfer taxes and other special assessments. Subject to certain conditions and limitations, foreign income tax paid by a domestic corporation may be allowed as a deduction from the gross income of a corporation, in lieu of credit against income tax due.

Losses
Losses sustained during the taxable year and not compensated for by insurance or other forms of indemnity are allowed as deductions if incurred in trade or business if the property is connected with the trade or business and if the loss arises from fires, storms, shipwreck, or other casualties, or from robbery, theft or embezzlement.

In the case of a non-resident alien individual or foreign corporation, the losses deductible shall be those actually sustained during the year incurred in business or trade conducted within the Philippines, when such losses are not compensated for by insurance or other forms of indemnity.

Operating losses incurred in a tax year may be carried forward and offset against gross income for the proceeding three consecutive taxable years provided that there is no substantial change in the ownership of the business or enterprise. Substantial change is defined to be a change of ownership of more than 25% of the nominal value of outstanding shares or of the paid-up capital of the company.

Losses cannot be carried-back to previous taxable years.

Tax Depreciation/Capital Allowances
In general, a corporation may adopt any reasonable method of depreciation. The acceptable methods of depreciation include, but are not limited to, the straight-line method, declining-balance method, the sum-of-the-years' digits method and any other method that may be prescribed by the Secretary of Finance upon the recommendation of the CIR.

Foreign corporations are allowed deductions for depreciation only on the properties located in the Philippines.

Except for the general guidelines in claiming depreciation allowance, the BIR has yet to issue a schedule of depreciable useful lives or depreciation rates which taxpayers may use to arrive at reasonable depreciation allowances for different assets.

A corporation is allowed to change the method of computing depreciation allowance upon prior approval from the CIR.

Indirect Taxation

Value-Added Tax (VAT)

VAT of 12 percent is imposed in the course of trade or business on the sale of goods, properties and services in the Philippines and the importation of goods to the Philippines, regardless of whether it is for business use. The term "goods or properties" shall mean all tangible and intangible objects which are capable of pecuniary estimation and includes, among others, the right or privilege to use motion picture films, films, tapes and discs. The term "sale or exchange of services" means the performance of all kinds of services in the Philippines for a fee, remuneration or consideration, including those performed or rendered by lessors of property such as lessors or distributors of cinematographic films, and shall also include, among others, the leasing of motion picture films, films, tapes and discs.

VAT is levied on the gross selling price or the gross value in money of the goods sold or exchanged, including charges for packaging and excise taxes if the goods are subject to such taxes. In the case of services, the tax base is gross receipts, which include not only cash but also constructive receipt of payments. The total value used in determining tariff and customs duties, excise taxes (if any) and any other charges are the bases for the 12 percent VAT on importation.

Companies, enterprises or individuals with annual gross sales or receipts not exceeding PhP 1,500,000 are not subject to VAT, but are subject to 3 percent tax on sales or receipts. However, they may elect to be covered by VAT by voluntarily registering as VAT taxpayers.

There are certain sales or services rendered by VAT-registered persons or entities that are subject to 0 percent VAT, such as export sales.

A VAT-registered person or entity is entitled to credits for input taxes previously paid on the purchase of goods or services used in their trade or business. Anyone whose sales or services are exempted from VAT is not

entitled to credit for input taxes on purchases of goods/services used in the production of such goods or services exempted from VAT. A VAT-registered taxpayer with zero-rated sales of goods or services may choose to apply for a tax credit certificate or for the refund of the unused input tax paid corresponding to the zero-rated sales.

Customs Duties

Generally, customs duties are levied on all articles imported into the Philippines. The rates vary depending on the classification and country of origin of the imported goods. If it originates from a country which is a member of the General Agreement on Tariffs and Trade (GATT) or the Association of South-East Asian Nations (ASEAN), the goods may be subject to preferential tariff treatment under the Generalized System of Preference or the ASEAN Common Effective Preferential Tariff.

Customs duties are payable at the time of release or withdrawal of the goods from the customs house or bonded warehouse.

Under the Tariff and Customs Code, there are conditionally-free importations of certain articles which shall be exempt from the payment of import duties upon compliance with the formalities prescribed by existing regulations. Among the articles exempted are:

- those brought by foreign film producers directly and exclusively used for making or recording motion picture films on location in the Philippines, upon their identification, examination and appraisal and the giving of a bond in an amount equal to 1.5 times the ascertained duties, taxes and other charges thereon, conditioned for exportation thereof or payment of the corresponding duties, taxes and other charges within 6 months from the date of acceptance of the import entry, unless extended by the Collector of Customs for another 6 months
- photographic and cinematographic films, undeveloped, exposed outside the Philippines by resident Filipino citizens or by producing companies of Philippine registry where the principal actors and artists employed for the production are Filipinos, upon affidavit by the importer and identification that such exposed films are the same films previously exported from the Philippines. The terms "actors" and "artists" include persons operating the photographic cameras or other photographic and sound recording apparatus by which the film is made

Personal Taxation

Non-Resident Artists (self-employed)

Income Tax Implications

A non-resident alien individual engaged in trade or business in the Philippines shall be subject to income tax in the same manner as a Philippine citizen and a resident alien on taxable income received from all sources within the Philippines. A non-resident alien doing business in the Philippines is one who stays in the Philippines for an aggregate period of more than 180 days during any calendar year.

A non-resident alien individual not engaged in trade or business in the Philippines is subject to a final withholding tax at 25 percent of gross income received from all sources within the Philippines such as interest, cash and/or property dividends, rents, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodic or casual gains, profits and income and capital gains.

Resident Artists (self-employed)

Progressive tax rates ranging from 5 percent to 32 percent, depending on the income bracket, are imposed on Philippine citizens and resident aliens.

For professional fees and talent fees for services rendered by individuals, there is a creditable withholding tax imposed at the rate of 15 percent, if the gross income for the current year exceeds PhP 720,000, and 10 percent if otherwise on the gross professional, promotional and talent fees or any other form of remuneration for the services of professional entertainers, such as, but not limited to, actors and actresses, singers, lyricist, composers and emcees, all directors and producers involved in movies, stage, radio, television and musical productions and other recipients of talent fees.

The amounts subject to withholding tax shall include not only fees, but also per diems, allowances and any other form of income payments. In the case of professional entertainers and recipients of talent fees, the amount subject to withholding tax shall also include amounts paid to them in consideration for the use of their names or pictures in print, broadcast or other media or for public appearances, for the purposes of advertisements or sales promotion.

Employees

Income Tax Implications

For employee services, taxable income includes compensation for services in any form, including, but not limited to fees, salaries, wages, commissions and similar items. In general, the term "compensation" means all remuneration for services performed by an employee for his employer under an employer-employee relationship,

The withholding of tax on compensation income is a method of collecting the income tax at source upon receipt of the income. It applies to all employed individuals (whether citizens or aliens) deriving income for services rendered in the Philippines. The employer is constituted as the withholding agent (i.e. every employer must withhold from compensations paid, an amount computed in accordance with existing regulations).

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Chapter 27

Poland

Introduction

With the introduction of the Cinematography Act and the creation of the Polish Film Institute ("PFI") in 2005, the world of Polish cinema has changed significantly over the past few years. The State supports the film industry in Poland by providing public grants for film production, selected festivals and events, developing archives, education and professional training, as well as for promotion of the Polish film industry abroad.

As such, there has been a rapid increase in the number of films being produced in Poland, as well as the number of foreign filmmakers interested in becoming involved in co-productions and other film services in Poland. The PFI actively promotes Polish cinema on an international level and offers assistance to foreign investors/film producers looking for Polish partners.

The Polish film production market is well-developed and many producers choose to make use of existing facilities when producing in Poland, rather than incurring costs developing their own production base. There are numerous film production companies in Poland, with many specializing in one particular field (e.g. feature films, documentaries, animation). Although the main players within this industry are private businesses, there are also a number of state-owned film establishments. Both private and public entities are eligible to apply for public funding.

In recent years there has also been an increased involvement of independent Polish film distribution companies in film production, contributing to the film's budget and subsequently acquiring picture rights. This sort of co-production has proven very effective and will no doubt continue to grow going forward.

In 2007, the Association of Polish Filmmakers and several leading film producers jointly founded a foundation known as Film Polski (Polish Film). It was established to promote Polish films in Poland and abroad, but also to handle their distribution. The first film distributed by Film Polski was *Twists of Fate* by Jerzy Stuhr.

Going forward, the PFI hope to build on the significant increase in Polish film production that has been seen in recent years, and hopefully build on the success of Andrzej Wajda (Lifetime Achievement Academy Award, 2000), Roman Polanski (Best Director Academy Award for *The Pianist*, 2000) and Jan A. P. Kaczmarek (Best Original Music Score Academy Award for *Finding Neverland*, 2005).

Key Tax Facts

Highest corporate profits tax rate	19%
Highest personal income tax rate	32%
VAT rate	Generally 23% (from January 1, 2011 until December 31, 2013)
Annual VAT registration limit	150,000 PLN (from January 1, 2011)
Normal non-treaty withholding tax rates:	
Dividends	19%
Interest	20%
Royalties	20%
Tax year-end: Companies	December 31 (unless otherwise stated)
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

The financing structures used in Poland vary in accordance with the operational structures and the requirements of the specific project being undertaken. Typically, film financing structures will take the form of one of the following:

Co-production

Co-production is a useful way to carry out film production in Poland, particularly for a foreign producer (on the condition that the foreign producer does not lay claim to exclusive distribution rights). The co-production agreement should detail (at least) the budget, financing, management and ownership rights of the production as well as deal with matters related to negatives and credits etc. Each party to the co-production (whether they be individuals or corporate investors) are then subject to tax on their share of the profits as stated in the co-production agreement in Poland, unless the respective double tax treaties provide otherwise.

Civil partnership

A civil partnership is set up according to the general principles of Civil Law for the purpose of conducting business activity. The civil partnership itself does not have legal personality and therefore each partner is obliged to register as an entrepreneur and will be taxed on their share of profits from the civil partnership accordingly.

Partnership

There are four types of partnerships available under Polish regulations:

- Registered partnership;
- Professional partnership;
- Limited partnership; and
- Limited joint-stock partnership.

All of the above partnerships have their own legal form, however, they are not entitled the legal personality. Consequently, the partnerships themselves will not be taxed; rather, the partners will be taxed on their share of profits from the partnership.

Limited liability company

The most common form of operating in the film industry is via a limited liability company. This is a legal entity with a minimum share capital of 5,000 PLN. It may be incorporated by one or more individuals or legal persons for the purpose of carrying on a business or for any other purpose allowed by law. Every company must submit an annual balance sheet and make various other filings with the National Court Registry (e.g. notification of any change of address of the company etc) and other authorities.

Joint-stock company

A joint-stock company is a legal entity with a minimum share capital of 100,000 PLN which may be obtained through the issue of shares. A joint-stock company would usually be established for operating a business on a large scale and is a rather complex form of conducting activity.

Foundation

Under the Polish Foundation Act, a foundation may be established for public benefit or social purposes, in particular for educational and cultural purposes. A foundation has legal personality and may be established by individuals or by legal persons irrespective of their residency. There are no legal requirements on the minimum initial capital. The founder states the purposes of the foundation and the assets allocated to the foundation in order to fulfill the purpose.

Foundations are eligible for a CIT exemption on their income, provided that it is allocated for the foundation's statutory activities.

Corporate Taxation

The Polish tax system is a classical tax system where corporate income is fully taxable at entity level, with any distributed profits being taxed again by way of withholding tax. There are no special rules for film producers or distributors, whether domestic or foreign invested; they are treated as ordinary tax payers. However, this is something that the PFI hopes will be introduced within the next couple of years.

Recognition of income and amortization of expenditure

Polish resident company

A company is resident in Poland for tax purposes if its legal seat or management office is located in Poland. Polish resident companies are taxable on their worldwide income. In the case of a film production company, income may include (but is not limited to):

- Receipts from the sale of the film or rights in it;
- Royalties or other payments or use of the film or aspects of it (for example characters or music);
- Payments for rights to produce games or other merchandise;
- Receipts by way of a profit share agreement.

Receipts are generally treated as income (and are therefore taxable) once they become due and payable, however a cash accounting method applies to interest. Foreign exchange gains can be recognized either on a cash or an accruals basis.

In general, expenses incurred for the purpose of generating taxable income, or retaining/securing the sources of income (e.g. salaries, rents, advertising, travel expenses and legal and professional costs), are deductible for tax purposes unless explicitly excluded by law (e.g. dividends, fines and fiscal penalties, business lunches, unpaid interest, unrealized negative foreign exchange differences and capital expenditure such as the purchase of land, fixed assets and intangibles).

Companies will also receive tax depreciation on fixed assets (except land and non-purchased goodwill). Rates vary from 1.5% for buildings to 30% for computers, and between 20% and 50% for intangible assets. Accelerated depreciation in respect of certain fixed assets is also allowed.

Losses
Losses incurred by a Polish resident company may be carried forward for up to 5 years; 50% of the loss may be set off in each year and loss carry back is not permitted.

Administration
The tax year for corporate taxpayers is defined as a period of 12 consecutive months. Unless a taxpayer decides otherwise and duly notifies the tax authorities, the tax year is deemed to be the calendar year.

The annual tax return must be filed by the end of the third month of the following tax year. Taxpayers are obliged to make monthly advance payments of corporate income tax and these must be paid to the tax office by the 20th of the following month.

In order to obtain certainty on a specific case, an individual tax ruling may be obtained on request of a taxpayer. Such individual rulings bind the tax authorities and grant the tax payer certainty on their filing position in relation to the specific point raised.

Thin capitalization rules ("thin cap")
The Polish thin cap regulations restrict the deductibility of interest paid to certain lenders if the borrower's debt to equity ratio exceeds 3:1. The restrictions apply (but are not limited to) loans granted by a shareholder/shareholders holding solely/jointly at least 25% of the voting rights of the borrowing company. As such, consideration should be given to the thin cap regulations prior to the implementation of any film financing structure.

Non-Polish resident company
Non-resident companies are subject to tax in Poland on their Polish source income only. Therefore if a non-resident company were to sell the rights to a production in Poland, this income would be subject to tax in Poland (unless a respective double tax treaty provides otherwise).

Where a non-resident company carries out a co-production in Poland, it should not be liable to Polish tax on its profits as such activities should generally not constitute a permanent establishment ("PE") in Poland under the definition of a PE as defined in most tax treaties. However, if the co-production goes on at a particular place in Poland for a considerable amount of time, there is a risk that it may be regarded as a fixed place of business and therefore constituting a PE. As such the non-resident company would be liable to Polish tax on profits attributable to the PE.

Additionally, care should be taken regarding any production/administration office set up in Poland by a non-resident company to assist with location shooting and production, as the Polish tax authorities may try to argue that it is a PE and therefore chargeable to tax in Poland.

Withholding tax
Income of non-resident companies which is derived from entertainment activities is subject to 20% withholding tax in Poland, unless the relevant double treaty states otherwise. This should therefore be considered before entering into any Polish co-production agreements.

Interest and royalties paid to non-residents are subject to 20% withholding tax unless the relevant double tax treaty states otherwise. Interest and royalties paid to certain associated companies within the EU will be subject to 5% withholding tax (note: such payments will be exempt from withholding tax from 1 July 2013).

Dividends are subject to 19% withholding tax (unless the relevant double tax treaty states otherwise). However, dividends paid to associated companies within the EU are exempt from withholding tax if the fully taxable parent holds continuously at least 10% (25% in the case of Switzerland) of the subsidiary for at least 2 years.

Foreign tax relief
If a Polish resident company receives income from overseas and suffers tax on that income, double taxation relief is granted by way of an ordinary tax credit. The credit is computed on a per country basis. Where a double tax treaty applies, the treaty relief is mandatory.

With respect to dividends received by Polish parent companies holding at least 75% in subsidiaries from a treaty country, the parent company is not only entitled to tax credit but also to apply underlying tax relief.

Indirect Taxation

Value Added Tax (VAT)
Following Poland's accession to the EU on 1 May 2004, important features of the Polish tax system have been harmonized with EU tax law, including VAT. Poland levies VAT at each stage of the production and distribution process and input tax suffered on purchases is deductible from any output tax due. Individuals and entities that supply goods or services in Poland or import/export goods to/from Poland are liable to charge VAT if they exceed the 150,000 PLN threshold.

Where services are provided within the territory of Poland by a supplier not registered for VAT in Poland, VAT can be self-charged by the recipient under the reverse charge mechanism. The reverse charge mechanism covers (but is not limited to) the sale of rights and granting of licenses or sublicenses and is also applicable in the case of intra EC acquisitions and local acquisitions of goods from foreign entities which are not registered for Polish VAT.

Under the reverse charge mechanism, the recipient issues an invoice to itself and charges VAT using the applicable Polish VAT rate (usually 23%). This VAT may be deducted as input VAT in the same VAT return in which the output VAT is declared. Therefore, providing the recipient can fully recover the VAT, the operation is tax and cash-flow neutral.

With regard to VAT rates applicable to film industry, the standard VAT rate of 23% applies to film production, the reduced VAT rate of 8% applies to distribution of films, whilst fees of individual artists are generally VAT-exempt.

Capital duty

Tax on civil law transactions (capital duty) is imposed on an initial capital contribution to a newly registered company and on any additional contribution to the company's capital. The rate is 0.5% of the capital contribution.

Transfer tax

The sale and exchange of goods, property and property rights are subject to tax on civil law transactions, unless the transaction is a VATable transaction, with the exception of the sale and exchange of immovable property and the sale of shares, which are subject to transfer tax as a rule.

The rate of tax on civil law transactions on the sale and exchange of immovable property located in Poland is 2% of the market value of the property. In respect of the sale of other goods and property, the rate is 1%.

Personal Taxation

General rules

An individual is considered to be a resident of Poland for income tax purposes if his centre of personal and economic interest is located in Poland, or if his stay there exceeds 183 days in a tax year. Polish resident individuals are subject to tax on their worldwide income while non-Polish resident individuals are subject to tax on their Polish source income only.

The tax year for individual tax payers is the calendar year and an annual tax return must be filed by 30th April of the year following the tax year. Income tax must be paid in advance each month and adjusted accordingly

at the year end, although tax payers earning business income may opt for quarterly advance payments in the year in which they commence the business activity or where their annual turnover in the preceding year was lower than EUR 1,200,000 (including VAT).

The Polish PIT Law lists the following categories of income: (1) income from dependent services, including employment and pension income, (2) income from independent services, (3) income from business, (4) income from particular agricultural sectors, (5) income from immovable property (rental income), (6) income from investments and property rights, (7) income from the sale of immovable property, property rights and movables and (8) other income. Tax is generally levied on the aggregate net income from all categories after accounting for deductions. The net income from each category is the difference between the sum of receipts (both in cash and in kind) and any related expenses. Poland employs a scale of progressive income tax rates (i.e. 18% basically and 32% to income over approx. 21,000 EUR) to tax individuals. However, certain income items are taxed separately at flat rates.

Tax losses may be carried forward for 5 years and up to 50% of the loss may be offset in each year. Tax losses may not be carried back.

Artists (self-employed)

Income tax implications

For Polish income tax purposes, an artist's income derived from his or her professional services will be considered "income from professional services" or "income from business", depending on how the services are performed.

In the first case, the "income from independent services" will be aggregated with their other net income and taxed at the appropriate rate. Net income is defined as being the difference between the sum of receipts (both in cash and in kind) and expenses, in the pre-defined amount of 50% of the receipts.

With regards to the taxation of "income from business", it may be taxed based on general rules or the taxpayer may opt for a 19% flat rate taxation of business income. However, taxpayers who opt for the flat rate taxation are not entitled to some personal deductions and credits that would otherwise be available.

Non-resident artists and tax credit

As stated above, non-resident tax payers are only subject to tax in Poland on their Polish source income. The taxable income of non-residents is generally calculated under the same rules that apply to residents.

If the taxable income derived by a non-resident cannot be accurately determined from the tax payers' financial records, it is estimated as a percentage of turnover (20% in the case of film production activities). However, this method to establish taxable income is not applied if a tax treaty provides otherwise.

It should be noted that a 20% withholding tax is levied on income from certain independent services performed by non-residents, including (but not limited to) income from artistic, literary, scientific, educational and journalistic activities, unless a double tax treaty states otherwise.

As stated above, a Polish self-employed artist is subject to tax in Poland on their worldwide income. Where a Polish resident suffers overseas tax on its income, double taxation relief is granted by way of an ordinary tax credit. The credit is computed on a per country basis. Where a double tax treaty applies, the treaty relief prevails.

Employees

Income tax implications

Income from employment includes all kinds of remuneration and benefits in kind. Employers are obliged to deduct advance payments on salaries and other remuneration paid to employees and these deductions must be paid to the Polish tax authorities by the 20th of the following month.

Social security implications

Employees are liable to make social security contributions based on their gross income. The contributions are payable by employees at the following rates:

Old age pension	9.76%
Disability insurance	1.50%
Sickness and maternity insurance	2.45%
Health insurance	9.00%

All of the above contributions are withheld by employers and the system applies equally to residents as it does to foreign nationals who have an employment contract with a Polish employer. Individuals working in Poland, who are EU member states nationals, should be covered by the EU social security regulations, which became effective in Poland following EU accession in 2004. Depending on the individual circumstances of each assignee, they may be subject to social security in their home country (based on A-1 form provided certain conditions are fulfilled), the country of their employment, or the country where the work is actually performed. Each case should be investigated carefully to determine appropriate social security contribution payment requirements and obligations.

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Chapter 28

Romania

Introduction

Romania's business infrastructure has improved significantly, with new private enterprises and new equipment to serve the needs of both Romanian and international filmmakers. In the past few years the film industry in Romania has been developing rapidly with an increase in both the number of movies made and in the quality of film productions, as a number of Romanian films have won prestigious awards in international film festivals. Foreign film producers have also been showing an increasing interest in our country thanks to the recent development of the sector.

Romania – A Member of the European Union

Romania became a member state of the European Union (EU) on January 1, 2007 and succeeded in largely adopting the EU acquis in respect of audiovisual policies.

The ratification of the European Convention on Transfrontier Television and the adoption of a considerable amount of secondary legislation on the basis of the Audiovisual Law (in force since July 2002) represent major developments in the audiovisual sector.

Film Industry in Romania

According to a survey of the National Cinema Centre done at the end of 2010, there are 54 film production companies and 12 major film distribution companies registered in Romania. Local film production companies offer support in projects related to film (including music videos, short and long documentaries, and feature films), TV and commercial productions, including casting, production and post-production equipment, film crews, costumes, props, construction of sites, makeup, and special effects. Any individual or company that performs activities in the field of cinematography needs to register with the Cinema Registry. The Cinema Registry is administered by the National Cinema Centre.

Film Production/ Sources of Finance	2004	2005	2006	2007	2008	2009	2010
1. Feature films	**21**	**20**	**18**	**12**	**9**	**18**	**19**
Entire domestic-financed films	9	9	14	9	7	11	9
Co-productions	12	11	4	3	2	7	10
Major co-productions	2	2	1	-	2	3	8
Minor co-productions	10	9	2	3	-	4	2

Film Production/ Sources of Finance	2004	2005	2006	2007	2008	2009	2010
50/50 co-productions	-	-	1	-	-	-	-
2. Short films, documentaries and animation films	**17**	**37**	**8**	**18**	**22**	**32**	**21**

Source: Yearbook film production distribution and exhibition, Romania 2010.

South Eastern Europe Cinema Network (SEE Cinema Network)

Romania is a signatory country of the SEE Cinema Network (the Network). The objectives of this organization are to develop and promote national cinematography of each signatory member of the Network in the other signatory country member and other nonmember countries; to realize bilateral and multilateral cooperation in the field of production, promotion and preservation of traditional cinematography of each member; to create a joint fund of co-productions and to encourage cooperation/co-productions with other European or other continent Networks. One of the ways provided in the Statutory Deeds of the Network is to lobby interests of the Network with domestic authorities.

Key Tax Facts

Corporate income tax rate	16%
Personal income tax rate	16%
VAT rates	24%, 9% and 5%
VAT registration threshold	a turnover over EUR35,000
Normal non-treaty withholding tax rates: Dividends	
• to companies[1]	16%
• to individuals	16%
Interest[2]	16%
Royalties[2]	16%
Supply of Services:	16%
Tax year-end: Companies	Financial year-end – December 31

[1]By virtue of the EU Parent/Subsidiary Directive, as from 1 January 2009, profit distributions made by a subsidiary in Romania to its parent company (i.e. which has a holding of at least 10% for an uninterrupted period of at least 2 years) located in another Member State, are exempt from withholding tax.

[2]Starting 1 January 2011, interest and royalty payments made to an associated company (one of the companies has a direct minimum holding of 25% in the other for a non-interrupted period of at least 2 years) from another Member State or from a state of European Free Trade Association (Island, Lichtenstein, Norway) are exempt from WHT.

Tax year-end: Individuals	December 31

Film Financing

Registration Procedures

According to Romanian Law, business entities, individuals or family associations, whether Romanian residents or not, that produce, multiply, distribute or make use of cinematographic works, use image or correlate sound with image regardless of the support used, or perform other cinema-related activities and services are required to register with, and obtain authorization and approval from, the Romanian Cinema Registry before starting any activity, and are requested to notify the Cinema Registry of any subsequent changes in the circumstances described at the time of registration.

A company intending to perform cinema-related activities in Romania has to follow certain steps for its legal establishment, including:

- Approval from the National Cinema Centre for performance of cinema-related activities
- Registration with the Romanian Trade Registry
- Authorization for functioning from the National Cinema Centre
- Registration with the Cinema Registry
- Also, in order to be released for exhibition in Romania, each film must be:
- Registered with the Cinema Registry (i.e., identified by title, producer, casting, distributors, conventions applicable)
- Licensed with (obtain exploitation visa from) the Classification and Vision Commission (i.e., a license for general audience, movies for which parental guidance is suggested for children under 12, prohibited for people under 15 or prohibited for people under 18)

Generally, there is no censorship of audiovisual communication. However, special decisions for the protection of minors and for private image preservation prevent the transmission of certain types of materials.

Authorizations and Fees

The National Cinema Centre authorizes all cinema-related activities within Romania, performed by individuals or companies, whether Romanian residents or not. The Cinema Registry (which is administrated by the National Cinema Centre) is responsible for registration, evidence and authorizations for cinema qualifying activities, as well as the classification of cinema works.

Romanian residents and non-residents have to pay fees for classification, registration or authorization for producing a film in Romania. The film producers have to register with, and receive authorization from, the National Cinema Centre; if not, the producers may face penalties between RON5,000 – 25,000 (EUR 1,200 – 6,000) and also the termination of their production activity.

Financing Structures

Co-production

It is possible for a Romanian investor to enter into a joint venture with a non-resident investor to finance and produce a film in Romania (even if the film is produced in Romania but the worldwide exploitation rights may be divided among the investors). The investors can then exploit their respective interests according to the co-production agreement.

The practical approach of the Cinema Registry's representatives is that a non-resident envisaging producing a movie in Romania in co-production with a Romanian registered entity would not be required to register with the Cinema Registry. However, this should be confirmed on a case-by-case basis, upon beginning of cinema activities in Romania.

The law does not impose specific requirements as to the legal form under which cinema-related activities must be carried out; thus the co-production may be carried out in any of the legal forms under which economic activities may generally be carried out (e.g., companies, branches, joint ventures, sole traders). If no legal relationship exists for Romanian civil law purposes, the co-production may be subject to tax in Romania provided it has a permanent establishment in Romania. See discussion of permanent establishment below under "Corporate Taxation."

Please note that for a movie to qualify as a co-production under Romanian cinema legislation, the Romanian party must bring a contribution which represents at least 10 percent of the production budget for multilateral productions and 20 percent for bilateral productions. Also, a co-producer is defined as any individual or authorized entity that contributes with a technical and/or financial means to the production of a film.

European Co-production

Romania is a party to the European Convention (the Convention) related to film co-productions. According to the Convention, co-producers (i.e., production companies or individual producers established in Romania or another EU Member State) are eligible to benefit from the incentives provided under the law in their states of residence (i.e., incentives under Romanian legislation). In order to benefit from the provisions of the Convention, the co-production work must:

- Have at least three co-producers from three distinct Member States of the Convention
- Have at least three co-producers from Member States and one or more co-producers from states other than a Member State of the Convention that must bear no more than 30 percent of the overall production costs

The concept of European (cinematographic) works refers to:

- Works originating in Romania or in another EU Member State
- Works originating in third-party countries which are parties to the Convention on Transfrontier Television
- Works realized exclusively or in co-production with producers established in one or more European states with which Romania or EU have concluded audiovisual conventions

Joint Venture

Joint ventures are not separately treated under Romanian laws. The term "joint venture" is a common term used to describe any form of economic activity involving foreign investment, including:

- A joint stock or limited liability company whose shares are held by both Romanian and foreign investors
- A partnership of two or more companies or individuals, including foreign investors
- Cooperation agreements

Limited Liability Company

A limited liability company (SRL) is the most popular type of company. It may have up to 50 shareholders. Romanian Companies Law allows for the incorporation of such a company with one shareholder. However, an individual or a legal entity cannot be sole shareholder in more than one SRL. Furthermore, an SRL with one shareholder may not be at its turn the sole shareholder of another SRL.

The share capital of a SRL needs to be at least RON 200 (approximately EUR48) and is divided into shares ("parti sociale") having a nominal value of at least RON 10 each (EUR2). The shares may not be traded on a regulated stock exchange but they can be traded among shareholders or between shareholders and third parties (Over The Counter). Each share gives its holder the right to one vote.

Joint Stock Company

A joint stock company (SA) can be set up by at least two shareholders. The share capital of an SA should be at least RON 90,000 (approximately 22,000 EUR) divided into shares ("actiuni"), each of them having a value of at least RON 0,1. The initial amount of capital paid by each shareholder should be at least 30 percent of the subscribed capital while the remaining 70 percent should be paid within at most 12 months. Shareholder-contributions in kind need to be made upon the registration of the company.

The shares are marketable titles and they can be nominal or bearer shares. The ownership rights over the nominal shares can be transferred further to a statement made by the transferor or by his or her attorney who is registered in the shareholders' corporate register, and by registering the transfer in the shares certificate, while the ownership right over the bearer shares can be transferred by simple remittance.

The General Meetings of Shareholders may be ordinary or extraordinary. The company is managed by a director or board of directors, who may be elected for a four-year period. Each director has to pay a guarantee for his or her office. The guarantee should be at least equal to lower of the value of ten shares or twice the director's monthly remuneration.

Branch or Subsidiary of Foreign Company

Foreign companies can establish branches or subsidiaries in Romania provided that the home country governing law entitles them to do so.

A subsidiary is a Romanian company (its parent company controls the activity of the subsidiary due to its participation in the subsidiary's share capital), with its own legal personality, governed in all aspects by the Romanian laws (e.g., in terms of incorporation, structure, operation, dissolution/liquidation, etc.), which its own assets and liabilities and acts in its own name and on its own behalf in relation with third parties (e.g., authorities, creditors/debtors, employees, etc.).

A branch is not a Romanian entity but it is an extension of its parent company; therefore it is treated as a foreign entity under the Romanian law, thus having different rights than a Romanian entity (e.g., a branch of a foreign company may not acquire land in Romania). A branch has no legal personality (legally speaking, a branch has no separate existence from its parent-company), has no assets and liabilities on its name/behalf and may conclude contracts (including contracts with customers, employees) only in the name and on behalf of the parent company; such contracts involve the latter's liability, therefore, the parent company is liable towards the employees and creditors of the branch for the actions/debts undertaken by the branch. However, the branch is treated as a Romanian resident for tax and currency regime purposes.

Law no. 105/1992 on private international law provides that branches are governed by the national law of their parent companies. By contrast, Romanian subsidiaries controlled by foreign companies, are subject to Romanian law. Of course, this comment refers mainly to corporate matters while the economic activities carried on in Romania are subject to Romanian Law.

In practice, subsidiaries have to fulfill the same registration formalities as companies, i.e., registration of the Constitutive Act with the specialized Office within the Romanian Trade Registry. It is important to notice that a subsidiary must comply with the minimum capital requirements imposed under the Romanian Company Law.

Sole Trader (Sole proprietorship)

A sole trader is merely an individual doing business by acting independently. The individual is entitled to all the profits deriving from his or her business and is personally liable for all related debts and obligations. The individual's liability to the business is therefore not limited to the assets used for carrying out his or her business, but also includes the personal assets of the trader.

The legal provisions set forth the conditions under which individuals—Romanian citizens or citizens of the EU member states and the member states of the European Economic Area—can perform economic activities in Romania, either independently, or as family associations.

In order to carry out economic activities, the individuals who act independently as well as the family associations must obtain an authorization, which is issued, upon request, by the mayor of towns, villages, etc., where the individuals have their residence. Performing the activity without the relevant authorization is deemed as a crime and is sanctioned according to the criminal law.

Once the authorization has been obtained, individuals and family associations must register with the Trade Registry and the relevant tax authorities.

Partnership ("asociere in participatiune")

A partnership is established when an individual trader or a commercial company grants to one or more individuals or companies a partnership interest in the benefits and losses of one or more transactions, or even over all its commercial activities. It may also be set up for commercial transactions made by non-traders.

A partnership does not represent, for a third party, a legal entity distinct from its partners. The third parties have no rights and are liable only towards the person with whom they concluded an agreement. Partners have no property rights over the properties of the partnership even though they provided these properties. However, to the extent of the relationships between them, the partners may stipulate to have their contribution returned in kind, and have the right to receive the damages suffered if such a return would not be possible.

Except for the general rules mentioned above, the form, size and constraints of a partnership are determined through agreements between the partners.

Partnerships are excepted from the formalities required for companies, but they have to be evidenced by writing.

Incentives for the Film Industry

Financial Grants from the National Cinema Centre

The National Cinema Centre can offer financing for:

- production of cinema films (by selection contest) in the form of:
  - Direct Credit
  - Indirect financial support in the form of tax incentives
- distribution, exhibition and exploitation of films in cinemas, in the form of non-reimbursable grants

The amount given as financing is established by a commission made up of members of the National Cinema Centre. However, only the projects that win the selection contest can receive financing for production of cinema films. The selection contest takes place bi-annually and the applicants (i.e. individuals or legal entities) must be registered with the Cinema Registry.

Certain types of films are restricted from benefiting from grants: films which bring prejudices to dignity, honor, private life of individuals, which instigate to violence, adult-content films, which engage electoral, political, religious propaganda.

After a film (i.e. production of a film or a co-production) is approved as eligible for grant after the selection process, certain requirements need to be complied with (i.e. registration with the Cinema Registry, specific budget requirements, copyrights etc.).

Although the Cinema Law provides the general framework for granting direct and indirect financial facilities, such facilities are granted in practice based on a state aid scheme.

In November 2010, the European Commission has approved a EUR 80.6 million state aid scheme for the Romanian cinema movies production. The scheme consists in offering interest-free loans (direct credit) and non-reimbursable financing facilities for production of Romanian movies. The measure also allows movie producers to spend up to 20 percent of the movie budget in the European Economic Area, not only in Romania. This support scheme will be available until the end of 2014.

According to the abovementioned state aid scheme, the facilities are granted for:

I Production of cinema films

1. Direct Credit:

- Cannot exceed 50 percent of the total amount of production expenditures, unless representing credit for the production of difficult films and films with a reduced budget. For the latter (difficult productions), the maximum credit granted cannot exceed 80 percent of the specification amount;
- Up to 50 percent of the credit can be granted at the beginning of the preparation period and the difference throughout the realization of the film;
- Include in the production budget preset maximum quotas, i.e., 10 percent for the producing companies; 10 percent – unexpected costs; 5 percent – director's fee; 4 percent – executive producer's fee; 4 percent – screenplay; 4 percent – lyrics' composer;
- The beneficiary does not have any liabilities to the State;
- May be granted to international film productions if certain conditions are met, such as: the co-producers are Romanian legal entities or individuals (authorized, registered with the Cinema Registry and have won a selection contest) and they bring a contribution which represents at least 10 percent of the production budget for multilateral productions and 20 percent for bilateral productions. However, direct credit for such productions cannot exceed 50 percent from the contribution brought by the Romanian party (except for difficult productions);
- Reimbursement of direct credits is made over a maximum time span of ten years.

The quantum of the grant for production will be decided and announced by the Council of the National Cinema Centre before each cinema projects selection session based on a scoring system. The criteria involve the quality of the script, the film budget, the production and financing plan, etc. However, the minimum quantum of the credit which may be granted is:

- 15 percent for debut fiction motion pictures
- 5 percent for fiction short films
- w15 percent for documentaries and animation

In order to benefit from a direct credit, a winner of a selection contest must conclude a loan agreement with the National Cinema Registry, which specifies the exact terms of the loan.

2. The indirect financial grant, in the form of:

- *Producers, co-producers and other entities involved in the financing of the movie are granted non-reimbursable financing facilities determined based on the amount of corporate tax paid, meaning 150 percent of the corporate income tax paid in relation to the invested sum. However, this amount cannot exceed 10 percent of the direct production costs incurred in Romania and 50 percent of the gross profit.*
- *Romanian companies involved in the production of movies realized "on demand" are granted non-reimbursable financial facilities representing 25 percent of the total taxes paid in respect of the costs incurred in Romania, provided that the following conditions are met:*
  - *The Romanian legal entity is registered with the Cinema Registry*
  - *The costs incurred in Romania represent at least 40 percent of the total budget of the production*
  - *The amounts granted as state aid must cover the direct production costs and must not exceed 10 percent of these costs*

II. Distribution, exhibition and exploitation of films in cinemas Grants are available for legal entities authorized provided that applicants:

- Register with the Cinema Registry;
- Submit an application form together with a file containing the required documentation;
- In the case of legal entities, their share capital must be of minimum RON 10,000 (approximately EUR2,500) or in the case of individuals they must submit a letter of guarantee issued in the name of the National Cinema Centre;

- Have a minimum contribution of 6 percent to the total production budget, Have the written approval from the author(s) of the screenplay regarding the distribution and the exploitation of the movie;
- Include in the production budget preset maximum quotas, i.e. 7.5 percent for the distribution company's fee; 5% for unexpected costs;
- The first installment must not exceed 30 percent of the total financial grant and the last installment must represent at least 15 percent of the total funds available;
- Have no liabilities to the State;

Eurimages
Eurimages is the Fund of the Council of Europe created in order to support co-production, distribution and exploitation of European film industry. Romania joined this program in May 1998. Grants are available for co-productions, for distribution and for cinemas.

Other Financing Considerations

Currency Restrictions
Generally, payments between Romanian residents, including branches and representative offices of foreign companies registered in Romania, must be made in Romanian currency (RON); however, certain categories of residents (i.e. companies that perform import-export operations, individuals and companies that perform international transportation of people/merchandise, international tourism, operations abroad), may make payments in foreign currency. Payments made from a Romanian resident to a non-resident can be made in hard currency. There are no restrictions on such payments. The granting of financial loans (with duration of more than one year) between residents and non-residents requires notification to the National Bank of Romania.

Corporate Taxation
Romanian legal entities are subject to tax on their worldwide income. Foreign legal entities carrying out activities in Romania through a permanent establishment are subject to tax on profits attributable to the permanent establishment. The definition of a permanent establishment provided for by Romanian legislation is generally in line with the standard tax treaty definition, as contained in the OECD model treaty.

If a company is not resident in Romania and does not have a production office in Romania, but undertakes location shooting there, it is unlikely that it would have a Romanian tax liability since it would not be regarded as having a permanent establishment in Romania. However, if a company is not resident

in Romania but has a production office to administer location shooting in Romania, the tax authorities may try to argue that it is subject to tax in Romania by being regarded as having a permanent establishment, unless specific exemptions can be obtained by virtue of a claim under an appropriate double tax treaty. In this case, it may be possible to argue that the location is similar to a construction or installation project that does not exist for more than the defined period, or that it is not a fixed place of business as provided for in the appropriate article. There is little guidance concerning recognition of permanent establishments of film productions of foreign companies and the computation of attributable profits for local tax base determination. Advice on this matter needs to be sought on a case-by-case basis.

Foreign filmmakers subject to Romanian corporate tax may theoretically benefit from the same corporate tax incentives as Romanian filmmakers. However, it is questionable whether such foreign filmmakers would be in a position to meet all of the relevant conditions.

Indirect Taxation

Value Added Tax (VAT)
As a member of the EU Romania harmonized its legislation on indirect taxation with the regulations applicable in the EU so the Romanian Law on VAT is in line with 2006 112/EC Directive.

The general VAT rate in Romania is 24 percent. Cinema entrance tickets are subject to the 9 percent reduced VAT rate. The activity of Romanian filmmakers is generally subject to VAT at 24 percent.

If supplied between two taxable persons established in different Member States the services mentioned above of filmmakers would be, as a general rule VAT taxable where the customer is established (i.e., in Romania if rendered to a customer established in Romania). Services rendered in Romania by Romanian filmmakers (i.e. taxable persons registered for VAT purposes in Romania) are generally subject to output VAT (i.e. no specific exemption is applicable) and such filmmakers are entitled to deduct input VAT on the costs they incur. Note that Romanian entities (i.e. taxable persons established in Romania) carrying out economic activities under the small undertakings threshold of EUR 35,000 (approximately RON 119,000) are not required to register and account for Romanian VAT. However, the taxable person may opt for the application of the normal tax regime. In case the taxpayer has a turnover of less than EUR 35,000 and does not opt for VAT registration, input VAT incurred in this situation cannot be deducted.

As mentioned above,
Generally, foreign filmmakers that do not carry out any other taxable operations in Romania do not have to register for VAT purposes in Romania, as the beneficiary is liable to pay for VAT viat the reverse charge mechanism. The refund VAT procedure applicable to taxable persons established in a Member State other than Romania, regulated by the Directive 2008/9/EC, has been implemented by the Methodological Norms for the application of the Fiscal Code and Order no.4/2010 and has come into force as of January 1, 2010. Filmmaking companies established outside the EU are not able to obtain a VAT refund as provided by the Directive 86/560/EC (with the exception of Switzerland and Turkey, under certain circumstances).

Foreign filmmakers that do carry out taxable activities, other than those for which VAT is payable by the Romanian beneficiary according to Romanian VAT law, or perform intra-Community acquisitions/supplies of goods, must register for VAT purposes in Romania before performing such operations. To deal with its VAT affairs a foreign entity may either appoint a VAT representative with joint and several liability to the tax authorities (compulsory for non-EU entities), or register directly with the Romanian authorities (option available only for entities from other EU countries). Note that voluntary VAT registration in not available.

Alternatively, a foreign filmmaking company may set up a Romanian company or a branch and so be subject to the same treatment as Romanian filmmakers.

With respect to input VAT, the purchase of goods and services provided in Romania for the purpose of filmmaking is generally subject to 24 percent VAT. Imports of goods are also generally subject to 24 percent VAT. Relief from import VAT may be available under the special rules relating to temporary regimes of import as described below. Romanian VAT law also provides for a derogation regarding the payment of VAT in customs, in case of imports performed during a financial year for companies that exceed a threshold of RON 100,000,000 (approximately EUR 25,000,000).

Customs Duties

As far as customs duties are concerned, the treatment of residents and non EU residents are similar. There are currently no restrictions on the importation of English-language films. Under the copyright law, the importation of a film needs an authorization from the author. Also, each copy of a film must have applied a hologram issued by the national copyright authorities for prevention of distribution of illegal copies.

Romania is a member of the EU since January 1, 2007 so customs duties arise only on importation of goods from countries outside the EU and not on importation from member states of the EU. Even in the case of importation from countries outside the EU, relief from customs duties may be available under the special rules relating to temporary regimes of import (where the goods are subsequently re-exported to a country outside the EU and certain other conditions are fulfilled). There is also a customs warehousing system allowing duties to be suspended under certain conditions.

For goods imported from outside the EU, the Common Customs tariff is applicable.

Special Taxes for Film Exhibition Activities

National Cinema Fund

Taxes paid to the National Cinema Centre include:

- A tax of 3 percent of the gross selling price of videocassettes, DVDs or any other recordable support is due by companies authorized to sell such goods to the public
- A tax of 4 percent of the income from advertising on the national and private TV networks
- A tax of 3 percent applicable to the advertising income received from cable TV networks for selling advertising space
- A tax of 4 percent applies to income from exhibition of films in cinema theatres or any other similar locations
- A tax of 1 percent of income is due in respect of subscriptions with cable companies, satellite and digital broadcasting
- A tax of 3 percent of the income derived from downloading movies through intermediaries of data transmission, including internet and telephony.

The above mentioned taxes must be declared and paid no later than the 25th of the month following the month for which they are due.

Show Tax

A tax of 2 percent, applied to the price of cinema tickets, is payable to the local budgets. However, this tax may be increased by up to 20 percent per year.

Cinema Stamp
A "cinema stamp" of 2 percent of the price of a ticket is payable by the final consumers to the companies authorized by the National Cinema Centre to organize cinema or video shows in Romania. The cinema stamp is added to the price of the ticket and the tickets need to have printed on them: "The price of the ticket includes the cinema stamp." The collecting units further pay the entitled organizations of authors (i.e., producers or other persons designated by the producers). For foreign films, the destination of collected stamp is established by the distributor.

Personal Taxation

Resident Artists
According to domestic Romanian rules, an individual is deemed to be a Romanian resident (for income tax purposes) if at least one of the following conditions is met:

- The person has his or her domicile in Romania
- The center of vital interest of the person is located in Romania
- The person is present in Romania for a period or periods that exceed in total 183 days during any period of 12 consecutive months ending in the calendar year in question
- The person is a Romanian citizen who is serving abroad as an official or employee of Romania in a foreign state

The Romanian tax legislation does not contain a definition of an "artist." A definition of "artist" is provided in the Copyright Law. According to this definition, artists include actors, singers, musicians, dancers and other individuals who present, sing, recite, play, interpret, direct or execute a literary or artistic work, or a show of any kind.

Incomes earned by residents who are cast in realizations of films, shows, or TV shows are subject to an income tax rate of 16 percent.

Income from copyrights is taxable similarly to freelancers. Thus, net income (taxable income) from copyrights is determined by subtracting out of the gross income a 20 percent allowed deduction plus social charges due and paid. Tax is levied at a tax rate of 16 percent.

Non-Resident Artists
Individuals who do not fulfill any of the residency criteria as above mentioned are not subject to income tax in Romania except on their Romanian source income.

More favorable residency criteria may exist under the Double Tax Treaties. Romania has a good tax treaty network, having concluded tax treaties for the avoidance of double taxation with almost 90 countries worldwide. Most of these treaties are generally in line with the OECD Model Tax Convention on Income and Capital.

Fiscal Residency Certificate
Benefits of the Double Tax Treaties may be applied only if a fiscal residency certificate of the foreign individual is provided. The fiscal residency certificate is a document which needs to be issued by the local tax authorities of the lender, stating that it is a resident of that state in accordance with the definitions given in the treaty in force between Romania and that country, and that the treaty stipulations are therefore applicable to it.

Work Authorization
Under current Romanian immigration law, non-EU/EEA individuals who work in Romania either as assignees of a non-Romanian employer or as local employees of a Romanian employer have the obligation to obtain a work authorization. The authorization as assignee is issued for a one-year period, and if the individual wishes to continue to work in Romanian after the initial one-year period of assignment, the person has to obtain a new work authorization (for local employees) and to conclude a local employment contract with a Romanian employer.

As from January 1, 2007 EU and EEA citizens are no longer required to obtain work permits in order to carry out activities in Romania. They just have to register with the Romanian Immigration office and obtain a registration certificate.

Other Issues

Author Rights
Under Romanian copyright law, the author of a cinematographic work is the director, the producer, the author of the adaptation, the author of the screenplay, the author of the dialogues, the author of the music specially created for that work, or the creator of the animated graphic images for animation films or film scenes including animation where such scenes cover an important part of the film. The contract signed between the director and the producer may stipulate other parties (which have substantially contributed to the creation of the film) to be included as authors.

Contracts concluded between the producer and the authors allow the producer to have the exclusive rights on the use of the film and the right to authorize subtitles and voice doubling, if not otherwise expressly provided. On the other hand, if not otherwise expressly stipulated, the contract also allows authors to keep ownership of copyrights over their contribution to the film and to use it for other purposes (i.e., for advertising purposes, other than for the promotion of the film).

If the producer does not finalize the film within a period of five years from the date of signing the contract with the co-authors or if he or she does not release the film within one year from the same date, then co-authors may ask for the termination of the contract.

Broadcasters

As from January 1, 2007, broadcasters incorporated in Romania have to comply with the following requirements:

- To reserve to the European works a minimum 50 percent of the transmission time, excluding time dedicated to news, sports, games, advertising, teletext and teleshopping
- To reserve to the European works created by independent producers at least 10 percent of the transmission time or of the program's budget

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Chapter 29

Singapore

Introduction

The campaign, "Media 21," was launched by the Singapore government in 2003 to develop and promote the media industry. Through the campaign, the government has introduced various development schemes to encourage media production and to attract foreign film producers into the country. The objectives of this campaign were to increase the Singapore's Gross Domestic Product (GDP) contribution of the media cluster from 1.56 percent in 2003 to 3 percent in 10 years, and create over 10,000 new jobs for Singaporeans.

In response to global trends towards digitization and a rising interest in Asia, Media 21 blueprint has to be updated. The updated strategy, Singapore Media Fusion Plan (SMFP), describes the vision, aspirations and thinking behind the multi-agency efforts to help the Singapore media sector prosper in a rapidly changing media environment. SMFP envisions Singapore as a Trusted Global Capital for New Asia Media.

Key Tax Facts

Corporate income tax rate	17%
Highest personal income tax rate	20%
Goods and services tax rate	7%
Normal non-treaty withholding tax rates: Dividends	0%
Interest	15%
Royalties	10%
Tax year-end: Companies	December 31
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

The most common forms of financing structures in the Singapore film industry are partnerships and investment agreements. In addition, Singapore has co-production agreements and arrangements with Canada, Japan, Australia, New Zealand, Korea and China, as discussed below.

Co-Production

Singapore has bilateral co-production agreements and arrangements with Canada, Japan, Australia, New Zealand and Korea. Singapore's co-production agreements with these countries generally provide a formal framework for cooperation on films, television programs, animated productions, video games and other media projects. Individuals involved in the co-production must be citizens or permanent residents of the relevant countries.

The Singapore-Canada Audio Visual Co-production Agreement specifies that copyright ownership and revenue is to be proportionate to the co-producers' financial contribution. Further, live action shooting and animation works must be carried out either in Singapore or Canada.

Under the Singapore-Japan and Singapore-New Zealand Film Co-production Agreements joint production projects are eligible for funding from relevant funding sources in Singapore or Japan, and Singapore or New Zealand, respectively.

The Singapore-Korea Arrangement for the Co-production of Broadcasting Programmes promotes cultural diversity, encourages the co-production of films, establishes training and attachment programs and facilitates the sharing of information between the two countries.

The Singapore-Australia Co-production Agreement seeks to enhance cooperation between the two countries in the area of film, to expand and facilitate the co-production of films which may be conducive to the film industries of both countries and to the development of their cultural and economic exchanges.

The Singapore-China Film Co-production Agreement covers theatrical feature films and telemovies, cross live-action, animation and documentaries. It aims to spur greater industry collaborations between the two countries by facilitating filmmakers from both countries to pool resources and create a larger distribution network for the international market.

Partnership

The business structure in Singapore classifies a general partnership as a business firm, and therefore it is not considered to be a separate legal entity. Therefore, general partners share unlimited and joint liability for all debts incurred by the business.

Investment Agreement

A popular method of film financing in Singapore is the use of an investment agreement. Further, many of the government funding schemes require that the recipients sign an investment agreement with the Singapore government. The agreement specifies the proportion of financing provided by each investor and the distribution of revenue among the investors.

Tax and Financial Incentives

Government funding schemes

The Singapore government has introduced a number of schemes specially developed for film and television co-productions to encourage collaborations between Singaporean and foreign film and television industries. To help achieve the SMFP vision, Media Development Authority of Singapore (MDA)[1] will continue to anchor international media funds in Singapore and establish debt financing programs to support media enterprises and projects. The MDA will also develop incentives to attract financial and ancillary support services for media into Singapore.

"Film in Singapore" scheme

The "Film in Singapore" scheme, introduced in May 2004 by the Singapore Tourism Board (STB), hopes to encourage leading international film producers to shoot and produce quality films and television programs in Singapore. The scheme will subsidize up to 50 percent of the qualifying expenses incurred by foreign producers during their shoots in Singapore. The qualifying expenses include the hiring of local talent and production staff; post-production services; rental of production facilities and equipment; and airfare and accommodation. The scheme is granted for the projects based on the following criteria:-

1) Singapore must be showcased in a positive light in the script
2) Estimated budget of production costs to be incurred in Singapore
3) The track record of the director/producer/actors
4) The financing, marketing and distribution plan.

In addition to financial support, the STB and the MDA provide technical information and support on the application of permits and licenses; the sourcing of locations; and the hiring and rental of resources.

[1] Formed in 2003, the Media Development Authority of Singapore (MDA) plays a vital role in promoting the development of vibrant and competitive film, video, television, radio, publishing, music, games, animation and interactive digital media industries in Singapore.

Scheme for Co-investment in Exportable Content (SCREEN)
SCREEN is spearheaded under the MDA, and assesses co-funding arrangements for television production projects. Television production companies incorporated in Singapore with 30 percent shareholding by Singaporeans/Singapore Permanent Residents, and central management and control in Singapore are eligible to apply for this scheme. All rights and revenues are shared among all the investors in proportion to the investment amount.

International Film Fund (IFF)
The IFF was launched in 2009 to encourage Singapore production and post-production companies to take on executive producer and/or co-producer roles in international film productions, ranging from animation, live-action features and stereoscopic 3D content. Under the IFF, the MDA will co-invest, together with Singapore companies and other international partners and investors, in feature films that present opportunities for global reach and returns, under a co-sharing of rights and revenues arrangement.

New Feature Film Fund (NFFF)
The NFFF, administered by the Singapore Film Commission (SFC)[2], aims to provide emerging talents the opportunity to direct their feature film in collaboration with film production companies. The SFC has the option to contribute up to S$500,000 in investment for each selected feature film, or 50% of the production budget, whichever is lower. Under the NFFF, the SFC, together with the film production companies, will co-fund the film under a co-sharing of rights and revenues arrangement in proportion to each party's respective financial contributions.

Recognising that films produced by emerging Singapore directors require additional marketing assistance to reach out to local audiences, the SFC is prepared to provide up to an additional S$30,000 for advertising and promotion of the finished film within Singapore.

To qualify for this scheme, the applicants must be Singapore citizens or permanent residents, with a minimum 30 percent local shareholding, and with central management and control in Singapore. The film company must contribute (in cash investment or production services) equivalent to at least 20 percent of production budget.

[2] The Singapore Film Commission (SFC) is an agency under the MDA that facilitates and assists film development for Singapore. Its key areas of focus are funding, facilitation and promotion.

Travel Assistance Programme
This scheme, administered by the MDA, aims to promote Singapore film and filmmakers internationally by supporting Singapore film talents (in particular directors and producers) to attend international film festivals and competitions when their completed films are selected for screening/awards. This scheme also aims to facilitate the participation and promotion of shortlisted Singapore films at international film festivals and competitions. All Singapore-based filmmakers who are Singapore citizens or permanent residents involved in creating the selected film can apply for this grant.

Applicants under the scheme are entitled to reimbursement of up to 100 percent of one economy class return air fare ticket to attend an international film festivals/competitions, subject to a certain cap (depending on the country to which the trip is made). The reimbursement is on per trip and per film title basis and an applicant may make a fresh application to the MDA for travel to another country to attend another international film festival/competition for the same film title. Each film title is subject to a funding cap of S$5,000 regardless of the number of trips made to attend international film festivals or competitions.

Other funding schemes
Other funding schemes provided by the SFC include the SFC Short Film Grant, SFC 35mm Fulfillment Fund, and SFC Script Development Programme. These schemes are available to all Singapore-based filmmakers who are Singapore citizens or permanent residents.

Other Financing Considerations

Exchange Controls and Regulatory Rulesv
Although the Exchange Control Act is still in force, all exchange controls have been removed since June 1978. There are now no restrictions on inward or outward remittances, whether capital or revenue. Banks have been asked to observe the Government's policy of discouraging the internationalization of the Singapore dollar when they consider granting credit facilities to non-residents. In addition, they must satisfy certain conditions and are required to report to the Monetary Authority of Singapore for any credit facilities exceeding S$5 million extended to any non-resident financial institutions.

Corporate Taxation

Recognition of Income

Singapore has a territorial basis of taxation where only income accruing in or derived from Singapore is subject to corporate income tax unless specifically exempt from tax. Income sourced outside Singapore is not subject to tax in Singapore unless the income is received in Singapore and not exempt from tax. In this regard, foreign-sourced income in the form of foreign dividends, branch profits and certain service income received in Singapore on or after 1 June 2003 are exempt from Singapore income tax under certain conditions.

The corporate income tax rate in Singapore is 17 percent[3] with effect from the year of assessment 2010 (i.e., financial year ending 2009). The effective tax rate is lower as a partial tax exemption is granted on the first S$300,000 of chargeable income where effectively, the first S$152,500 of chargeable income is exempt from tax. Newly incorporated companies may benefit from a full tax exemption for the first S$100,000 of chargeable income and 50 percent on the next S$200,000 of chargeable income in the first three consecutive years of assessment provided certain conditions are met.

Amortization of Expenditure

Deductions

Generally, expenses incurred in the production of income subject to Singapore income tax are allowed in arriving at the taxable income. Such allowable expenses include:

- Interest and qualifying borrowing costs on loans employed in acquiring income
- Rent payable in respect of any land or building or part thereof occupied for the purpose of acquiring the income
- Expenses for repairs of premises, plant, machinery or fixtures or for the renewal, repair or alteration of implements, utensils or articles employed in acquiring the income
- Specific bad and doubtful trade debts that occurred during the period. Conversely, debts that had been previously allowed as a deduction but are subsequently recovered must be included as income in the year the recovery takes place

[3] The rate of 17 percent may be reduced under tax incentives granted under the Income Tax Act (Chapter 134, 2008 Revised Edition) or Economic Expansion Incentives (Relief from Income Tax) Act (Chapter 86, 2005 Revised Edition). Tax incentive schemes offer concessionary rates ranging from zero to 15 percent.

- Compulsory contributions made by employers to an approved pension or provident fund or society for employees
- A reasonable share of head-office or regional-office expenses incurred overseas
- Research and development (R&D) expenditure incurred for any trade or business and for R&D undertaken in Singapore, expenditure incurred during the basis periods for the years of assessment 2009 to 2015 need not be related to the current trade

Expenses that are not incurred wholly and exclusively in the production of income, including expenses that are domestic, private and capital in nature, are not deductible for tax purposes.

Tax Depreciation/Capital Allowances

Tax depreciation (commonly referred to as capital allowances) is granted only in respect of capital expenditure incurred on the provision of plant and machinery used in a trade, business or profession (except where the expenditure is for the provision of plant and machinery for any R&D undertaken in Singapore, the plant and machinery need not be in use for the current trade). Plant and machinery is classified into working lives of 5, 6, 8, 10, 12 or 16 years for capital allowances purposes. As an alternative to claiming capital allowances over the prescribed working life, accelerated allowances can be claimed over three years (or over two years for capital expenditure incurred during years of assessment 2010 and 2011) for all plant and machinery. Some assets, such as computers and prescribed automation equipment (e.g., data processing equipment, data communications equipment, etc.), robots, power generators installed in a factory or office as back-up units in the event of power failures and efficient pollution control equipment can be written off in one year.

From years of assessment 2011 to 2015, as part of the Productivity and Innovation Credit (PIC) Scheme introduced in Budget 2010, expenditure incurred to acquire prescribed automated equipment can qualify for 400 percent allowance instead of 100 percent allowance subject to a certain expenditure cap, and 100 percent allowance on the balance expenditure exceeding the cap. The allowance is granted on due claim.

Amortization

Expenditures that are capital in nature are not deductible for Singapore income tax purposes. Such expenditures, whether expensed in full or amortized over a period of time in the accounts, are added back in the income tax computation. However, capital expenditures incurred between 1 November 2003 to the last day of the basis period for the year of assessment 2015 to acquire intellectual property rights (IPRs) for use in a company's trade or business may qualify for writing-down allowances on a straight-line basis over five years. This includes acquisition of IPRs relating to films. To qualify, the legal and economic ownership of the IPRs has to be with the Singapore company. For IPRs acquired on or after 17 February 2006, application can be made to the Economic Development Board (EDB) to waive the legal ownership requirement.

Where an approved Media and Digital Entertainment (MDE) company acquires approved IPRs pertaining to films, television programmes, digital animations or games, or other MDE contents for use in its trade or business, the writing-down allowances would be reduced from five years to two years. The accelerated writing-down allowances will be granted on an approval basis by the EDB for qualifying IPRs acquired during 22 January 2009 to the last day of the basis period for the year of assessment 2015.Approval is required in all instances, including where both legal and economic ownership of the IPRs for the MDE content are acquired.

From years of assessment 2011 to 2015, companies can claim enhanced writing-down allowances under the PIC Scheme, whereby expenditure incurred to acquire IPRs (other than EDB approved IPRs and IPRs relating to MDE contents) can qualify for 400 percent allowance instead of 100 percent allowance subject to a certain expenditure cap, and 100 percent allowance on the balance expenditure exceeding the cap.

Withholding Tax

Singapore withholding tax is applicable on certain payments made to non-residents of Singapore. The rate of withholding tax may be reduced in accordance with the provisions of the respective tax treaties.

Royalties

The term "royalties" as used in tax treaties generally includes payments of any kind received as consideration for the use of, or the right to use, any copyright, patent, trademark, design, model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific experience. Some tax treaties extend such payments to the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films while other tax treaties specifically exclude these. The royalties arising in Singapore may be exempt from Singapore income tax or may be taxable at reduced rates, but reference should be made to the respective tax treaties.

In an effort to promote the arts in Singapore, an individual who is an author, a composer or choreographer, including a company in which the shares are wholly owned by the author, composer or choreographer, is subject to tax on income from royalties or other payments in relation to literary, dramatic, musical, or artistic work on the lesser of:

- The net royalty income after deduction of allowable expenses and wear and tear allowances
- Ten percent of the gross royalties

This tax concession does not apply to royalties or payment received in respect of any work published in any newspaper or periodical. This very attractive tax treatment also applies to royalties received by persons from recording, film or drama companies in Singapore.

Foreign Tax Relief

Foreign income earned by a Singapore company may be subject to taxation twice – once in the foreign jurisdiction, and a second time when the foreign income is remitted into Singapore. To help mitigate double taxation, foreign tax relief is granted to Singapore resident companies[4] by allowing them to claim a credit for the tax paid in the foreign jurisdiction against the Singapore tax that is payable on the same income. The types of foreign tax relief available are:

- Double taxation relief which is the credit relief given on foreign income derived from a foreign jurisdiction with which Singapore has concluded an Avoidance of Double Taxation Agreement ("tax treaty");

[4] A company is a tax resident of Singapore if the control and management of its business is exercised in Singapore.

– Unilateral tax credit which is given on foreign income derived from a foreign jurisdiction with which Singapore does not have a tax treaty concluded, or where the foreign income is not covered in a limited tax treaty concluded between the foreign jurisdiction and Singapore.

Regardless of the type of foreign tax relief (be it double taxation relief or unilateral tax credit) claimed on any source of foreign income from any foreign jurisdiction, the amount of relief to be granted is restricted to the lower of the Singapore tax payable on net income (computed on a "source-by-source and country-by-country basis), and the actual foreign tax suffered.

With effect from the year of assessment 2012, Singapore resident companies may elect to pool the foreign taxes paid (including any underlying tax, where applicable) on any items of their foreign income, if certain conditions are satisfied. The amount of the foreign tax relief to be granted is based on the lower of the total Singapore tax payable on those foreign income and the pooled foreign taxes paid on those income.

Exemption of Foreign Source Income

In an effort to encourage the remittance of foreign-sourced income into Singapore, and to augment Singapore as a regional hub, Singapore resident companies receiving foreign income in Singapore in the form of foreign dividends, branch profits and service income on or after 1 June 2003 are exempt from Singapore income tax. The exemption is applicable if the following conditions are met:

i) The income is from a jurisdiction with a headline tax rate (i.e., highest corporate tax rate) of at least 15 percent

ii) The foreign income is subject to tax in the foreign jurisdiction from which the income is received, and

iii) The Inland Revenue Authority of Singapore (IRAS) is satisfied that the exemption is beneficial to the Singapore resident company.

Indirect Taxation

Goods and Services Tax (GST)

Singapore GST is a broad-based consumption tax implemented on 1 April 1994. Singapore operates a dual-rate GST system (i.e., standard-rate and zero-rate) with few exemptions. Supplies of goods and services made in Singapore by taxable persons (i.e., persons who are GST-registered or liable to be GST-registered) and imports of goods into Singapore are subject to GST at the prevailing standard rate of 7 percent[5]. A supply of goods is regarded

as made in Singapore if the goods are physically located in Singapore at the time of supply. Otherwise, the supply is not within the scope of Singapore GST and regarded as an out-of-scope supply for GST purposes. A supply of services is regarded as made in Singapore if the supplier belongs[6] in Singapore.

Export of goods from Singapore and provision of international services as listed under section 21(3) of the GST Act are zero-rated (i.e., 0 percent). Sale and lease of residential properties and certain financial services (including life insurance and reinsurance) are GST exempt.

The sub-sections of section 21(3) of the GST Act that may be applicable to the film industry for zero-rating are as follows:

Section 21(3)(j) – Services supplied under a contract with a person who belongs outside Singapore[7] and which directly benefit a person who belongs outside Singapore and who is outside Singapore at the time the services are performed, not being services which are supplied directly in connection with land/land improvements in Singapore or goods situated in Singapore at the time the services are performed, other than goods for export. This sub-section does not include any services comprising either of or both –

(a) the supply of a right to promulgate an advertisement by means of any medium of communication; and

(b) the promulgation of an advertisement by means of any medium of communication.

[7] A non-individual recipient of services would be regarded as belonging in Singapore if it has:

(a) a business establishment (e.g., a branch and agency) or some other fixed establishment in Singapore and no such establishment elsewhere;

(b) no such establishment in any country, but the supplier's usual place of residence (i.e., the place of incorporation or legal constitution) is in Singapore; or

(c) such establishments both in Singapore and elsewhere, but the establishment which is most directly concerned with the supply is in Singapore.

Section 21(3)(u) –	Services comprising either of or both – (i) the supply of a right to promulgate an advertisement by means of any medium of communication; and (ii) the promulgation of an advertisement by means of any medium of communication, where the Comptroller of GST is satisfied that the advertisement is intended to be substantially promulgated outside Singapore. This sub-section does not include any services comprising only of the promulgation of an advertisement by means of the transmission, emission or reception of signs, signals, writing, images, sounds or intelligence by any nature of wire, radio, optical or other electro-magnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.

Generally, a person (including a corporation) who makes taxable supplies is liable to be registered for GST in Singapore if the value of taxable supplies has exceeded S$1 million in the current and preceding three quarters (i.e. a total of past 12 months) or is expected to exceed S$1 million in the 12 months then beginning. Supplies made by GST-registered film producers and distributors in Singapore would be taxable at the prevailing standard-rate of 7 percent unless they qualify for zero-rating. Input GST incurred on purchases by GST-registered film producers and distributors in the course or furtherance of their businesses of making taxable supplies or out-of-scope supplies which would be taxable if made in Singapore, can be credited against their output GST when they lodge their GST returns, except for input GST on purchases that are specifically disallowed under the GST legislation.

Supply of a Completed Film

The IRAS has not issued any guidelines on whether the supply of a completed film would be regarded as a supply of goods or a supply of services. Arguably, this is more likely to be a supply of services, as the supply of a completed film essentially is a sale of the rights to the film. The fact that the film is contained in a carrying media (e.g., disc or tape) should not affect the GST classification of the supply.

If the supply of a completed film is a supply of services, the supplier belonging in Singapore has to charge GST at the prevailing standard-rate of 7 percent on its supply of a completed film to another person belonging in Singapore. The supply of a completed film to a person belonging outside Singapore may qualify for zero-rating under section 21(3)(j).

Pre-Sale of Distribution Rights

A taxable supplier belonging in Singapore is required to charge GST at the prevailing standard-rate of 7 percent on pre-sale of distribution rights to another person belonging in Singapore. Pre-sale of distribution rights to a person belonging outside Singapore may qualify for zero-rating under section 21(3)(j).

Royalties

GST at the prevailing standard-rate of 7 percent is chargeable on the payment of royalty by a person belonging in Singapore to another taxable person belonging in Singapore.

The payment of royalty by a person belonging outside Singapore to a taxable person belonging in Singapore may qualify for zero-rating under section 21(3)(j).

Media Sales

Media sales where circulation is wholly or substantially outside Singapore can be zero-rated under section 21(3)(u) of the GST Act. Media sales refer to:

- the sale of advertising space for hardcopy print and outdoor advertisements
- the sale of advertising airtime for broadcasting
- the sale of media space for web advertising in other digital media

Peripheral Goods and Merchandising

Local sale of peripheral goods and merchandising (such as books, magazines, clothes and toys) relating to the distribution of a film is standard-rated. Exports of peripheral goods and merchandising can be zero-rated provided that the supplier maintains the requisite export documents.

Promotional Goods or Services

Local sale of promotional goods is standard-rated while exports can be zero-rated where the supplier maintains the requisite export documents.

Generally, where promotional goods are given away without any consideration, deemed output tax needs to be accounted for if the gift costs more than S$200 or if the gift costs S$200 or less each, but a series of more than two gifts is made to the same person in one quarterly prescribed accounting period.

Promotional services supplied by a taxable person belonging in Singapore are standard-rated if the supply is made to a customer belonging in Singapore. Promotional services supplied by a taxable person belonging in Singapore to a person belonging outside Singapore may qualify for zero-rating under section 21(3)(j).

Imports of Goods

GST is chargeable at the prevailing standard-rate of 7 percent on the importation of goods into Singapore regardless of whether the importer is a taxable or non-taxable person. The import GST is collected by Singapore Customs from the importer at the point of importation. The burden of the payment of import GST falls on the importer and not the exporter from the country of origin or export.

Import GST is levied on the aggregate value of CIF (Cost, Insurance, Freight), customs duties payable (if any), commission and other incidental charges. The import value if shown in foreign currency should be converted to Singapore dollars by using the prevailing Customs exchange rate. Importers should also note that for the import of film, GST is chargeable on both the value of imported content and the value of the carrying media.

Import GST is not payable if the goods are granted imports relief. Notably, under numbers 22 and 27 of the GST (Imports Relief) Order, import relief is granted to the temporary import of professional equipment and stage effects, equipment, paraphernalia and life animals required for performances.[8]

Non–GST-Registered Producer

Non–GST-registered film producers and distributors need not collect GST for the supplies made in Singapore but they are unable to recover their input GST incurred in Singapore and on imports into Singapore.

Customs Duties

Goods imported into Singapore are not subject to customs duties except for the following four groups of dutiable goods: petroleum products; intoxicating liquor; tobacco products; and motor vehicles.

Personal Taxation

General Taxation Rules

In general, only income accruing in or derived from Singapore (i.e., Singapore-sourced income) is subject to tax in Singapore unless specifically exempt from tax. A resident individual is exempt from tax on foreign-sourced income received in or remitted to Singapore, unless received through a Singapore partnership. A resident individual is a person who normally resides in

[8] Conditions for the import relief apply.

Singapore and includes a person who is physically present in Singapore or who exercises employment (other than as a director of a company) in Singapore for at least 183 days in any calendar year.

Resident individuals are assessed to tax on their income, after deduction of personal tax reliefs, at graduated rates that range from zero to 20 percent. For the year of assessment 2011 (i.e. calendar year 2010), a personal income tax rebate of 20%, up to a maximum of S$2,000 is granted. Resident individuals are also entitled to benefits conferred under the Avoidance of Double Taxation Agreements that Singapore has concluded with treaty countries.

Non-resident individuals are not entitled to personal tax reliefs and treaty benefits. They are generally subject to tax at:

- a flat rate of 15 percent or at resident rates, whichever gives rise to higher tax, on employment income in respect of employment exercised in Singapore (other than as a director or public entertainer) for 61[9] to 182 days in a calendar year;
- a flat rate of 15 percent on gross income (or 20 percent on net income if option is exercised) from services performed in Singapore arising from profession or vocation (other than as a public entertainer);
- a flat rate of 15 percent or 10 percent on gross income from services performed in Singapore as a public entertainer;
- a flat rate of 20 percent (unless specifically exempt or subject to a reduced tax rate) on other Singapore-sourced income (including directors' remuneration).

Public Entertainers

A public entertainer refers to a stage, radio or television artist, a musician, an athlete or an individual exercising any profession, vocation or employment of a similar nature. A public entertainer would however exclude administrative or support staff (e.g., camera operators, producers, directors, choreographers, technical staff, etc.).

Public entertainers are assessed to tax on income derived from the exercise of their profession, vocation or employment in Singapore. Taxable income subject to tax would include professional fees, allowances and benefits-in-kind (e.g., prize monies, per diem, food, tax borne by the payer, etc.). As a concession, accommodation provided for 60 days or less in a calendar year and the cost of airfare borne by the local payer are not considered taxable income. Expenses, which are wholly and exclusively incurred by the public entertainer in the production of income, are tax-deductible.

[9] Employment income is exempt for short term employment of 60 days or less in a calender year.

Non-resident public entertainers are subject to a withholding tax of 15 percent on his/her gross income (or 10 percent if the income is due and payable during the period from 22 February 2010 to 31 March 2015) from services performed in Singapore. Tax exemption for short-term employment of 60 days or less in a calendar year does not apply.

Resident public entertainers are assessed to tax on their income, after deduction of personal tax reliefs, at graduated rates.

Non-Public Entertainers (i.e., administrative and support staff)

Non-public entertainers (i.e. administrative and support staff) are also assessed to tax on income derived from the exercise of their profession, vocation or employment in Singapore. If they are resident individuals, they are generally subject to tax on their income, after deduction of personal tax reliefs, at graduated rates. If they are non-resident employees, they are subject to tax on employment income at 15 percent or resident rates, whichever gives rise to higher tax. Income attributable to the exercise of employment for not more than 60 days by a short-term visiting employee is exempt from tax.

For non-public entertainers who are exercising profession or vocation in Singapore for less than 183 days in a calendar year, they are subject to tax at 15% of their gross income (inclusive of expenses borne by the local payer). They are however allowed to exercise an irrevocable option to be taxed at 20% of their net income. Under this option, if their stay in Singapore is 60 days or less in a calendar year, the cost of airfare and accommodation borne by the local payer is not taxable as a concession.

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Chapter 30

South Africa

Introduction

The local film industry is still in its infancy. However, moves are being made which may pave the way for some renewed interest in South Africa as an attractive alternative, particularly from a location, cost and facility point of view.

The relatively aggressive film schemes of the past and the harsh treatment thereof by the Revenue authorities may account for some of the investor caution experienced in the industry.

Key Tax Facts

Corporate income tax rate: SA companies	28%
Corporate income tax rate: SA branches of foreign companies	33%
Secondary Tax on Companies (STC)	10%[1]
Marginal personal income tax rate (sliding scale)	18% to 40%
VAT rate	14%
Normal non-treaty withholding tax rates: Dividends	0%[2]
Interest	0%[3]
Royalties	12% of the gross royalty
Capital gains tax: SA companies	14% (effective rate)
Capital gains tax: SA branches of foreign companies	16.5% (effective rate)
Capital gains tax: Individuals	0% to 10% (effective rate)
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	February 28

[1] STC is payable by a South African company on the 'net dividend' distributed by that company during any dividend cycle.

[2] As of April 1, 2012, STC will be repealed and replaced with a dividends withholding tax (DWT). The DWT will effectively be a withholding tax on dividends paid to a shareholder by a South African company and will be levied at a rate of 10%. The company paying the dividend will have to withhold the tax and pay it over to the revenue authorities.

[3] A withholding tax on interest paid to non-residents is to be introduced from January 1, 2013. All interest received by or accrued to non-resident persons will be subject to a final withholding tax rate of 10%, unless such interest is exempt from the withholding tax or subject to a reduced rate of tax as a result of relief provided by a relevant double taxation agreement.

Film Financing

Financing Structures

Very little information is available by way of precedent, however most commonly the provision of finance at the initial stages of production would entitle the investor to a share of distribution or broadcasting rights, as the case may be.

Co-Production

Whilst there has been very little activity in the past by way of foreign investment in the production of South African sourced films, what follows below sets out the general principles that would be applicable in this context.

Where a South African resident investor enters into an unincorporated co-production joint venture (a partnership) based in South Africa with a foreign investor, exploitation rights are usually apportioned between the parties. In such circumstances, the joint venture itself is not recognized as a tax entity and would not be liable in its own right for taxation in South Africa.

What is important from a taxation point of view is the particular tax position of each party to the transaction. South Africa adopted the residence basis for taxation with effect from January 1, 2001. South African income tax residents are taxed on their worldwide income. A company is tax resident in South Africa if it is incorporated in South Africa and/or if it is effectively managed in South Africa. Thus, a foreign company would be considered to be tax resident in South Africa, if its place of effective management is in South Africa.

Non-residents are taxed on South African source or deemed source income, which is determined in accordance with normal source principles. A foreign investor may, therefore, fall to be taxed in South Africa to the extent that its income is sourced or deemed to be sourced in South Africa. The foreign investor could potentially be taxed on the same income in South Africa, as well as its home country. The existence of a Double Taxation Agreement (DTA) between South Africa and the relevant foreign jurisdiction may alleviate instances of double taxation.

In addition to the above, the South African Income Tax Act imposes a withholding tax on the payment of royalties by residents to non-residents. This is a final tax. The existence of a DTA between South Africa and the relevant foreign jurisdiction, however, would generally reduce this withholding tax to a lower or even a zero rate, should the beneficial owner of such royalties be a resident of the foreign jurisdiction.

It is important to bear in mind, from an exchange control point of view, that income derived from investments in South Africa is generally freely transferable to foreign investors. Certain restrictions, however, are relevant in this context. Royalties are normally transferable provided prior exchange control approval from the Financial Surveillance Department of the South African Reserve Bank (FSD) has been obtained. Full disclosure must be made to the FSD in respect of the relevant transaction.

Where a South African investor is entitled to a share of foreign exploitation rights, and no appropriate relief is available in terms of a DTA, such that the local investor is taxed in that foreign jurisdiction on royalties received, the investor would be entitled to a rebate in respect of foreign taxes paid thereon, provided that the rebate does not exceed so much of normal tax as is attributable to the inclusion of the royalties in the investor's taxable income.

Where a DTA exists and a foreign investor is actively involved with the production of a film in South Africa, there is a possibility that such a party would be taxed in South Africa on profits arising from such activity on the basis that this constitutes a permanent establishment of the foreign investor. The term "permanent establishment" is defined in all the DTA's that South Africa has entered into with foreign jurisdictions and includes, inter alia, a place of management, a branch, an office, a factory, a workshop, a mine, quarry or other place of extraction of natural resources and a building site or construction or assembly project which exists for more than 6 – 12 months (depending on the provisions of the applicable DTA).

It could be argued that the establishment of a production office in South Africa may qualify for exemption under the appropriate DTA in that its activities would merely be of a preparatory or auxiliary character in relation to the enterprise. Alternatively, if the location site is not expected to be in existence beyond the period as defined in the DTA, or no business as such is being carried on, the relevant provisions contained in the particular DTA could be defeated on those grounds. If not, the appropriate relief from taxation in the foreign investor's home territory would be governed by the relevant DTA. Where no DTA exists, a non-resident would be taxed on South African sourced income as described above.

Where a South African investor is a party to a foreign based co-production joint venture in respect of a film produced abroad such that tax is leviable by the foreign revenue authorities in respect of the income derived therefrom, a rebate equal to the sum of the taxes on income proved to be payable, without the right of recovery by the investor from the foreign revenue authorities, will reduce the normal tax payable by the investor. The rebate cannot exceed so much of the normal tax payable by the investor as is attributable to the inclusion of the relevant income in his taxable income. Most importantly, the rebate cannot be granted in *addition* to any relief afforded to the investor in terms of any DTA between South Africa and the other country. Relief by way of rebate would only be granted in substitution for the relief the investor would receive in terms of such an agreement.

Acquisition of Distribution Rights

Where an investor does not enter into a co-production joint venture, the provision of finance may take the form of an acquisition of film distribution rights in return for the provision of financial assistance. The relevant tax implications of such an investment are comparable to those of a co-production joint venture investor referred to above.

Partnership

In the past, partnerships were used extensively by investors who participated in "film schemes", which were eventually curtailed by the South African Revenue Service (SARS) in 1987. As a result, many investors found themselves in less than desirable positions, particularly from a taxation point of view. It appears that today there is still some reluctance on the part of some investors to utilize the partnership vehicle for fear that it might spark some unwelcome scrutiny from SARS in relation to the enterprise.

South African taxation law does not recognize partnerships as separate legal entities and they are not taxable as such, rather they are treated as "transparent" for tax purposes. In terms of the partnership agreement, the investor would share the actual income of the partnership. A South African partner that is tax resident in South Africa would be taxed on its worldwide income. Thus it would be taxed on its share of the partnership's income, irrespective of the source of such income.

Should the partnership have a non-resident (for income tax purposes) as a partner, the question of source once again becomes important, as non-residents are taxed on a South African source or deemed source basis. Generally, a share in the profits of a partnership would arise either from the employment of capital or in respect of work undertaken or services rendered. This enquiry concerns the partner and not the partnership as a whole. Case law has inclined to the view that, where activities are undertaken by a partner in South Africa, the income from the partnership would be derived from a South African source despite the fact that the other partner resides and renders services to the partnership outside South Africa. It may thus be argued

that the non-resident derives income from a source within South Africa and is subject to tax in South Africa on such income. Moreover, consideration must be had to the extent of the foreign investor's involvement in the project. If it only relates to the employment of capital with a consequent share in foreign territorial exploitation rights to the film, no South African tax implications would arise for the foreign partner. This is so because the foreign investor would not share in the overall revenues generated by the film but only in those arising from revenue generated abroad.

Where a DTA exists between the home country of the foreign investor and South Africa, and the foreign investor sets up a production office in South Africa, such facility may very well constitute a permanent establishment as defined and the investor would be taxed on the share of profits so derived from the overall revenues generated by the film. Again, the existence of a DTA would potentially alleviate the investor's position.

Other Tax-Effective Structures

South African Subsidiary

Where a foreign film production company wishes to produce a film or a series of films in South Africa, a South African subsidiary may be formed for this purpose. Investors would either subscribe for shares in the company or provide loan capital. Although dividends are currently exempt from tax in South Africa[4], the imposition of STC on the company on the net dividend distributions at the rate of 10 percent, in addition to the company's liability for corporate tax at 28 percent, should be considered.

From an exchange control point of view, dividends can generally be freely remitted to foreign investors.

In order to prevent foreign-owned companies gearing their South African operations excessively, restrictions are in some instances placed on local borrowings. There is no restriction on the amount that could be borrowed locally in instances where an affected person[5] wishes to borrow locally to finance a foreign direct investment into South Africa or for domestic working capital requirements. Wholly non-resident owned subsidiaries may borrow locally up to 100% of the total shareholders' investment, in respect of the acquisition of

[4] Refer footnote 2.

[5] "Affected person" is defined as a body corporate, foundation, trust or partnership operating in South Africa, or an estate, in respect of which (i) 75% or more of the capital, assets or earnings thereof may be utilized for payment to, or to the benefit in any manner of, any person who is not resident in South Africa; or (ii) 75% or more of the voting securities, voting power, power of control, capital, assets or earnings thereof, are directly or indirectly vested in, or controlled by or on behalf of, any person who is not resident in South Africa.

residential property in South Africa and certain specific financial transactions. In this regard, the FSD prescribes a formula where the "local financial assistance ratio" or permitted percentage of effective capital[6] is to be calculated.

Financial assistance includes the lending of currency, granting of credit, taking-up of securities, concluding of hire purchase or lease agreements, financing of sales or stocks, discounting of receivables, factoring of debtors, guaranteeing of acceptance credits, guaranteeing or acceptance of any obligations, any suretyships and buy-back or leaseback agreements.

In addition, where the foreign-held production company proposes to provide loan finance to the local company, approval is required from the FSD. The loan must be for a minimum period of six months. No repatriation guarantees will be given by the FSD.

The South African thin capitalisation and transfer pricing provisions would also find application to cross-border transactions with connected persons. These provisions are intended to address tax avoidance schemes involving the manipulation of prices for goods and services which encompasses the granting of financial assistance, including a loan, advance or debt and the provision of any security or guarantee under cross-border transactions between connected persons. In essence, the following two practices are covered by the provision:

- Transfer pricing provisions will be applied to adjust, for tax purposes, the prices of goods and services concluded between connected persons, to arrive at an arm's length price that would have applied had the transaction been concluded between unconnected parties.
- Thin capitalisation provisions will be applied in order to limit the deductibility of interest for tax purposes, in circumstances where there is a disproportionate ratio between the loan capital and equity employed in a company. SARS have issued draft guidelines, which indicate that the maximum permissible debt to equity ratio will be 3:1. It also provides guidance as to acceptable interest rates[7]. Disallowed interest is treated as a dividend subject to STC.

[6] "Effective capital" is defined to include issued share capital and premium, retained income, other earned reserves created out of profits, deferred tax, outstanding dividends, the permanent portion of an inter-company trading account with an overseas associate or holding company, and approved shareholders' loans which are in proportion to ownership.

[7] The South African transfer pricing and thin capitalization provisions have undergone a major change with a newly worded section of the ITA to come into operation from October 1, 2011. As a consequence, it is anticipated that the guidelines issued by SARS, which are currently applicable, will be amended.

As an alternative to the registration of a South African subsidiary, a foreign production company could establish a place of business in South Africa in the form of a branch and as such have to be registered as an external company. The profits of a branch operation are subject to normal tax at the corporate rate of 33 percent. A South African branch of a non-resident company is not required to pay STC on the repatriation of profits, as STC is only payable by South African resident companies.

Other Financing Considerations

Department of Trade and Industry Film and Television Production Rebate

The South African government has introduced a rebate whereby an eligible applicant will be rebated a sum totaling 15 percent for foreign productions or 35 percent for qualifying South African productions, including official co-productions of the Qualifying South African Production Expenditure (QSAPE), of the amount that the applicant has spent on an eligible film production, with a maximum rebate for each project being capped at R20 million. The incentive is effective from 1 February 2008 and will be administered for a period of six years until 2014.

Productions eligible for the South African Film and Television Production Incentive can either be a Qualifying South African Production (QSAP) or an Official Treaty Co-production (OTC).

For a production to qualify as a QSAP, the following should apply:

- At least 75 percent of the total budget of the film must be defined as QSAPE;
- The majority of the intellectual property must be owned by South African citizens;
- The director of the film should be a South African citizen, unless the production requires the participation of a particular individual, in which case approval may be given at the provisional approval stage;
- The top writer and producer credits should include South African writers, unless the production requires the participation of a particular individual, in which case approval may be given at the provisional approval stage (either exclusive or shared collaboration credits);
- The majority of the five highest paid performers should be South African citizens, unless the production requires participation of a particular individual, in which case approval may be given at the provisional certification stage; and
- The majority of the film's heads of departments and key personnel should be South African citizens.

In the event of an OTC, the production must be approved by the Minister of Arts and Culture as an Official Treaty Co-production. An advance ruling must be obtained and submitted at the application stage for provisional certification. (If these requirements are not met, the production may qualify as a foreign production.)

To be eligible for the rebate, a production must meet the following criteria:

(a) principal photography must commence on or after February 1, 2008;

(b) minimum production expenditure on QSAPE should be R12 million for a foreign production and a budgeted R2.5 million for South African productions, of which at least 75% is defined as QSAPE;

(c) at least 50 percent of the principal photography schedule, and a minimum of four weeks of filming, should be filmed in South Africa (a minimum of two weeks for a South African production);

(d) the production must be in one of the following formats, (i) feature film, (ii) tele-movie, (iii) television drama series or mini-series, (iv) documentary, documentary series and documentary feature, or (v) animation;

(e) the applicant may not bundle productions in order to qualify for the rebate, that is, only one film production, television drama or documentary series per entity is eligible for the incentive;

(f) the applicant must be a Special Purpose Corporate Vehicle (SPCV) incorporated in South Africa per production solely for the purpose of the production[8], have access to full financial information for the whole production worldwide, and have at least one South African resident shareholder who should have an active role in the production and be credited in that role; and

(g) the Department of Trade and Industry (DTI) should be credited for its contribution in the end titles of the film or TV production.

Any other South African rebates, training or internship funding specific to this project may be claimed but should be deducted from the gross QSAPE before calculation of the rebate. An exception is applicable for SETA funds, which may be received after the final application or payment of the rebate.

[8] Both the applicant SPCV and holding company (ies) must comply with the requirements for Broad-Based Black Economic Empowerment in terms of the Codes of Good Practice for Broad-Based Black Economic Empowerment, as issued in Government Gazette February 9, 2007.

A project that receives funding from the Industrial Development Corporation, National Film and Video Foundation or private investors under section 24F of the Income Tax Act No 58 of 1962, as amended, will be eligible for the rebate.

Prior to commencement of principal photography, an applicant needs to apply to the DTI for a provisional certificate on Form A. An applicant should provide a timeframe for the production with their application for assessment and also attach letters of intent from investors. The provisional certificate will lapse within six months of it being issued, if the applicant fails to confirm the commencement of principal photography by submission of Form B. An applicant should, within three months after completion of film production, submit to the DTI a final rebate application providing information on expenditure and other information. On receipt of a complete final rebate application, the DTI will verify the application and upon approval, approve payment. This process is expected to take no more than six weeks from the date of submission. The Ministry of Trade and Industry will make payment of the rebate within three weeks of the approval by the DTI.

Security Transfer Tax (STT)

STT is levied at the rate of 0.25 percent of the greater of the consideration paid or the market value of any security transferred.

Exchange Controls and Regulatory Rules

Exchange Control has no application to non-residents and, as such, income derived from investments in South Africa is generally freely remittable abroad to foreign investors, subject to the following restrictions:

- Interest

  Interest is freely remittable abroad, provided the loan facility has been approved by the FSD and the interest rate is related to the market rate of the currency in which the loan is raised (generally the FSD will also approve the interest rate upfront).

- Management Fees

  Payment of a management fee by a South African company to an offshore company or beneficiary is subject to approval by the FSD. The amount paid must be reasonable in relation to the services provided. Payments of such fees by wholly owned subsidiaries of foreign companies may not be readily approved.

- Royalties and License Agreements

  Agreements for the payment of royalties and similar payments for the use of technical know-how, patents and copyrights require prior approval from the FSD.

- Dividends

  Dividends can be freely remitted as long as the company is within its local borrowing limit (see above). Applications to transfer dividends abroad must be accompanied by a representation letter, an auditor's clearance certificate and either the audited financial statements or, in the case of interim dividends, interim financial statements.

Corporate Taxation

Recognition of Income

Film/Television Program Production Company – Production Fee Income

South African Resident Company
Where a South African subsidiary company is established to produce a film or video in South Africa without acquiring any exploitation rights to the completed product, it would be important to ensure that the consideration payable by the foreign investor in respect of the production services rendered in South Africa reflects an arm's length price. Failure to do so would result in SARS adjusting the consideration to reflect such a price.

Where a branch is established to attend to the production of a film in South Africa, any taxable income attributable to the South African branch must be calculated as if it was a separate and distinct entity from its head-office.

Non-South African Resident Company
Where a DTA exists and a non-resident company sets up a production office in South Africa to administer filming here, the main issue for consideration is whether such activity would constitute a permanent establishment of the foreign enterprise. One would have to consider the various exemptions provided for in the DTA in order to determine the company's tax liability, if any, in South Africa. If no such agreement exists, the normal source principles referred to above would apply.

If the foreign company merely undertakes filming in South Africa and does not establish a production office here, it is unlikely that such activity would constitute a permanent establishment of the foreign enterprise.

Should SARS seek to tax the company on the basis that its activities constitute a permanent establishment, this would be done by reference to the profits attributable to that permanent establishment. In this regard, the profits would be determined on the basis of what an independent enterprise engaged in similar or the same activities would be expected to derive.

Sale of Distribution Rights
In this context, where a production company sells distribution rights in a film to a distribution company, the sale proceeds would normally be treated as income arising from the conducting of a trade in such rights.

Where a foreign company sells distribution rights in a film and such rights will be exercised by the purchaser in South Africa, the income derived from the sale of such rights could be deemed to have accrued to the seller from a South African source. If a DTA exists, however, this may provide relief from South African taxation.

Where distribution rights are transferred in a cross-border transaction between connected parties, the consideration for tax purposes would, if necessary, be adjusted to reflect an arm's length price which would be payable between unrelated third parties.

In addition, the necessary Exchange Control formalities would have to be complied with.

Film Distribution Company
The payment by a South African company for the acquisition of film distribution rights could be recognized as part of the production cost of the film for South African income tax purposes and would then be governed by the relatively complex provisions dealing with film allowances for "film owners", discussed more fully below.

Transfer of Film Rights between Related Parties
As discussed above, the cross-border transfer of film rights between connected (related) parties would fall within the ambit of the South African transfer pricing legislation and, as such, if the consideration payable for the exploitation of those rights does not reflect a price that would be payable

between independent third parties, it would, for tax purposes, be adjusted to reflect an arm's length price.

It is not possible to speculate on what the arm's length consideration would be which SARS might wish to apply. As long as the consideration can be justified on an open-market, third-party basis, no transfer pricing adjustment should be necessary. Determining an arm's length amount, however, may prove to be difficult in view of the relative absence of activity in the South African film industry.

South African taxpayers are required to make full disclosure of any cross-border connected party transactions when submitting their income tax returns. Taxpayers must also, if requested by SARS, submit a transfer pricing policy and copies (if available) of any agreements relating to such cross-border transactions with connected parties.

The Television Broadcaster

Television broadcasters in South Africa are divided into two groups, the first comprising the South African Broadcasting Corporation (SABC), which is the public broadcasting entity, and e-TV, a private broadcasting entity, and the second comprising broadcasters, such as M-Net, which provide cable television services. Satellite channel facilities have recently become available and have already generated a significant amount of interest amongst the general public. The SABC and, to a lesser extent, M-Net, have generally been involved in the production of films and/or series which have, in some instances, been released internationally. As such, these bodies have provided the necessary impetus in the local industry for the production of films. Indeed, the broadcasting legislation specifically empowers the SABC to "make, compile, print, manufacture, buy, hire or acquire by any other means sound, visual, or audiovisual recordings, fixations and material of whatever nature or description and may sell, lease, deal in or in any other manner dispose of such recordings, fixations and material, irrespective of whether it was broadcast by the corporation or not". In this context, they provide a vital resource in the financing of such projects.

Much of the SABC's income is derived from a statutory licensing fee payable by the user of a television set. In addition, a large proportion of its income is derived from the screening of advertisements. Income is also generated by the sale of programming to third parties abroad. M-Net, the cable channel operator, earns a combination of subscriber and advertising income.

Amortization of Expenditure

Film Owners: Film Pre- and Post-Production Expenditure

The South African Income Tax Act No 58 of 1961, as amended ("the ITA") currently makes a specific provision for allowances of pre-and post-production expenditure deductions in the hands of a film owner. However, draft legislation has been released which will repeal these allowances effective January 1, 2012 and replace them with an exemption regime (see below).

Proposed legislation

For productions where principal photography commences on or after January1, 2012, draft legislation has been released that replaces the current tax allowances on expenditure with an exemption on income. The proposal stems from the fact that, in previous years, the focus of the legislation was on costs. Therefore, the greater the amount of expenditure incurred, the higher the amount of the allowance received. This incentivised tax advisors and other financial facilitators to create tax schemes to maximise deductions without regard for the underlying film. The exemption is aimed at covering all receipts and accruals (including sales and licensing rights) derived from the exploitation rights of a film, for a period of ten years commencing on the date that the film production is completed. In order to receive the exemption, the following criteria must be satisfied:

- The production must be derived from a film;
- The film must be approved as a domestic production or co-production;
- The income must be allocable to the initial investors;
- The income must be derived in respect of exploitation rights; and
- The income must fall within a 10-year period.

Marketing and Print Expenditure

The deduction of marketing expenditure is governed by the general deduction provisions of the ITA. The deduction for print costs, which relate to expenditure incurred by a film owner in making copies of a film, are also governed by the general deduction provisions. In both instances, the deductions are subject to the "at risk" provision referred to above.

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In addition, they are subject to a cap determined on the same basis with regard to expenditure incurred in relation to production and post-production costs referred to above.

Foreign Tax Relief

There are currently no withholding taxes on dividends or interest accruing to non-residents. However, a withholding tax of 12 percent is payable in respect of royalties received by or accrued to non-residents. The withholding tax may be reduced by a DTA.

Indirect Taxation

Value Added Tax (VAT)

VAT is an indirect tax, which is largely directed at the domestic consumption of goods and services and at goods imported into South Africa. The tax is designed to be borne mainly by the ultimate consumer or purchaser in South Africa. It is levied at two rates, namely a standard rate (currently 14 percent) or a zero rate (0 percent). Supplies which are charged with tax at a zero rate are primarily supplies of goods or services which are exported from South Africa. Standard-rated and zero-rated supplies are known as taxable supplies. Other supplies are known as exempt and non-supplies.

Unless a person registers as a vendor, he cannot charge VAT and, moreover, cannot claim any input tax (i.e. VAT credits). Registration as a vendor is compulsory where a person carries on an enterprise in South Africa or partly in South Africa, continuously or regularly (whether for profit or not) and his turnover in respect of taxable supplies exceeds or is expected to exceed R1 million per annum. Should his turnover in respect of taxable supplies be below that figure, registration is voluntary, provided it is in excess of R50 000.

Supply of a Completed Film

Where a South African resident supplies a completed film to another local resident, a taxable supply will have been effected and, accordingly, VAT will be payable at the rate of 14 percent on this supply. There are provisions in the VAT legislation which deal specifically with situations where the deduction of input tax will be denied. One of those circumstances relate to the situation where a vendor acquires goods and services for the purposes of entertainment. The definition of what constitutes entertainment is very wide and includes the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor to anyone in connection with an enterprise carried on by him. The provision

will not apply where the goods or services are acquired *wholly* or *mainly* for making taxable supplies in the ordinary course of an enterprise which continuously or regularly supplies entertainment for consideration. There is a proviso, however, to the effect that the consideration charged must be sufficient to cover the cost of the entertainment supplied by the vendor to the recipient.

Where a local company exports a completed film to a non-resident, the taxable supply will be zero-rated and therefore no VAT will be payable.

Pre-Sale of Distribution Rights

Such a sale by a local resident to another local resident would attract VAT at the rate of 14 percent. A sale of such rights by a South African resident to a non-VAT vendor may be zero-rated. To determine whether the zero rate will apply is dependent upon the specific circumstance.

Royalties

The same principles referred to above in relation to the pre-sale of distribution rights would be applicable in this context.

Agent versus Principal Deals

Generally, where an agent acts on behalf of a principal, supplies by and to the agent will be deemed to be supplies by and to the principal for purposes of VAT. Where the principal is a non-resident, certain supplies may be zero-rated. However, each supply must be considered to determine the applicable rate of VAT.

Peripheral and Promotional Goods or Services and Merchandising

All such items would constitute taxable supplies at the standard rate of 14 percent. However, regard must be had to the deemed value of the supply, as some of it may be deemed to have a nil value.

Film Crews and Artists

If a film production company (being a VAT registered) films an advertisement, television programme or film in South Africa, the question arises as to whether input tax may be claimed on expenses incurred in regard to catering provided for crew members, clients and production staff during the production of the advertisement, television programme or film.

In terms of the general disallowance rule, a vendor is not entitled to claim an input tax deduction in respect of goods or services acquired for the purpose of entertainment. However, this rule does not apply where the goods or services are acquired for making taxable supplies in the ordinary course of an enterprise which continuously or regularly supplies entertainment for a consideration which covers both the direct and indirect cost of the entertainment or the open market value thereof.

However, a vendor is entitled to claim an input tax deduction where the goods or services are acquired in respect of the personal subsistence of employees or office holders, who, by reason of their duties, are obliged to spend at least one night away from their usual place of residence and usual working-place. Foreign crew members will only be regarded as employees or office holders if an employment contract has been entered into between the parties concerned. The film production company is entitled to claim an input tax deduction in respect of personal subsistence incurred by local crew members who are away from their usual place of residence and their usual working-place while involved in the production of a film or making of an advertisement on location.

Imports of Goods and Customs Duties

Any entity wishing to import goods into South Africa is required to be registered as an importer with SARS. The importation of goods into South Africa by a local or a foreign company may attract customs duties as well as VAT. Customs duty are generally not refundable, whereas the VAT may well be.

Customs duty rates vary depending on the imported product and its allocated tariff heading. As an example, cinematographic cameras are classified under tariff heading 90.07 and are free of customs duty. It is advisable to obtain clarity on the customs duty liability prior to shipping any goods to South Africa.

Certain goods may be temporarily imported into South Africa, subject to certain restrictions, in particular, time restrictions for the period which temporarily imported goods may be stored or utilized in South Africa. The customs duty may be rebated under rebate item 480.00 upon importing such goods temporarily. With any temporary import a provisional payment for customs duties may be payable and will be refunded upon providing the required proof that the goods were duly re-exported from South Africa.

Goods may also be imported temporarily under an ATA carnet, which replaces the ordinary customs declarations for import and export. The requirement for providing a security payment for the customs duty and VAT on the temporarily imported goods remains applicable when utilizing an ATA carnet. An ATA

carnet is generally valid for 12 months and therefore provides a longer time frame than the 6 months time limit on goods temporarily admitted under rebate item 480.00.

In order to import second hand goods into South Africa an import permit is generally required, except where goods are imported temporarily. An import permit can be obtained from the DTI.

Personal Taxation

Non-Resident Artists (self-employed)

Income Tax Implications

Based on the normal South African source principles, a non-resident artist would be taxed in South Africa in respect of any income received arising from a performance in South Africa. Indeed, all the DTA's provide that income derived by public entertainers, such as theatre, motion picture, radio or television artists and by athletes from their personal activities, may be taxed in the contracting state in which they exercise their activities.

VAT Implications

Central to the imposition of VAT on any supply of goods and services is that such supply is made in the course or furtherance of any enterprise. An enterprise is defined, *inter alia*, as constituting an activity which is carried on *continuously* or *regularly* by a person in South Africa, or partly in South Africa. Since, in most cases, a non-resident artist will render services on a one-off basis, the question of VAT should not be relevant in this context.

Resident Artists (self-employed)

Income Tax Implications

Resident artists will be taxed on any income derived from their participation in a performance rendered in South Africa. In addition, such artists will be taxed in South Africa on any income derived by them where they render their services outside South Africa, whether the payment for the service, work or labor is made or is to be made by a person resident in or out of South Africa and wherever payment is to be made. The term "trade" includes every profession, trade, business, employment, calling, occupation or venture.

Since, in terms of most DTA's, income earned by artists would be subject to taxation in the country where they exercise their activities, the provisions contained in such agreements which allow for an exemption or credit in respect of such income which is subject to tax in their home country, would provide the necessary relief against double taxation.

VAT Implications
Where an artist's income exceeds R1 000,000 *per annum*, he or she will be required to register for VAT. As such, the artist will be required to charge VAT at the standard rate of 14 percent. On the issue relating to the claiming of input tax, regard should be had to the comments made in relation to the provision of "entertainment" above.

Employees

Income Tax Implications
South African employers are required to make regular, periodic payments to SARS in respect of employees' tax liabilities arising from income earned from remuneration as defined in the ITA, which includes, *inter alia*, salaries or wages. Deductions are made in terms of the "Pay As You Earn" (PAYE) provisions which are determined in accordance with schedules supplied by SARS.

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Chapter 31

South Korea

Introduction

The Korean film industry, which once struggled to attract domestic audiences, has been successfully exporting its products and expanding its influence throughout Asia, Europe, and North America in the past decade. These days, casual observers associate Korean cinema with the broader cultural phenomenon of hallyu ("Korean Wave").

Currently, as there are no specific tax laws governing the financing industry, general tax provisions apply.

Key Tax Facts

Corporate income tax rate (including local income tax)	24.2%
Highest personal income tax rate (including local income tax)	38.5%
Value Added Tax	0% or 10%
Normal non-treaty withholding tax rates: Dividends (including local income tax)	22%
Interest (including local income tax)	22%
Royalties (including local income tax)	22%
Tax year-end: Companies	Generally, the accounting year-end
Tax year-end: Individuals	December 31

The corporate income tax rate will be decreased to 22 percent (inclusive of local income tax) from the financial year 2012, and individual income tax (inclusive of local income tax) will be decreased to between 6.6 percent and 36.3 percent from the 2012 financial year.

Film Financing

Financing Structures

Various mechanisms for film financing are available. These include the provision of funds by way of share capital or loan finance (or a mixture of both) to a company, the creation of joint ventures involving companies and/or individuals and the establishment of partnerships. The form of business enterprise that a foreign film industry investor establishes in Korea will depend on the purpose of its business, the tax implications and Korean government regulations.

Co-Production
Two or more parties may enter into a joint venture (JV) agreement to co-produce a film or, alternatively, to produce and/or finance a film whereby typically the rights to exploit the film are divided amongst the parties. The existence of a JV agreement does not necessarily mean that a partnership or profit sharing agreement exists.

A JV is not required to pay any income taxes at its level. Instead, its income or loss will be allocated to each owner of the JV and be included into their individual/corporate income tax returns when the owner files their income tax returns. However, a JV may be required to file and pay any other types of taxes including property tax, value added tax (VAT) etc.

Branch vs. Subsidiary
The branch of a foreign company is established by filing appropriate documents with a foreign exchange bank and registering with the local district court and the tax office. Branches registered under the foreign exchange regulations generally conduct business for profit and pay domestic taxes on Korean sourced income.

The type of subsidiary recognized in the Commercial Code and most commonly used by foreign investors is the stock corporation. To establish a stock corporation, articles of incorporation must be drawn up and notarized. At least one promoter is required for incorporation, and under the Commercial Code their status as a promoter lasts only until registration. The shares may be issued as common or preferred. Minimum par value of shares is KRW 100.

Equity Tracking Shares
These shares provide for dividend returns depending on the profitability of a film production company's financial performance. The investor acquires such shares in the production company. These shares have similar rights as the production company's ordinary shares except that the dividends are profit-linked.

Corporate Taxation
Determining a foreign investor's tax liability on its activities in Korea largely depends on the existence of a permanent establishment (PE) in Korea. Under the Korean tax law, a foreign investor having a fixed place of business or a PE in Korea will be taxed on its Korean sourced income at a rate of 24.2 percent (including local income tax; reduced to 22 percent from 2012).

If a foreign investor has no PE in Korea, it will not be subject to tax in Korea on its business income but may be subject to Korean withholding tax on Korean sourced income. In the absence of an applicable tax treaty, dividends, interest or royalties paid to a foreign corporation will be taxed in Korea at a rate of 22 percent (including local income tax) under Korean domestic tax laws (15.4 percent withholding tax rate, including local income tax, will apply to interest payment on government bonds). The withholding tax rate on dividend, interest or royalty could be reduced under an applicable tax treaty.

Tax Exemption for Foreign Investment
The Korean government grants various tax incentives to attract investment in technology into Korea. If a foreign film investor meets certain conditions, a reduction or exemption on corporate income tax and withholding tax on dividend income may be offered.

Organizational Expenditure
Under Korean tax law, business start up expenditure such as legal costs, registration fees and acquisition costs for facilities are tax deductible for the period in which those expenses are incurred.

Net Operating Loss
Net operating losses can be carried forward up to ten years.

Foreign Tax Credits
Where a domestic corporation has paid or is liable to pay foreign tax abroad, the tax paid or payable abroad is deducted from the corporation tax up to an amount equivalent to the ratio of the income from foreign sources to the total taxable income.

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Thin Capitalization

The International Tax Coordination Law contains a thin capitalization rule whereby, if a Korean company borrows from its foreign controlling shareholder an amount in excess of three times its equity (six times for financial institutions), interest on the excess portion of the borrowing will not be deductible in computing taxable income. Money borrowed from a foreign controlling shareholder includes amounts borrowed from an unrelated third party based on guarantees provided by a foreign controlling shareholder. The non-deductible amount of interest shall be treated as deemed dividends or other outflows of income.

Transfer Pricing

The tax authorities have authority to adjust a transfer price based on an arm's length price and determine or recalculate a resident's taxable income when the transfer price used by a Korean company and its foreign related party is either below or above the arm's length price.

The arm's length price should be determined by the most reasonable method applicable to the situation. The method and reasoning for adopting a particular method in determining the arm's length price should be disclosed by the taxpayer to the tax authorities in a report submitted with the annual tax return.

Indirect Taxation

Value Added Tax (VAT)

Under the VAT law, a corporation engaging in the supply of goods or services and imports of goods in the course of business, whether for profit or not, is liable for VAT. For the VAT purposes, the supply of goods and services and imports of goods can be classified as either a VAT leviable transaction or a VAT exempt transaction. For VAT leviable transactions, two VAT rates apply: (i) 10 percent general VAT and (ii) zero-rate VAT. Zero-rate VAT is applied on exported goods or special transactions specified in the VAT law.

VAT should be collected and filed by a company who supplies goods or services in the course of business. However, in the case of imports of goods from a foreign corporation, since the foreign corporation is located in a foreign jurisdiction, they are not classified as a taxpayer who has a VAT obligation for Korean VAT purposes. In such a case, the Customs House imposes and collects the VAT, in addition to the customs duty on the imported goods at the time of import.

Customs Duty

A person who imports goods is liable to pay customs duty according to quality and quantity of imported goods when an import declaration is filed.

Personal Taxation

Non-Resident Artists (self-employed)

Non-resident artists who do not have a permanent establishment in Korea are subject to 22 percent withholding tax (including local income tax) in Korea. The withholding tax obligation must satisfy the filing and payment requirements. Where there is a tax treaty entered between two countries, the tax treaty will override the domestic law in determining the withholding tax obligation.

Resident Artists (self-employed)

Resident artists are subject to 3.3 percent withholding tax (including local income tax) on their income in Korea. In addition, they are required to file a comprehensive income tax return.

Employees

A withholding tax system on wages and salaries operates in Korea. Employers are required to make monthly payments to Korean tax authorities in respect of their employees' personal tax liabilities arising from their salary or bonuses paid to them. The withholding tax system operates on the basis of a prescribed withholding tax table. If an employee has salary income only or salary income and retirement income, a year-end adjustment on the income tax on salaries is made by the employers to help ensure that the tax withheld during the year equals the employee's total tax liability. If the tax withheld is greater than the total liability, the employee is entitled to a refund.

Social Tax Compliance Requirements

There are four types of social taxes in Korea - National Pension, National Health Insurance, Employment Insurance and Industrial Accident Compensation Insurance. Foreigners are required to participate depending on the type of visa issued, but may be exempt under an applicable agreement. You should seek specialist tax advice in this regard.

National Pension

The required contribution is 9 percent of an employee's monthly compensation which is shared equally between the employer and the employee (i.e. 4.5 percent for each). The monthly contribution is capped at KRW 168,750.

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Chapter 32

Sweden

Introduction

Although Sweden formerly had a reputation for being a high tax country, this is no longer the case since the tax reform in 1991, which introduced considerable decreases with respect to corporate and individual taxation as compared to the earlier system.

Key Tax Facts

Corporate income tax rate	26.3%
Highest personal income tax rate (2011)	59.17%
VAT rate	0, 6, 12, 25%
Annual VAT registration limit	Generally none
Normal non-treaty withholding tax rates: Dividends	30%
Interest	0%
Royalties	0%*
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	December 31

* Royalties are not subject to withholding tax, but they are normally subject to income tax by assessment. Sweden has implemented the EC Interest and Royalties Directive (2003/49/EC).

Interest is fully deductible and there are no rules on thin capitalization. However, from January 1, 2009, a limitation on deductibility applies to interest paid between affiliated companies in certain situations.

Film Financing

Financing Structures

Co-Production

A Swedish resident may enter into a joint venture with one or more foreign investors and produce films in Sweden. Such an arrangement does not trigger a tax liability in Sweden for a foreign investor. For this purpose, the position of each investor has to be decided on a case-by-case basis.

Generally, a foreign investor is subject to corporate income tax in Sweden if the investor carries on business which is attributable to real property or a permanent establishment there.

Liability to Swedish VAT may incur if goods or services are provided in Sweden regardless of whether a fixed establishment for VAT purposes exists or not.

The term "permanent establishment" is defined in domestic tax law. The definition follows closely that of the OECD Model Convention. Where a bilateral tax treaty would restrict this concept, the treaty prevails. To the extent that a Swedish tax liability arises as a result of a permanent establishment on these grounds, relief would normally be available in the investor's home country by means of a tax credit, either under a relevant treaty or under domestic law. If the activities of the foreign investor are carried on through a Swedish company (subsidiary), the return would normally take the form of dividends. The withholding tax rate under domestic law is 30 percent, but the rate may be reduced under a relevant tax treaty or the EU Parent-Subsidiary Directive.

Partnership

Two types of partnerships are known in Sweden – general partnerships ("handelsbolag") and limited partnerships ("kommanditbolag"). A Swedish partnership—whether general or limited—is transparent for tax purposes and the profits of the partnership are taxed in the hands of the partners. From a Swedish perspective, a Swedish partnership cannot be a "resident" under a tax treaty, since the partnership as such is not liable to tax. This means that the partnership as such cannot claim the benefits of a treaty. Under special provisions in some tax treaties, e.g., with the U.S. and Belgium, a Swedish partnership is a resident in Sweden for the purpose of the treaty, provided certain conditions are fulfilled.

However, for VAT purposes a general- or limited partnership is regarded as a taxable person, why it generally needs to register for VAT if conducting business subject to VAT in Sweden.

Equity Tracking Shares

The term "equity tracking shares" is not used in Sweden. Internationally, the term refers to shares which provide for dividend returns dependent on the profitability of a film production company's business.

Yield Adjusted Debt

A film production company may sometimes issue a "debt security" to investors. Its yield may be linked to revenues of specific films. The principal is repaid on maturity and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplementary (and perhaps increasing) interest payment may be made where a predetermined target is reached or exceeded (such as revenues or net cash proceeds).

For Swedish tax purposes, this "debt security" would probably be classified as debt. It is assumed that the terms and conditions are at arm's-length.

Sale and Leaseback

Although it could be possible to enter into leasing contracts for intangible assets, the area of sale and leaseback arrangements is very complicated. Such arrangements must be analyzed on a case-by-case basis.

Tax and Financial Incentives

Investors

There are no tax incentives in this field in Sweden.

Producers

No tax incentives exist but the production of Swedish film is supported by the foundation "Svenska Filminstitutet," the Swedish Film Institute (SFI).

SFI was established in 1963 and is a foundation whose operations are regulated by an agreement between the Swedish State, on one side, and the film and TV industries, on the other.

SFI is the central organization in Swedish cinema. Its tasks are to:

- Support the production of Swedish films of high merit
- Promote the distribution and exhibition of quality films
- Preserve films and materials of interest to cinematic and cultural history
- Promote Swedish cinematic culture internationally

The production grants that SFI distributes to various film projects are financed by a levy on cinema tickets enhanced by grants from the film and TV industries and State funds. The funding agreement is based upon the principle that those who exhibit films—at cinemas or on television—should contribute to the financing of new Swedish films. SFI's activities in the field of cinematic culture are paid for entirely by Swedish State funds. SFI is headed by a Board of Governors appointed by the Swedish Government. Its daily operations are overseen by a Managing Director who is also head of administration.

SFI supports only Swedish films. A film is regarded as Swedish if it has a Swedish producer and the contribution of Swedish artists is of substantial importance. A "Swedish producer" is defined as an individual residing in Sweden, a Swedish company or a branch of a foreign company, or another legal person registered in Sweden. However, a film that has no Swedish producer is still regarded as Swedish, provided the Swedish capital investment amounts to at least 20 percent of its production cost and the contribution of Swedish artists is of substantial importance.

From a VAT perspective it should be noted that financing generally either can be subject to VAT or out of scope of VAT, depending on the nature of the contributions. The area is complex why we recommend that the VAT status of the contribution is checked on a case by case level.

Further information on the activities of SFI may be received from Svenska Filminstitutet, P O Box 27126, S-102 52 Stockholm, Sweden, or at www.sfi.se.

Distributors

No tax incentives exist. Royalties paid from Sweden are not subject to withholding tax but tax is levied on a net basis after a normal assessment procedure in the same way as income from business activities carried on through a permanent establishment in Sweden. However, most Swedish tax treaties with industrialized countries provide for a zero taxation of royalties (except Australia, Canada, Italy, Japan, New Zealand and certain others). Sweden has implemented the EC Interest and Royalties Directive (2003/49/EC).

Actors and Artists

Non-resident actors and artists, whether employees or self-employed persons, are subject to the special income tax on artists, etc., resident abroad. The tax is in principle levied on the gross remuneration received by the artist and the rate is 15 percent. Reimbursements for travel costs, meals and accommodation are, however, exempt from tax.

As the reverse charge VAT scheme does not apply to cultural services, self-employed actors and artists in film productions, or persons otherwise supplying "cultural services" from a company is obliged to invoice including Swedish VAT (6 percent) for activities carried out in Sweden. Hence an obligation to register for VAT in Sweden exists.

However, it should be noted that the remuneration to artists for live performance of literary or artistic works on stage is VAT exempt, with no right to input VAT recovery.

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in Sweden on any issue of new ordinary or preference shares or loans.

Exchange Controls and Regulatory Rules

There is no exchange control in Sweden but a work permit may be required by persons from non-Nordic or non-EU countries.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Swedish resident companies, i.e., companies created under Swedish law, and non-resident companies carrying on business through a permanent establishment in Sweden, have to report an arm's-length profit on their production. Non-arm's-length profits can be disputed by the tax authorities.

Whether a foreign company has a permanent establishment in Sweden or not is determined on a case-by-case basis, taking into account all the facts and circumstances in the case. The Commentary on Article 5 of the OECD Model Convention serves as a guideline for this purpose.

Film Production Company – Sale of Distribution Rights

Gains from the sale of intangibles are treated as normal business income and should be reported at the time when the contract payment is enforceable, irrespective of the time when the payment is received. In this context it should be observed that the concept of "super royalties" is unknown in Swedish tax law. The arm's-length principle is of decisive importance for the calculation of gains.

Film Distribution Company

Swedish resident companies and permanent establishments of non-resident companies should report income on the accrual basis. Lump-sum payments for the acquisition of intangibles can be amortized over time. Royalty payments are deductible on an accrual basis. Any pricing arrangement between related parties must be based on the arm's-length principle. Sweden has adopted a system of binding advance rulings for tax issues. The due authority is the Council for Advanced Tax Ruling. In addition, since 1 January 2010 Advance Tax Rulings in Transfer Pricing matters (APA) are available in Sweden.

Amortization of Expenditure

Production Expenditure

Intangible assets are depreciated in the same way as tangible assets, i.e., either under the declining balance method at a rate of 30 percent, or under the straight-line method at a rate of 20 percent provided the taxpayer has "an orderly accounting which is closed into annual accounts." Land is not depreciable.

Tangible assets may be depreciated immediately if the economic life is not more than three years, or if the assets are deemed to be of low value (certain amount limits apply). This possibility is not available in relation to intangible assets.

Other Expenditure

There are no special rules for film distribution or production companies. Consequently they are subject to the usual rules to which other companies are subjected. This means, in calculating trading profits, that they may deduct most normal day-to-day business expenditure such as salaries, rents, advertising, travel expenses and legal and professional costs normally related to the business.

Losses

An operating loss one year is treated as a deductible item in the next following year. Thus, the taxpayer cannot choose when the loss should be utilized but on the other hand, no time limits exist. Changes in ownership may restrict the right of loss deduction, or losses carried forward may be wholly or partly forfeited. As mentioned previously, capital gains are treated as ordinary business profits. Capital losses are treated accordingly.

Foreign Tax Relief

Producers

Swedish resident producers are taxed on their worldwide income. Where income is allocated to a permanent establishment abroad, any foreign tax on such income may be deducted and credited against Swedish tax on that income. A foreign tax may (optional as from January 1, 2009) initially be treated as a deductible expense for a Swedish company. Subsequently, the excess foreign tax may be credited either under domestic law or under the relevant tax treaty. Some Swedish tax treaties provide for exemption with respect to profits derived from a permanent establishment in the country concerned. Neither cost deduction nor tax credit are allowed in such cases. There are some treaties with developing countries that contain provisions on tax sparing credit.

Distributors

Foreign withholding taxes may initially be treated as a deductible expense for a Swedish company. Subsequently, the excess withholding tax may be credited either under domestic law or under the relevant tax treaty. Dividends from a foreign subsidiary may be exempt under domestic law or a treaty. Tax sparing credit may occur with respect to dividends (if not exempt), interest or royalties in treaties with developing countries.

Indirect Taxation

Value Added Tax (VAT)

The standard VAT rate in Sweden is 25 percent but lower rates apply to, among others, food, hotel accommodation and domestic travels (12 percent) and to newspapers and books (6 percent).

The 6 percent VAT rate also applies to most of the services supplied within the film industry. Thus, the entrance fee for cinema performances is subject to 6 percent VAT. The 6 percent rate also applies to sales and grants of show rights and other rights protected under the Swedish copyright regulations as well as to artists and actors taking parts in productions located in Sweden. However, the standard rate of 25 percent applies to commercials, computer software, information films and photographs. Moreover, remuneration to artists and actors performing literary or artistic works live on stage is VAT exempt, with no right to recover input VAT.

Imports of Goods and Customs Duties

Customs duties arise only on importation from countries outside the EU and not on importation from other member states of the EU. Also, VAT is payable on the value of the goods including the customs duty. The VAT is refundable, the customs duty is not.

However, if goods are temporarily imported into Sweden, no tax or customs duty is potentially chargeable if the goods are subsequently re-exported without alteration, provided a customs relief such as "Inward Processing Relief" or a duty suspension regime such as customs warehousing is used.

The rates of customs duty depend of the origin and the nature of the goods that are imported. The rates are set on at European level and should therefore be the same as in other member states. The duty rates are defined in the online customs tariff database, also called TARIC. This multilingual database is available online on the website of the European Commission, *www.europa.eu.int*, under Taxation and Customs Union.

Advertising Tax

When commercials are viewed via film in a cinema advertising tax arises. The tax is 8 percent of the payment received for showing the commercial. Liable to pay the tax is the one who has made the commercial public, normally the owner of the cinema.

Personal Taxation

Non-Resident Artists

As mentioned above, non-resident artists, whether employed or self-employed, are subject to a special final withholding tax of 15 percent on their remuneration. The term "non-resident" means a person who does not have "his or her real home and dwelling" in Sweden, and who does not stay there permanently. A stay is considered as "permanent" if it lasts six months or more. The tax is in principle levied on the gross remuneration but certain reimbursements for accommodation and travel costs etc. are tax-free. Under most tax treaties, Sweden may exercise its taxing right in full, but some treaties make exceptions for certain artists visiting Sweden, e.g., within the framework of cultural exchange. The Sweden-U.S. tax treaty has a threshold for levying the tax (gross remuneration of US$6,000). Social security contributions are levied from 2010 if the artist is covered by the Swedish social security system. The same rates will apply as for employees and self employed.

Resident Artists (self-employed)

Such artists are taxed on their worldwide income in the same way as income from business profits. The rates are progressive and vary (in 2011) from approximately 29 percent to approximately 59 percent. In addition, they have to pay Social Security contributions amounting to approximately 28.97 percent of taxable income. The contributions are deductible for tax purposes.

Employees (other than artists)

The income of resident employees is taxed at progressive rates varying (in 2011) between approximately 29 and 59percent. The tax consists of Municipal tax ranging between approximately 29 percent and 34 percent and a State income tax. In 2011, the State income tax will be levied at two different rates, 20 and 25 percent; 20 percent is to be levied on annual income between SEK 383,300 and SEK 548,300 and 25 percent of annual income exceeding SEK 548,300. A basic deduction of approximately SEK 12,600 is normally allowed for the purposes of both taxes. Further, a tax credit of approximately SEK 21,000 is allowed. A Swedish resident employer and a foreign employer, having a permanent establishment in Sweden, have to withhold preliminary income tax when paying remuneration. Special preliminary tax tables are used for this purpose. Where the final tax, based on a tax return and an assessment procedure, deviates from the preliminary tax, any difference has to be paid by the employee or is refunded to him or her.

Non-resident employees are subject to a special tax regime. Tax is in principle levied on the gross remuneration and the flat rate is 25 percent. In the case of a temporary employment in Sweden exemptions apply with respect to compensation for certain lodging and travel costs. Furthermore, where the stay in Sweden does not exceed 183 days in any twelve month period the remuneration is exempt, provided it is not paid by a Swedish resident employer or, in the case of a foreign employer, the remuneration is not borne by such employer's permanent establishment in Sweden. The term "non-resident" means a person who does not have "his or her real home and dwelling" in Sweden, and who does not stay there permanently. A stay is considered as "permanent" if it lasts six months or more.

Any employer, Swedish or foreign, employing personnel in Sweden is liable to pay Social Security contributions amounting to approximately 32 percent (31.42 percent, 2011) of the remuneration and any taxable benefits. The contributions are deductible for corporate tax purposes. The employee also pays contributions at a rate of approximately 7 percent although in the latter case contributions are not payable on remuneration and taxable benefits exceeding approximately SEK 420,447 (in 2011).

Where a non-resident employer does not have a permanent establishment in Sweden, the employer and the employee may agree that the employee pays all the contributions himself. The rate is then approximately 28.97 percent (plus his or her own 7 percent). A Social Security convention or EEA agreement may restrict or prohibit the levying of Swedish Social Security contributions.

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Chapter 33

Thailand

Introduction

A foreign company carrying on business in Thailand, whether through a branch, an office, an employee or an agent, is subject to 30 percent tax on profits derived from its business in Thailand. An individual, depending on the income earned, is subject to tax at the rate of 5 to 37 percent on all income earned in Thailand. Several double tax agreements have been concluded between Thailand and other countries to reduce taxes levied on foreign filmmakers.

Key Tax Facts

Corporate income tax rate	30%
Highest personal income tax rate	37%
Current Value Added Tax Rate	7%
Normal non-treaty Withholding Tax Rates: Dividends	10%
Interest	15%
Royalties	15%
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	Calendar year-end

Film Financing

Financing Structures

No controls or limits exist on the amount of foreign currency that may be brought into Thailand. However, individuals and juristic persons residing in Thailand are required to sell any foreign currency received to an authorized bank or authorized person or to deposit the money into a foreign currency account within 360 days of receipt.

Foreign currency proceeds from the sale of exported goods from Thailand must be sold to an authorized agent or deposited in a foreign currency account within 360 days of receipt.

Thai individuals and juristic persons in Thailand are allowed to maintain foreign currency accounts under certain conditions. The total daily outstanding balances in all foreign currency accounts must in general not exceed USD 100 million for a juristic person and USD 1 million for an individual. The accounts may only be used to settle foreign currency obligations to persons abroad, authorized banks, the Export and Import Bank of Thailand, or the Industrial Finance Corporation of Thailand. The amount of the deposits must match the foreign currency obligations and settlement must be made within twelve months of the date of the deposit.

Non-residents may open and maintain foreign currency accounts with authorized banks in Thailand. Deposits into these accounts must originate from abroad. Balances on such accounts may be transferred without restriction. However, required documents must be presented to an authorized bank.

The amount of foreign currency that may be remitted abroad for business expenses including the payment of goods, services, interest, profits and dividends is unlimited but must be accompanied by required supporting documentation.

Foreign direct investments by Thai residents or the provision of loans require consent from the Bank of Thailand in the following cases:

- Overseas investment in other than an investment in an affiliated company or new investment with at least 10 percent shareholding; and
- Provision of a loan to an overseas non-affiliated company for an amount exceeding USD 50 million.

Remittance for the purchase of immovable property in an amount not exceeding USD 10 million or securities with an aggregate amount of capital exceeding USD 50 million in a foreign country both require prior approval.

Remittance to Thai emigrants with permanent residence abroad are allowed up to an annual limit of USD 1 million per person provided the funds are derived from the emigrant's personal assets. Remittances of funds abroad between relatives are allowed up to an annual limit of USD 1 million per person.

Certain remittances abroad in both foreign and local currency must be made with the appropriate deduction of withholding tax as required by the Revenue Code.

Co-Production

Thailand first concluded a double tax agreement (DTA) in 1963. The Thai DTA network continues to be expanded and updated. Currently, Thailand has concluded DTAs with 54 countries.

Foreign filmmakers are required to hire a local co-coordinator (company or individual) that is officially registered with the Thailand Film Office, a government agency under the Office of Tourism Development. Each co-coordinator must represent the foreign filmmaker in obtaining any necessary permits. They are also responsible for representing the film company in any matter arising both during and after the completion of shooting in Thailand.

When a permit is granted, a Monitoring Officer will be appointed by the Thailand Film Office. The Monitoring Officer is sent by the concerned government agencies to monitor and give advice at the shooting locations. A signed sticker is applied to all film/tape used and serves as confirmation that its content has been officially monitored. Filming is not allowed, under any circumstances, without the acknowledgement of the Monitoring Officer.

A shooting permit enables foreign film makers to shoot in Thailand, however separate permits are required for specific locations such as National Parks or Historical Parks. All arrangements should be made as far as possible in advance of shooting dates.

Partnerships

The three types of partnerships in Thailand differ principally in the liability attached to each.

An unregistered ordinary partnership has partners who are all jointly liable, without any limitation on the partnership's total obligations. A new partner in an unregistered ordinary partnership becomes liable for all obligations incurred by the partnership before or after their admission to the partnership. This type of partnership is not a legal entity and is subject to taxation as if it were an individual.

A registered ordinary partnership is a juridical entity having a separate and distinct personality from each of the partners by virtue of its registration in the Commercial Registrar. A registered ordinary partnership is treated as a corporate entity for income tax and liability purposes.

A limited partnership is one in which there are one or more partners whose individual liabilities are limited to their respective contributions, with one or more of the partners being jointly liable without any limitation for all the obligations of the partnership. A limited partnership is taxed as a corporate entity.

Equity Tracking Shares

The term "equity tracking shares" refers to shares that provide for dividend returns dependent on the profitability of a film production company's business. These shares have the same rights as the production company's ordinary shares except that their dividends are profit-linked and they carry preferential rights to assets on a liquidation of the company.

In Thailand, preference shares normally carry a fixed rate of return. Equity trading shares are uncommon in the market.

Yield Adjusted Debt

A film production company may sometimes issue a "debt security" to investors. Its yield may be linked to revenues from specific films. The principal would be repaid on maturity and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplementary (and perhaps increasing) interest payment may be paid where a predetermined target is reached or exceeded (such as revenues or net cash proceeds).

For Thailand, this "debt security" would normally be referred to as a "structure note". When a film production company issues a structure note in Thailand whose yield is based on a target such as revenue or cash proceeds, Thai law requires procedures under the Notification of the Office of the Securities and Exchange Commission Thor Jor 12/2552 to be followed.

Other Tax-Effective Structures

A.T.A. Carnet

Crew importing equipment into Thailand for film production and goods under the auspices of the A.T.A. Carnet agreement (temporary import provisions) which are to be used for the purpose of filming or as samples and re-exported are required to inform the Customs officer at the red channel for Customs clearance at the Passenger Control Division, Suwannaphumi International Airport Customs Bureau or such other place designated by the Regional Customs Bureau.

On the departure date crew must present the A.T.A. Carnet document, the equipment for film production and goods for inspection, otherwise the equipment or goods will be considered as not having been re-exported and Customs duties and taxes will be levied.

Tax Incentives

Thai taxation laws do not have general anti-avoidance provisions. However, the Revenue Department has powers to conduct an investigation into any company's or individual's business affairs to determine whether the respective tax returns disclose correct and complete information.

Tax laws allow expenses to be deducted provided that they are incurred exclusively for the purpose of acquiring profits or for the purpose of their business. Therefore, any scheme that reduces a taxpayer's taxable income by virtue of its expenses not being for the acquisition of profit, or for the purpose of their business may lead to such expenses being disallowed. Artificial or fictitious expenses are non-deductible.

Various penalties, surcharges and terms of imprisonment can be imposed on companies and officers involved in any arrangements whereby tax has been evaded. The severity of the punishment depends upon the particular circumstances.

The Board of Investment (BOI) is the government agency responsible for granting incentives to encourage private-sector investment in priority areas. The structure, role, and policies of the BOI today basically follow the guidelines contained in the Investment Promotion Act of 1997, as amended in 1991 and 2001.

The types of entities that may be promoted by the BOI and granted investment incentives are: a limited company, a foundation or a cooperative. Application for promotion may be submitted in accordance with the rules, procedures, and forms prescribed by the BOI prior to the formation of the qualified promoted company.

The BOI grants two major types of tax incentives to promoted companies, namely:

- Exemption or reduction of tariffs on imported machinery and equipment, as well as raw materials for the promoted activity, and
- Exemption from income tax on net profits and dividends. The extent of these incentives varies according to the location of the promoted company.

However, these incentives are generally only available for manufacturing activities.

Taxation

Thai taxes are imposed both at the national and local levels. Tax collections are administered by the Ministry of Finance through three departments:

- The Customs Department, which is responsible for import and export duties;
- The Revenue Department, which attends to the collection of income tax, value added tax, specific business tax, and stamp duty; and
- The Excise Department, which collects excise taxes levied on certain specific commodities.

Local governing bodies deal with the collection of property and municipal taxes.

The Revenue Code is the principal tax law in Thailand. The Code governs personal income tax, corporate income tax, value added tax, specific business tax, and stamp duty. The Customs Act governs tariff on imports and exports. Other laws govern excise tax and property tax.

A foreign company carrying on business in Thailand, whether through a branch, an office, an employee or an agent is subject to 30 percent tax on profit derived from business in Thailand. A foreign company that does not carry on business in Thailand will be subject to withholding tax on certain categories of income derived from Thailand. The withholding tax rates may be reduced or exempted depending on the type of income under the provisions of a DTA.

Tax treaties between Thailand and other countries cover taxes on income and capital applicable to individuals and juristic entities. The Petroleum Income Tax and the Local Development Tax (i.e. property tax) are covered under some treaties but Value Added Tax, Specific Business Tax and Municipal Tax are not covered under any tax treaties.

Thai tax treaties generally place a resident of a Contracting State in a more favorable position for Thai Tax purposes than under the domestic law (i.e. the Thai Revenue Code). In general, Thai tax treaties provide an income tax exemption on business profits (industrial and commercial profits) earned in Thailand by a resident of a Contracting State if it does not have a permanent establishment in Thailand. In addition, withholding taxes on payments of income to foreign juristic entities not carrying on business in Thailand may be reduced or exempted under the tax treaties.

Definition of Residence

Taxpayers in Thailand are classified as either "resident" or "non-resident". A resident is an individual who lives in Thailand for one or more periods totaling 180 days or more in any tax year. A resident is subject to tax on all income from sources in Thailand and on income derived from sources outside of Thailand, should such income be brought into Thailand. A non-resident individual is subject to tax only on income earned from sources within Thailand.

Individual taxpayers are classified into 5 categories including natural persons, non-juristic body of person, non-juristic body of partnership (unregistered ordinary partnership), a deceased person's assessable income and estate throughout the year in which death occurred, and the undistributed estate of the deceased.

Corporate Income Tax

Juristic companies and partnerships organized under Thai law are subject to income tax on income earned from sources within and outside of Thailand. The definitions of juristic companies and partnerships for income tax purposes are broader than those under the Civil and Commercial Code. Juristic companies and partnerships for income tax purposes include, but are not limited to private and public limited companies, registered ordinary and limited partnerships, joint ventures, and foundations and associations.

A branch of a foreign corporation is taxed only on income derived from sources within Thailand. Tax is imposed on the net profits of juristic companies and partnerships, determined in accordance with generally accepted accounting principles, subject to adjustments required by the Revenue Code of Thailand.

A corporate taxpayer must file an annual tax return and pay any tax due within 150 days from the end of the accounting period. Except for newly incorporated companies, an accounting period is defined as 12 months. Returns must be accompanied by audited financial statements.

Tax on corporate net profits is computed at a rate of 30 percent for all limited companies, juristic partnerships and branches of foreign companies. Where a juristic company or partnership organized under a foreign law enters Thailand to produce a motion picture but subsequently derives no income from the production, it will not be deemed to be carrying on business and receiving income or making profit in Thailand. Therefore such juristic companies or partnerships are not liable to pay income tax under Section 66 and Section 76 bis of the Revenue Code.

Where the production coordinator of a foreign motion picture in Thailand is a juristic company or partnership organized under Thai law or a foreign law and carrying on business in Thailand, income received from the coordination of the production of such a motion picture should be included in the computation of corporate income tax under Section 66 and Section 76 bis of the Revenue Code. If the production coordinator of a foreign motion picture being filmed in Thailand is a juristic company or partnership organized under a foreign law and not carrying on business in Thailand, such a person is subject to corporate income tax only on income received from coordinating the production in Thailand.

Personal Income Tax

The Revenue Code describes the various types of income subject to personal income tax. Some types of income entitle the individual to standard deductions.

Personal Income Tax (PIT) is a direct tax levied on the income of a "person". A person means an individual, an ordinary partnership, a non-juristic body of person and an undivided estate. In general, a person liable to PIT has to compute their tax liability, file a tax return and pay tax, if any, on a calendar year basis. The taxable base is determined by deducting expenses and allowances from all assessable income. Tax is levied on the taxable base at progressive rates ranging from 5 percent to 37 percent.

In the production of a foreign motion picture in Thailand, a foreign actor, a member of a production crew, and a production coordinator, whether their residency is in Thailand or in a foreign country, is deemed as a person who derives assessable income from Thailand and is liable to pay personal income tax under Section 41 first paragraph of the Revenue Code.

A foreign actor must file a tax return and pay personal income tax twice a year (half-year personal income tax and annual personal income tax). The income of a foreign actor subject to tax consists of assessable income or remuneration from carrying on the acting profession in a foreign motion picture, any reward and benefit received from acting, including transportation expenses, allowances, personal accommodation, or any other remuneration received. Provided that the transportation, accommodation and other allowances are actually fully-utilized to pay for actual expenses, the allowances are exempt from tax.

If a foreign actor resides in Thailand, they are entitled to deduct allowances for their spouse and children whether or not their spouse and the children are in Thailand. However, a foreign actor who does not reside in Thailand can only deduct allowances for their spouse and children if they reside in Thailand.

Withholding Tax

Payments of employment income and certain specific types of assessable income to natural or juridical persons are subject to income tax at various rates depending on the type of assessable income. Taxes withheld by the payer must be remitted within seven days after the end of the month of payment, together with a return to the Revenue Department. The recipient of the assessable income is provided with a withholding tax certificate and can use the tax withheld at source as a credit against their annual or mid-year income tax payable for the respective tax year.

Interest income is subject to 15 percent withholding tax and dividend income is subject to 10 percent withholding tax. A Thai resident may consider the withholding tax on interest and dividend income as a final tax, or include the interest or dividend in their assessable income and claim a credit for the withholding tax. However, the withholding tax is a final tax for a non-resident.

A person who pays income to a foreign actor must compute and deduct tax at source and remit the tax to the Amphur Office within seven days of the end of the month in which the payment was made.

Withholding tax at the rate of 1 percent applies to actors and other entertainers subject to Personal Income Tax (e.g. an entertainer, performing in theatre, motion picture or radio, a television artiste, a musician, a sportsman or an artiste who performs either individually or in a group) where the payer of the income is the Government, a government agency, municipality or local authority, and the payment is 10,000 Baht or more.

The following withholding taxes apply to actors who are resident in Thailand or abroad, where the payer of the income is an individual, ordinary partnership or group of persons which is not a juristic person, a company or juristic partnership, other juristic persons, a company or juristic partnership, or other juristic person:

- Progressive rates if actor is a resident in a foreign country;
- 10 percent if the actor is a resident in a foreign country and the producers of the motion picture or television program has received permission to produce the film or program in Thailand by the Sub-Committee for the Approval to Film a Foreign Motion Picture in Thailand; and
- 5 percent if the actor is resident in Thailand.

Income for Organizers
An Organizer is a person who arranges actors for a film. Income for Organizers is considered income from other business activity under the Revenue code. This refers to types of income such as ticket fees or other income arising in connection with the organization for a public artiste's performance.

Withholding tax at the rate of 1 percent applies to an organizer who is subject to Personal Income Tax or an organizer who is a company or a juristic partnership that carries on business in Thailand, where the payer of the income is the Government, a government agency, a municipality or local authority paying 10,000 Baht or more.

Withholding tax at the rate of 3 percent applies to an organizer who is subject to Personal Income Tax or an organizer who is a company or a juristic Partnership established under Thai laws (excluding a foundation or an association), a company or a juristic partnership established under foreign laws with a permanent branch office in Thailand. Withholding tax at the rate of 5 percent applies to an organizer who is a company or a juristic Partnership established under foreign laws which carries on business in Thailand without a permanent branch office in Thailand where the payer of the income is a company or juristic partnership, or other juristic person, and the payment is 1,000 Baht or more.

Income for Contractors
A Contractor is a person who sources Actors. Income for Contractors is considered as service income under the Revenue Code. This refers to income arising from contracts for actors to perform in Thailand. The rate of standard deduction for this type of income is 40 percent (but cannot exceed 60,000 Baht).

Withholding tax at the rate of 1 percent applies to a contractor who is a company or a juristic partnership which carries on business in Thailand where the payer of the income is the Government, a government agency, Municipality or local authority.

Withholding tax at the rate of 3 percent applies to a contractor who is a company or a juristic partnership which carries on business in Thailand where the payer of the income is a company or juristic partnership or other juristic person.

Withholding tax at the rate of 15 percent applies to a contractor who is a non-resident and subject to Personal Income Tax where the payer of the income is an individual, partnership, company, association or group of persons, a contractor who is a company or a juristic partnership established under foreign laws and does not carry on business in Thailand where the payer of the income is the Government, a government agency, municipality or local authority, and also applies to a contractor who is a company or a juristic partnership established under foreign laws and does not carry on business in Thailand where the payer of the income is a company or juristic partnership or other juristic person.

Income for Producers or Coordinators
Income such as salaries, wages, consideration etc, is considered to be employment income under the Revenue Code. Income such as remuneration for services, commission, or brokerage is considered to be service income under the Revenue Code. The rate of standard deduction for either type of income is 40 percent (but cannot exceed 60,000 Baht).

Withholding tax at the rate of 3 percent applies to a person who is a company or a juristic partnership that carries on a business in Thailand where the payer of the income is a producer or coordinator who is a company or a juristic partnership or other juristic person.

Withholding tax at the rate of 10 percent applies to a person who is a foundation or an association (excluding those specified by the Finance Minister pursuant to section 47(7)(b) of the Revenue Code) where the payer of the income is a producer or coordinator who is a company or a juristic partnership or other juristic person.

Withholding tax at the rate of 15 percent applies to a person who is a non-resident and subject to Personal Income Tax where the payer of the income is a producer or coordinator who is an individual, a partnership, a company, an association or a group of persons, and applies to a person who is a company or a juristic partnership established under foreign laws that does not carry on business in Thailand where the payer of the income is a producer or coordinator who is a company or a juristic partnership or other juristic person.

Value Added Tax

Generally, Value Added Tax (VAT) is levied at the rate of 10 percent on the value of goods sold and services rendered at every level, including importation (the rate has been temporarily reduced from 10 percent to 7 percent). However, certain categories of goods and services (e.g. exports) are zero-rated (i.e. subject to 0 percent VAT) and some other categories of goods and services (e.g. sale of agricultural products) are exempt from VAT.

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Chapter 34

United Kingdom

Introduction

The U.K. film industry enjoys a first rate reputation, enhanced recently by international commercial successes such as *The King's Speech, Slumdog millionaire* and the *Harry Potter* series of films.

Filmmakers are attracted to the U.K. for three main reasons:

1. The high-quality studio, laboratory and post-production facilities, talented performers and experienced, professional crew;
2. The beneficial tax incentives available; and
3. The favourable exchange rate.

The U.K. is the third largest film market in the world and the industry makes a substantial contribution to the country's economy. In 2010, the film and video industries employed almost fifty thousand people. It was also a record year for inward investment in the U.K, with *Captain America: The First Avenger, Pirates of the Caribbean: On Stranger Tides, Sherlock Holmes 2, War Horse* and *X-Men*: First Class all being shot here. Factors contributing to this may be the weak pound which has increased the U.K.'s cost effectiveness as a location for film production and generous U.K.film tax incentives (as described later in this chapter). However, the value of domestic production fell by 22% reflecting the tougher economic conditions facing the independent U.K. production sector.

The U.K. Film Council was established in 2000 to promote a competitive, successful and vibrant U.K. film industry, and to promote the widest possible enjoyment and understanding of cinema throughout the U.K. The U.K. Film Council was closed in early 2011 and its responsibilities for ensuring that the economic, cultural and educational aspects of film are effectively represented Most of the U.K. Film Council's core functions have transferred to the BFI - including the distribution of National Lottery funding for the development and production of new British films, as well as audience development activity through supporting film distribution and exhibition. The BFI also takes over responsibility for the certification of U.K. films (which enables filmmakers to access the U.K. film tax relief for film production). Responsibility for inward investment has transferred to Film London, funded by the BFI.

Key Tax Facts

Highest corporate profits tax rate	26%[1]
Highest personal income tax rate	50%[2]
VAT rate	0%, 5%, 20%
Annual VAT registration limit	U.K. £73,000
Normal non-treaty withholding tax rates: Dividends	0%
Interest	20%
Royalties	20%[3]
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	April 5

Film Financing

Financing Structures

One of the most common forms of film financing involves the provision of a proportion of a film's total budget in return for an involvement in a co-production or the acquisition of distribution and broadcasting rights. These are discussed below, together with some variations on this theme.

Co-Production

A co-production is a film produced under the terms of an international co-production agreement between two or more countries.

In the U.K., such films are made under either a bilateral co-production treaty or the European Convention on Cinematic Co-production. The aim of these agreements is to encourage international co-operation between filmmakers, working together to produce a film involving the skills and resources of more than one country.

One of the benefits of making a film as an official co-production is that the producers are able to access the support provided to national films in each of the co-producing countries including, where appropriate, tax incentives.

[1] The main rate of corporation tax for large companies was previously 28%. This was reduced to 26% on 1st April 2011. The U.K. government has announced further reductions of 1% a year will take place over the three years such that the highest rate of corporation tax will be23% from 1st April 2014.

[2] The 50% rate on personal income tax only applies to income exceeding £150,000 p.a.

[3] Zero percent withholding for film and video royalties

There are a number of ways in which co-productions may be structured. The tax position of the investors and the conditions for tax incentives would need to be considered when structuring such an investment. Please refer to the comments under Tax and Financial Incentives for details of how official co-productions can qualify for U.K. film tax incentives.

In general terms, where a U.K. resident investor enters into a U.K. based co-production joint venture (JV) with a foreign investor to finance and produce a film in the U.K., the rights are normally divided worldwide amongst the JV members, with the U.K. investor retaining exclusive media rights in the U.K. In this type of arrangement, each party would advance funds to enable the production to proceed and this effectively represents their investment in the film.

Provided that the exploitation of the film can be kept effectively separate from its production, the foreign investor should not be subject to U.K. tax on the income it receives from exploiting the film in the overseas territories, since the investors are not sharing overall revenues, but take various territorial rights to exploit from within their own home country. As long as the foreign investor cannot be said to be carrying on a trade in the U.K. of film exploitation, U.K. tax should not be chargeable in respect of this activity. Consequently it is vital that the joint venture legal agreement cannot be construed such that the foreign investor can be regarded as carrying on in the U.K. a business of film production or rights exploitation.

The issue is complicated if the foreign investor produces the film in the U.K. under a production contract. The foreign investor is likely to be taxed on the basis that business profits arise to a permanent establishment which it operates in the U.K and it would have to rely on an applicable treaty (if one exists) to obtain relief in its home territory. If there is a delay in receiving the U.K. tax credit in the domestic territory, there would be a tax cash flow cost. Care should be taken to avoid any tax credit mismatch which might prevent the foreign investor accessing its tax credit.

For U.K. tax purposes, the U.K. authorities interpret the term "permanent establishment" in accordance with the OECD Model Tax Convention. This might provoke some discussion with the U.K. tax authorities as to the proper level of profit which should be attributed to the U.K. activities. In this case it would be more sensible to create a separate, U.K.-incorporated special-purpose company to undertake the production and set an appropriate market rate for the production fee so that this risk could be decreased.

A note of caution needs to be stressed where a foreign company receives film or TV broadcasting royalties. Advisers need to take care in interpreting the relevant double tax treaties since the content of the various articles covering such income can vary. Some treaties classify such income as business profits; others classify the income under the royalties article. This does not pose a problem if the royalty article exempts tax in the territory in which that income arises, provided the recipient is resident in the other territory which is party to the treaty, as this would have the same effect as treating the income as business profits (i.e., taxable only in the country of residence). However, where the originating territory regards the income as a royalty, retains a taxing right and subjects that income to withholding, there would clearly be a cash flow cost under those arrangements.

On the basis of the JV outlined above, U.K. investors would be taxed on the full amount of the profits arising in respect of film production and exploitation.

Partnership

Occasionally financial investors from several territories and film producers become either general partners or partners with limited liability in a U.K. resident partnership, all contributing funds.

Limited liability partnerships (LLP) were introduced in the LLP Act of 2000 and have historically proved very popular vehicles in which to conduct film investment activity. Partners in LLPs are termed members. The members of the LLP can legally bind the business, but not other members. This is one of the greatest advantages which an LLP enjoys over a general partnership,whose partners tend to be jointly and severally liable, and was the principal reason for the creation of this business vehicle. Therefore members of the LLP can enjoy the benefits of "limited liability" as afforded to companies, while also maintaining the tax transparency of general partnerships. LLPs are not subject to Corporation Tax, but each member is liable for income tax on his or her share of the profits/revenues.

The partnership may receive royalties under distribution agreements from both treaty and non-treaty territories, proceeds from the sale of any rights remaining after exploitation and a further payment from the distributors to recoup any shortfall in the limited partner's investment. Such proceeds may first be used to repay the limited partners (perhaps with a premium, e.g., a fixed percentage of the "superprofits").

In such a case a U.K. resident partner would have contributed money on capital account, whether on a long-term basis or as a short-term loan. It would acquire an interest in the partnership assets, its share being the share to which it is entitled according to the partnership agreement. It would pay tax on its share of chargeable profits, including any "superprofits."

There is no longer any statutory 100 percent write-off for tax purposes available for the production or acquisition of British qualifying films as this relief has been replaced with a production tax credit (as described later in this chapter).However, some partnerships may be able to claim an accounting write-down (under U.K. GAAP) depending on the structure. These partnerships (again usually LLPs) provide participants with an opportunity to share in the revenue stream generated by a single film, or a slate of films. Individuals would usually be investing in films with some pre-sales and bank or corporate funding already in place.

Readers should however be aware that anti-avoidance rules have been introduced in the U.K. which severely restrict the ability of "non-active" U.K. partners to set off their share of a partnership loss against their other personal income. This type of partnership structure is now therefore less attractive.

Equity Tracking Shares

Such shares are a less common means of financing a film. They provide for dividend returns dependent on the profitability of a film production company's business. The investor acquires such shares in the company producing, or holding rights in, the film. These shares may have the same rights as the production company's ordinary shares/common stock except that dividends are profit-linked and have preferential rights to assets on a liquidation of the company.

If the company is resident in the U.K., these tracking shares would be regarded as preference share capital. For U.K. tax purposes the dividends paid on the tracking shares would be treated in the same way as dividends paid on share capital: there is no difference in the treatment of dividends paid by U.K. resident companies on ordinary and preference shares. Such dividends cannot be deducted in computing profits chargeable to U.K. corporation tax. Dividends are payable without withholding tax.

For U.K. tax purposes, if a U.K. resident investor acquires tracking shares in a company which is resident outside the U.K., any dividends received on the tracking shares would be treated in the same way as dividends received on overseas shares. Any tax withheld would be dealt with according to the dividend article of the appropriate double tax treaty. The availability of the distribution exemption in respect of any dividends received by U.K. tax resident corporate investors (which came into force in July 2009) would also need to be considered in detail.

Sale and Leaseback

Sale and leaseback techniques were a common means of providing production financing, especially in the light of the increased tax write-off for British Films introduced from July 1997.

HMRC became increasingly wary of this type of structure in view of perceived abuses. For this reason, it decided to completely overhaul the U.K. film tax incentive system. Given the withdrawal of the 100 percent write-off on the acquisition of a British film after January 1, 2007, these types of structures are now less attractive. Please note that the anti-avoidance legislation noted above under "Partnerships" also applies to investors in film sale and leaseback partnerships.

Other Tax-Effective Structures

U.K. Subsidiary

A film production company resident in, for example, the U.S., may wish to produce a film in the U.K. U.K. resident investors may invest either by way of equity or loan capital but they would wish to receive a return on that investment. The U.S. film production company may wish to produce further films in the U.K. if the present one is successful.

In such a case, a U.S. resident film production company may decide to set up a U.K. subsidiary to produce the film in the U.K. This would enable profits to be easily recycled in the U.K. vehicle. The U.K. film production company may also be eligible for U.K. film tax relief subject to meeting the relevant conditions as explained below. If U.K. individual investors take an equity interest in the U.K. subsidiary, they should be able to receive tax efficient dividend payments with a tax credit attached, since for individuals their effective tax rate could be lower than the 40/50 percent rate they would normally pay as a higher rate taxpayer. For U.K. corporate investors any dividends received would not be charged to corporation tax.

If the U.S. film production company wishes to use its share of profits in the film to produce another film subsequently in the U.S., it may wish to utilize a structure whereby the U.K. investors are able to exploit (perhaps U.K.) rights in the film, while the U.S. company retains its rights in its preferred locations. As indicated previously, the U.S. company would need to take care to prevent having a U.K. permanent establishment. Other investors who are resident outside the U.K. may wish to participate in profits by similarly exploiting rights in their own territory.

Tax and Financial Incentives

Investors

In 1992, tax relief was introduced to provide immediate relief for film development costs and an accelerated write off over three years for production and acquisition costs where the film is certified by the Department for Culture, Media, and Sport (DCMS) as a qualifying British film. This became known as "section 42 relief". Rules enhancing this relief, by allowing a write off in year one was introduced in 1997 for qualifying British films with production expenditure of less than £15 million. This enhancement was known as "section 48 relief"

However, the U.K. government considered that the incentives were subject to abuse with much of the value going to investors, financial intermediaries and other third parties rather than filmmakers themselves (see comments on Sale and leaseback in the Film Financing section above).

As a result, many changes in tax legislation were introduced between 2002 and 2005 in order to counter perceived tax avoidance in the industry. In 2004, a lengthy period of consultation commenced in respect of a new film tax regime. The legislation introducing the new regime was introduced in 2006 but only came into force after official State Aid approval from the European Commission was obtained in November 2006. The new reliefs only benefit film production companies as opposed to investors.

The new rules (as described in more detail below) apply to films commencing principal photography on or after January 1, 2007. As a result of the legislative changes in recent years, there are not currently any specific U.K. tax incentives for investors in film.

Producers

The film production credit is available to film production companies (FPCs) within the charge to U.K. tax (as opposed to individuals or partnerships) and can take the form of an enhanced tax deduction for qualifying U.K. production expenditure and a cash tax credit.

The rules are designed so that only one company can be an FPC in relation to a film. In order for a company to be an FPC it must be responsible for and actively engaged in pre-production, principal photography and post production of the film and delivery of the completed film. It must also directly negotiate, contract and pay for rights, goods and services in relation to the film. A company whose participation is restricted to providing or arranging finance cannot qualify for the relief. Importantly however there is no requirement for the FPC to own the master negative or rights in the film.

There are special rules that apply in regards to an official co-production (i.e. a film that is treated as being British under the terms of one of the international co-production treaties with the U.K.). In such cases, the FPC is a co-producer that makes an effective creative, technical and artistic contribution to the film.

There are a number of criteria that the film must satisfy before relief for expenditure is available.

Firstly, the film must be intended for theatrical release. "Theatrical release" means exhibition to the paying public in the commercial cinema. The HMRC has issued guidance as to how this test may be assessed. Broadly speaking a significant proportion (exceeding 5%) of the earnings of the film should be intended to be obtained from such exhibition either in the U.K. or overseas.

Secondly the film must meet a "Cultural Test" for a British Film and be certified as such. The DCMS has set out a framework for obtaining certification in this regard which is based on a points system. Application for certification must be made to the B.F.I.

A co-production can be certified as British either by meeting the requirements of the cultural test or by meeting the conditions of one of the U.K.'s international co-production agreements.

Thirdly, 25 percent of the "core expenditure" incurred by the FPC or in the case of a qualifying co-production, the co-producers must relate to goods or services that are used or consumed in the U.K. ("U.K. expenditure").

"Core expenditure" for these purposes means expenditure on pre-production, principal photography and post-production of a film but excludes expenditure on development and distribution. In addition, the acquisition of pre-existing rights from a third party forms part of development expenditure and does not therefore represent "core expenditure" for these purposes.

Unlike s48 and s42 reliefs which could generally be claimed in respect of the whole budget of a film, the new relief can only be claimed on so much of the FPC's core expenditure that is U.K. expenditure up to a maximum of 80 percent of the core expenditure (the qualifying expenditure).

In the case of a co-production, it is essential that the U.K. co-producer incurs all the costs of goods and services used and consumed in the U.K. in order to obtain the maximum benefit.

Please refer to the comments in the "Corporate Taxation" section for details of the computational mechanics of the new credit.

In addition to the above tax incentives, the B.F.I provides funding to support filmmaking in the U.K. through the Film Fund. The Film Fund supports emerging and world class filmmakers who are capable of creating distinctive and entertaining work.

Distributors

No specific tax incentives are available for distributors in relation to the acquisition and exploitation of film rights. With effect from January 1, 2007 such rights are to be taxed in line with the accounting treatment (see Corporate Taxation section below).

The B.F.I. does however administer a Prints and Advertising Fund which is designed to widen and support the distribution and marketing strategy of specialised films and to offer support to more commercially focused British films that nevertheless remain difficult to market.

Actors and Freelancers

There are no specific tax or other incentives available for actors or freelancers who are tax resident in the U.K., other than those generally available. They are not exempted from tax on payments arising in their profession.

Many actors and freelancers consider themselves self-employed, however depending on the nature of the contract (a contract **for** services, or a contract **of** services), some of them will be taxed as employees. A contract of service is put in place where a person is working for another (i.e. an employee) but a contract for services is put in place where a person provides services to a client (i.e. a freelancer).

However, it is worth noting that the National Insurance Contributions treatment of entertainers is different from that which applies for tax. Under the Entertainers Regulations issued in 2005 the majority of entertainers who were self-employed for tax purposes, were treated as employed earners for NIC purposes, allowing them to make Class 1 NIC contributions. However, the First-tier Tribunal's decision in ITV Services Ltd (TC836) clarified the scope of these regulations, meaning that more entertainers engaged under Equity contracts are to be treated as employed earners for National Insurance contributions purposes. As a result of the ruling, many more entertainers are now liable for Class 1 National Insurance Contributions, and their engagers are therefore responsible for ensuring that correct contributions are made.

Other Tax Incentives

Investment under EIS has been available from January 1, 1994. The "Enterprise Investment Scheme" (EIS) enables qualifying individual investors to claim income tax relief at 30 percent (from 6 April 2011) on the capital cost of shares up to £500,000 in a qualifying company. The maximum tax relief available is therefore £150,000 and the shares must be held for three years from the date the shares were issued (or three years from the date the qualifying trade started) otherwise the income tax relief is withdrawn.

In addition, if the individual investor holds the qualifying shares for at least three years, any capital gain arising is exempt, but because of this any loss arising cannot constitute an allowable capital loss. If the shares are disposed of at a loss, the individual investor may elect for the amount of the loss, less any Income Tax relief given, to be set against income of the year of disposal, or income of the previous year.

The scheme is generally available to all unquoted trading companies meeting certain criteria. Generally if the company does not carry on a qualifying trade throughout the investment period, the reliefs are withdrawn. Those companies trading in the production of films or in the distribution of films they produce should qualify as long as they derive profits from the exploitation of rights held in those films. Pre-arranged exit routes for investors are not permitted.

Finally, under the EIS, individuals and trustees of certain trusts may defer the payment of tax on a capital gain where the proceeds are invested in subscription shares of a qualifying EIS company. However, as of 22 June 2010 it is not possible to defer a capital gain under the EIS rules and for the capital gain to qualify for Entrepreneur's Relief.

A "Venture Capital Trust" (VCT) provides similar tax reliefs to individual investors as the EIS described above and facilitates indirect investments into a range of small higher-risk unquoted trading companies. A qualifying VCT Fund must be quoted on the U.K. Stock Exchange and there are certain rules governing the permissible "mix" of companies in which the VCT can invest. A qualifying investor can subscribe for up to £200,000 in ordinary shares in a VCT Fund per tax year and receive income tax relief at 30% in respect of the investment. The individual is exempt from income tax on any dividends arising from the ordinary shares in the VCT and any capital gain arising on disposal of the VCT shares may also be exempt from capital gains tax.

The maximum total amount that a company can raise via EIS and VCTs combined is normally £2,000,000 in any 12 month period.

The U.K. government has announced plans to increase the EIS and VCT investment limits with effect from 6 April 2012 as follows: the annual amount that can be invested though both EIS and VCTs in an individual company to increase to £10million and the annual amount that an individual can invest through EIS to increase to £1million.

The use of settlements ("trusts") has also played a major role in U.K. tax planning for individuals, although the anti-avoidance measures of recent years mean that great care must be taken in any planning exercise which involves them.

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in the U.K. on any issue of new ordinary or preference shares or loan capital.

A document based duty, "stamp duty," is payable in the U.K. at the rate of 0.5 percent on the transfer of ordinary or preference shares/stock, or marketable securities. In general, no duty is payable on loan capital.

Exchange Controls and Regulatory Rules
There are no specific exchange controls or other regulatory rules relating to the restriction of currency movements in the U.K. since they were abolished in 1979. There is therefore nothing to prevent a foreign investor or artist repatriating income arising in the U.K. back to his or her own home territory, other than evaluating the tax consequences of doing so. No changes are expected to be made in the foreseeable future to reintroduce such controls.

Corporate Taxation

Recognition of Income and Amortization of Expenditure

Film Production Company

U.K. Resident Company
The film production tax credit rules set out a consistent approach to calculating taxable profits for an FPC. The new basis, like the treatment it replaces, applies a revenue treatment of income and expenditure even where film costs would otherwise be capitalized on the balance sheet.

The activities of a FPC in relation to a film are treated as a separate trade for tax purposes which commences when pre-production of the film commences or when the company first receives income (if earlier).

For the purposes of determining its profit/loss for tax purposes, an FPC is required to bring into account a proportion of the total estimated income for the film which is treated as earned during that period. That proportion is calculated by multiplying the total estimated income from the film by the total of costs incurred to date (and reflected in work done) and dividing the result by the total estimated cost of the film. We understand it is HMRC's intention that "estimates" for these purposes should be made in accordance with generally accepted accountancy principles. This may give rise to some practical challenges.

Income for the above purposes is construed widely and includes receipts from the making and exploitation of the film. It includes (but is not limited to):

- Receipts from the sale of the film or rights in it
- Royalties or other payments or use of the film or aspects of it (for example characters or music)
- Payments for rights to produce games or other merchandise
- Receipts by way of a profit share agreement

If a special purpose company is set up in the U.K. to produce a film, video or television program, without acquiring any rights in the product, i.e., a "camera-for-hire" company, the tax authorities might query the level of attributed income if they believe it is below a proper arm's-length rate. It is difficult to be specific about the percentage of the total production budget that would be an acceptable level of attributed income in the U.K., but an acceptable level could lie between one and two percent of the production budget. The lower the rate, the more likely there is to be an enquiry. In many cases, setting a percentage rate may well be wholly inappropriate given the size of the budget, but some comparison needs to be made with the level of fee which a third party would set for similar services. The basis of the level of fee that is set should be clearly documented.

As long as the relevant conditions are met (as described in the Tax and Financial incentives section above), an FPC is eligible for an enhanced deduction in computing its taxable profit/loss. The value of the enhancement is 100 percent of qualifying expenditure for films with core expenditure, deemed as a limited-budget film, of GBP 20m or less and 80 percent of qualifying expenditure for films with core expenditure of greater than GBP 20m.

To the extent that an FPC has a trading loss for a period (taking into account the enhanced deduction noted above), it may surrender all or part of that loss in exchange for a cash tax credit. However, the amount of loss which may be surrendered is limited to the qualifying expenditure for the period.

For lower (limited) budget films (less than GBP 20m), a cash tax credit of 25 percent of the losses surrendered is available. This is reduced to 20 percent for films with a budget in excess of GBP 20m. It should be noted however that given it is only possible to surrender a loss up to a maximum of the qualifying expenditure for the period (i.e., U.K. expenditure up to a maximum of 80 percent of core expenditure). As a result, the maximum cash credit available for films which are made wholly in the U.K. will be 20 percent (25 percent x 80 percent) of core expenditure for lower budget films and 16 percent (20 percent x 80 percent). The benefit will be eroded even further the more expenditure incurred on non-U.K. goods and services.

The tax credit repayment is claimed via the FPC's corporation tax return which must be submitted within 12 months of the end of the relevant accounting period. There is no requirement for HMRC to pay the credit within a set time frame.

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Losses
While a film is in production, losses (including those arising as a result of the enhanced deduction) may only be carried forward and set off against future profits of the same trade (i.e. the same film as each film is treated as a separate trade for tax purposes).

Once a film is completed or abandoned, losses arising otherwise than by way of the enhanced deduction may be offset against profits of the FPC in that accounting period, an earlier accounting period or surrendered to be offset against profits arising elsewhere in the group.

Once the film trade ceases, any terminal losses may only be offset against profits from other films made by the same FPC or surrendered intra-group to be offset against profits made another FPC which has already commenced pre-production of a qualifying British film.

Non-U.K. Resident Company
If a company is not resident in the U.K. but has a production office to administer location shooting there, it is possible that the tax authorities may try to argue that it is chargeable to tax by being regarded as having a permanent establishment, unless specific exemptions can be obtained by virtue of a claim under an appropriate double tax treaty. In this case it might be possible to argue that the location is similar to a construction or installation project which does not exist for more than the defined period, or that it is not a "fixed place of business" as provided for in the appropriate article.

If the U.K. tax authorities attempt to tax the company on a proportion of its profits on the basis that it does have a permanent establishment there, they would first seek to attribute the appropriate level of profits which the enterprise would be expected to make if it were a distinct and separate enterprise engaged in that activity. Clearly, however, a proper measurement of such profits would be difficult. It is likely that the U.K. tax authorities would measure the profit enjoyed by the company in its own resident territory and seek to attribute a specific proportion of this, perhaps by comparing the different levels of expenditure incurred in each location or the periods of operation in each territory. The level of tax liability would ultimately be a matter for negotiation.

It is unlikely that a production office could be regarded as causing a company to be resident in the U.K. if that company is not incorporated there or if that office could not be regarded as being the site of its central management and control.

If a company is not resident in the U.K. and does not have a production office there, but undertakes location shooting, it is unlikely that it would have a U.K. tax liability since it would not be regarded as having a permanent establishment.

Non-resident companies making a "culturally British" film should consider setting up a U.K. company to carry out production in order to benefit from the new film tax credit as explained further above.

Television Production Company
U.K. companies which make programmes for television will also be required to compute their income and expenses on the same basis as companies making films for cinema from January 1, 2007. However, such companies are not entitled to the enhanced relief as they do not meet the relevant conditions (intended for theatrical release, etc.).

It is however possible for such companies to elect out of the above regime and be taxed instead in line with their accounting treatment.

Television Broadcaster
The television broadcaster, the cable channel provider and the satellite channel operator are, like the cinema exhibitor, final links in the production chain. They differ in the U.K. from the cinema exhibitor, in that they often provide a vital resource in the financing process, whether they are providing funding for films or programming. Their own income can of course stem from various sources.

The U.K. public broadcaster, the BBC, derives a substantial amount of its income from a statutory license fee payable by each U.K. home, but even the BBC defrays an increasing proportion of its costs by selling its programming overseas, entering into co-productions and making advances to producers to help fund films and programming in return for first transmission rights and a share of any subsequent profits.

The principal source of income for non-public service broadcasters in the U.K. is advertising income, but the publisher-broadcaster can also derive income from the sales of its own product to third parties abroad, either by appointing third-party sales agents to increase their exploitation income, or undertaking this activity in-house. Broadcasters have begun to commission increasing amounts of their own programming, whether in-house or from U.K. independents, and the recent consolidation of the U.K. commercial television industry has resulted in large mergers intended to produce the benefits of economies of scale.

The identification of film and program income and the amortization of related expenditure is inappropriate for a television broadcaster, whose income, as indicated above, would consist for the most part of advertising income. The treatment of expenditure on the acquisition of films by the U.K. commercial network is a little complex but under various individual agreements with the U.K. tax authorities, such film expenditure is generally written off on a formula basis which recognizes the terms of the license granted to the network and the frequency with which the film can be shown in the period prescribed by that license.

Other Expenditure

A television broadcaster does not have any special status under U.K. tax law. Consequently, it is subject to the usual rules to which other companies are subject. For example, in calculating taxable trading profits, it may deduct most normal day-to-day business expenditure such as salaries, rents, advertising, travel expenses and legal and professional costs normally relating to the business.

Certain other expenditure cannot be deducted, for example any expenditure on capital account, such as the purchase of land and buildings, goodwill and investments. Neither can the acquisition of plant and machinery be deducted, although tax depreciation can be deducted at specific rates for assets acquired for business purposes. Additionally certain day-to-day expenditure is not allowable, such as business entertaining of existing or prospective clients, and any other expenditure which is too remote from any business purpose.

The tax authorities have recently been interested in claims to deduct the expenses of certain pre-trading launch expenses, the cost of applying for new and existing commercial television and radio franchises, various legal and accounting costs, the costs of advertising and cross-border transfer pricing issues.

Losses

Companies may set off trading losses against any other profits they receive in the same period. Any excess trading losses may be set off against profits of whatever description arising in the year prior to the year of loss, or alternatively carried forward to be deducted solely against income of the same trade arising in future years. Unlike certain other territories, there is no time restriction for utilizing such trading losses. There are rules which restrict the availability of loss relief following a change in ownership of a company.

Film/Television Program Distribution Company

From January 1, 2007, if a U.K. resident distribution company acquires rights in a film or television program from a production company, for U.K. tax purposes the payment for the acquisition of the rights the purchase of an intangible asset.

The tax treatment of such assets generally follows accepted principles of commercial accountancy although it is possible to make an election instead to amortize the intangible asset for tax purposes at a rate of 4 percent per annum.

For U.K. accounting purposes, but depending on the specific circumstances of each case, income (such as minimum guarantees) can be recognized in the year in which it arises, or on the date the deal is signed, or on the date payment is received if the latter represents overages. In other words, income is recognized in the specific period in which it is, or is expected to be, earned. A prudent view is therefore normally taken, at the end of each accounting period, of the likelihood of such income being received, and such accounting provisions made as are necessary.

A film or television program distribution company that acquires distribution rights over product for sublicensing elsewhere may adopt either of two methods to recognize income in its accounts. It may recognize in its trading and profit and loss account the total income the sublicensing generates in the distributor's domestic or overseas territories, and then expense in that same account the royalty payments it makes back to the licensor. In this case, its profit would effectively represent its commission income.

As an alternative, it may recognize solely its commission income in its trading and profit and loss account, and deal in its balance sheet with the gross income it receives from the sub-licensees and with the payments it makes to the licensors. With this method, its turnover would represent its commission.

As noted above under "Television Broadcaster," a film distribution company has no special status under U.K. tax law and is subject to the same rules as other companies as regards the deductibility of other expenditure and relief for losses.

Foreign Tax Relief

If a U.K. resident film distributor receives income from non-resident companies, but suffers overseas withholding tax, it is normally able to rely on the U.K.'s wide range of double tax treaties to obtain relief for the tax suffered. If no such treaty exists between the territories concerned, the U.K. resident would expect to receive credit for the tax suffered on a "unilateral" basis. There are statutory rules that govern the method by which U.K. companies obtain relief for the withholding tax suffered. The domestic U.K. legislation relating to double tax treaties provides that, where overseas taxes have been computed by reference to specific income arising, credit should be allowed against any U.K. tax computed by reference to that same income.

Where a U.K. film distribution company receives income from sources both within and outside the U.K., it may suffer overseas withholding taxes on its overseas income at a rate which is higher than its effective U.K. tax rate. Technically, such overseas taxes are creditable solely against the U.K. tax attributable to the relevant overseas income that has suffered the tax and, indeed, cannot exceed that attributable U.K. tax.

Where a sales agency does not hold any master or distribution rights, the principals to the deal need to determine that the correct recipient benefits from any tax credits due, since there is the danger that the sales agent might be able to retain credits that do not belong to him or her. Additionally, where films or programming are licensed by a U.K. agent on behalf of a non-U.K. resident licensor to a non-U.K. resident licensee, the appropriate tax laws and practice of the paying territory should be examined to determine whether the paying territory can impose withholding rules on where the money flows, rather than on where the principal recipient is resident. Since the U.K. does not impose withholding tax on the payment of film or programming royalties under domestic law, the issue only arises in respect of payments coming in to the U.K. from abroad. Where there is a potential tax credit "leakage," the use of a third-party royalty collection company should be considered, where the commercial circumstances warrant this.

Related Parties: Transfer of Film/Program Rights; Distribution as Sales Agent

Where a worldwide group of companies holds rights to films, videos or television programming, and grants sublicenses for exploitation of those rights to connected (related) U.K. resident company, it needs to take care to help ensure that the level of license payments and commission income to be earned by the U.K. company can be justified. U.K. transfer pricing legislation requires transactions between connected parties to be conducted on arm's-length terms. There is also a requirement for the taxpayer to prepare and keep documentation to support the arm's-length price. There is no specific level which the U.K. tax authorities seek to apply. They can be expected to have regard to comparative deals which other unconnected parties may make, particularly those directly involving the taxpayer or a related party, together with the taxpayer's functions and risks under the intra-group contracts in place.

Where a U.K. based company distributes the product of a connected party, or acts as its sales agent, in consideration for commission income it is therefore necessary to set an arm's-length, market rate for that distribution fee or commission, and any other transactions into which it might enter into with a connected party. The difficult question is to establish exactly what that rate might be. Again, this depends on an evaluation of the taxpayer's functions and risks, including basic facts such as whether the rate applies to a single title or portfolio of titles, and the type of film, e.g. an expected blockbuster, or a niche product. Consequently, third-party rates tend to cover a wide range, often between 10 and 30 percent of the total income generated.

One of the most important determinants in setting a defensible rate can be the size of the prospective audience, and, therefore, revenues. This is because where the U.K. entity is not significantly at risk for direct distribution costs (e.g. film prints, DVD pressing or advertising) as it is a commission agent, or is entitled to deduct the distribution fee from revenues before paying a royalty out of the balance, its main risk can relate to recovering its local office costs. These tend to be fairly invariant to revenue level. That is, local staff costs do not tend to increase at the same rate as the audience for the films they distribute—a significant volume discount needs to be priced into the fee to return the correct amount to the ultimate licensor.

Where the intra-group arrangements extend to cover a series of films over time, corporate tax efficiency and savings in effort can be maximized by designing a robust "sliding scale" of commissions or distribution fees, which allows for variation in film revenues and controls taxable profits within a narrow range.

In some cases, risks borne by the local entity can be higher, for example where a distributor does bear direct cost risk under the contract and is required to pay a fixed percentage royalty regardless of a film's performance. Over time this would impact the arm's-length level of return to be recognized locally, although setting the transfer pricing can be approached in a similar manner.

Whatever rate is set, under the appropriate operating/transfer pricing model, full details should be recorded to justify the rates set in the particular circumstances. It is generally wise to obtain evidence at the time a deal is struck to verify that the rate agreed can be substantiated at a later date should the tax authorities query the deal.

It is also possible in the U.K. to enter into an advance pricing agreement with the tax authorities in order to get certainty in respect of prices used.

Withholding Tax on Royalties

The U.K. tax regime generally requires tax to be withheld at the basic rate of 20 percent from royalty payments made to holders of copyright resident outside the U.K. In any event double tax treaties and the European Interest and Royalties Directive often apply a reduced or nil withholding tax rate in respect of certain royalties. Additionally, there are two specific exemptions that override even this practice, whether the royalties are paid to a resident of a treaty territory or not. Firstly, individual authors who exercise a profession outside the U.K. may receive royalty payments gross from U.K. residents. Secondly, where a U.K. resident pays a royalty abroad in respect of a cinematography film, video recording, or soundtrack of such a film or recording (as long as the soundtrack is not separately exploited), U.K. tax law also permits such payments to be made gross.

Indirect Taxation

Value Added Tax (VAT)

The U.K. charges VAT on the sale or supply of goods or services under the harmonized system of VAT found in the EU, and companies making supplies of goods and services within the U.K. would normally be required to register for U.K. VAT (businesses whose taxable turnover is less than £73,000[1] in any 12-month period do not have a requirement to register). There are certain restrictions which deny companies "credit" for tax suffered at an earlier stage in the manufacturing or service process. No "credit" is available in respect of entertaining expenses, most purchases of automobiles and other goods and services not purchased for business purposes. Intending traders can register to advance their recovery.

Supply of a Completed Film

Any U.K. resident company which delivers a completed film to a company also resident in the U.K. has to charge VAT at the standard rate of 20 percent on this supply. Such a sale is regarded as a supply of rights and therefore as a supply of services. If a U.K. company delivers a completed film, it would be required to account for any applicable VAT to the tax authorities within one month of the end of the VAT accounting period in which the supply was made or, if earlier, in which a "tax point" was created. VAT accounting periods can cover one month or three months. The basic tax point is the completion of the service. However, if a company receives a payment or issues a tax invoice in advance of delivery of a completed film, the receipt of payment or date of the invoice would create a tax point.

Where a U.K. resident company delivers a completed film to a company not resident in the U.K. but resident in a Member State of the EU there would be no charge of U.K. VAT to the customer although the U.K. supplier would be able to recover all of the VAT that it had incurred (subject to the normal rules). A U.K. company delivering the film would need to establish that the customer is receiving the supply in its business capacity, usually by showing the customer's own VAT registration number on the invoice and, as of 1 July 2011, it is also a requirement under EU law to validate the VAT number and evidence the customer's name and address. However, the customer in the Member State would have to pay the VAT applicable to the product in that particular Member State and credit that sum against its own VAT liability (the so-called "reverse charge").

[1] The current U.K. VAT registration threshold for the tax year 2011/12 is £73,000

A U.K. resident company which delivers a completed film to a company not resident in either the U.K. or the EU would not charge VAT since such a supply would be regarded as being "outside the scope of VAT," but would be able to recover the VAT incurred in making the film.

Pre-Sale of Distribution Rights

A U.K. company must charge VAT at the standard rate of 20 percent [4] on a "pre-sale" of distribution rights to a U.K. resident. On a pre-sale to a person not resident in the U.K. but resident in the EU, such a supply is outside the scope of VAT if made to a person in business (if made to a person not in business, the rate is 20 percent). On a pre-sale to any person not resident in either the U.K. or the EU, the supply would be outside the scope of VAT.

Royalties

Where a U.K. resident company pays a royalty to another U.K. resident company, VAT would be charged at the rate of 20 percent.

A U.K. resident company which pays a royalty to a company which is not resident in the U.K. but is resident in a Member State of the EU would not be charged overseas VAT, but would be required to operate a "reverse charge" calculation, i.e., charge itself VAT at 20 percent, and the supplier would not charge his or her own domestic VAT. A U.K. resident company which pays a royalty to a company not resident in either the U.K. or the EU would also be required to operate a "reverse charge" calculation.

Agent as Principal Deals

On occasion, licensing deals are handled by agents acting in the name of the licensor. Although the agent is clearly not a principal to the deal it is sometimes more appropriate, from a VAT point of view, for the agent to act in a principal capacity in order to simplify the VAT accounting and compliance issues. In these cases the agent can act as though he both receives the grant of the license from the licensor and makes the grant of that same license to the licensee. The value of those transactions would be the same and so any VAT would flow through the agent with no adverse consequences. The agent's commission is a separate transaction and is subject to the normal VAT rules. This treatment of agents as principals for VAT purposes can prove very useful to overseas licensors who might otherwise be required to register for VAT in the EU, although for direct tax purposes care needs to be taken when structuring this arrangement.

Peripheral Goods and Merchandising

The sale of many peripheral goods connected to the distribution of a film (such as books, magazines and the publication of music where presented on paper) may be zero-rated. However, the sale of other merchandising connected with the distribution of a film (such as the sale of CDs, clothes, posters, toys, etc.) will be subject to VAT at 20 percent (children's clothing is zero rated). If these are to be imported then duty and import VAT would normally be due.

Promotional Goods or Services

The VAT treatment of business promotions is a complex area upon which it is recommended that advice be sought on a case-by-case basis. However, as a general rule, where a business gives away goods for no charge and recovers VAT incurred on those goods as a credit, VAT is not due if the VAT-exclusive cost of the goods is £50 or less and the gift does not form part of a series or succession of such gifts costing over £50 in total to the same person in the same year. Otherwise, VAT is normally due on the cost value of the goods.

For services provided at no charge, the VAT treatment depends upon whether the company is providing its own or bought-in services. The free provision of own services is generally not a taxable supply and VAT credit is not restricted, whereas the free provision of bought-in services does give rise to a VAT credit restriction. If, however, services are merely paid for by the business undertaking the promotion but supplied directly by a third party to the customer, the business makes no supply for VAT purposes but cannot deduct any VAT charged by the provider of the services.

Film Crew and Artists

Many diverse services are provided within the film industry. It should be stressed that it is not the job title which is the determining factor as to the VAT treatment, but the nature of any service provided.

With effect from 1 January 2010 the basic place of supply rule for services is that business-to-business services are treated as supplied where the customer belongs. (Prior to January 2010 the basic rule was that VAT was due where the supplier was established.)

Some entertainment services and ancillary services are deemed to be supplied where physically carried out. Following the Tribunal case of *Saffron Burrows* (involving an actress taking part in a film production in New Zealand) HMRC accept that acting services are supplied where performed. It is arguable that this treatment should also be extended to ancillary services. However, for now, HMRC appear to be adopting a narrow interpretation of this case and restricting its application to actors.

Actors sometimes work as waged or salaried employees under standard contracts. In these circumstances there is no supply for VAT purposes and their services are outside the scope of VAT.

Imports of Goods and Customs Duties

Where tangible goods are imported into the U.K. from outside the EU, customs duties (see below) would be payable in respect of the goods and VAT at the appropriate rate would almost certainly be payable on the value of the goods, plus the customs duty. Data transferred by intangible means such as via the Internet is not subject to customs duty but may be subject to VAT. For VAT-registered companies the VAT is recoverable in the normal way, subject to the company holding adequate supporting evidence. Customs duty is not recoverable and represents an absolute cost.

Customs duty due and import VAT due will depend on the customs valuation declared for the goods imported into the U.K.. The usual method used by importers is called Method 1 or transaction value and is the price paid or payable for the imported product. However, if Method 1 is used by importers it is important to note that the price paid or payable on the products imported must be subject to the addition or deduction of certain elements (e.g. freight, insurance, royalties, etc). This could become a complex area for imports into the EU, especially for the kind of products in the film industry where there are often royalty agreements in place.

However, there are various duty reliefs and suspensive regimes available, including Temporary Admission Relief (TI), which can be used to temporarily admit goods with total or partial relief from duty and tax. While many of these reliefs can benefit the film industry, various strict criteria must be fulfilled in order to use them, such as the time limits for subsequent re-export and the use to which the goods are put. As always, it is prudent to seek professional advice on the specifics.

The following rates of customs duty are the maximum payable in the circumstances stated below.

Type of Goods	Customs Duty Rate
Exposed and developed film of a width of 35mm or more – consisting only of soundtrack[2]	Free
Exposed and developed film of a width of 35mm or more – negatives and intermediate positives[3]	Free
Exposed and developed film of a width of 35mm or more – other positives[4]	6.5%, up to a maximum of EUR5 per 100 meters
DVD[5]	3.5%
Computer operated projectors[6]	Free
Cinematographic projectors[7]	3.7%

Note that all the items above are "standard rated" supplies for VAT purposes, in respect of which 20 percentis charged on the value inclusive of customs duty.

Personal Taxation

Non-Resident Artists (Self-Employed)

Income Tax Implications

The U.K. authorities tax the income arising to a non-resident artist from any performance in the U.K. They would also seek to tax income received outside the U.K. in connection with a U.K. performance, and also tax profits arising from merchandising if they can link this to a performance in the U.K. Unlike certain other territories, the U.K. authorities do not consider merchandising income to represent a royalty for the exploitation of name or likeness.

Tax is collected by the Foreign Entertainers' Withholding Scheme. The foreign entertainers withholding tax rules apply whether an actor undertakes a live performance on stage before an audience or performs solely before the camera in a studio or on location.

5 We assume this falls under commodity code 37061010

3 We assume this falls under commodity code 37061091

4 We assume this falls under commodity code 37061099

5 We assume this falls under commodity code 85234051

6 We assume this falls under commodity code 85286910 – although please note, a 'colour projector' that falls under commodity code 85286999 would attract a customs duty rate of 14 percent

7 We assume this falls under commodity code 90072000

If a non-resident artist receives any payment arising from, or in consequence of, a activity within the terms of the scheme, the U.K. payer is obliged to deduct withholding tax and account for this tax to the authorities. However, where a non-U.K. payer makes a payment to the non-resident artist in respect of a U.K. performance, the withholding tax rules cannot be enforced and the U.K. tax authorities can only rely on voluntary compliance by the non-U.K. payer.

The withholding tax rate is 20 percent, subject to any reduced rate which can be negotiated if profits are sufficiently low, or if there are substantial expenses. However the authorities can be restrictive in the extent to which they allow deductions to be set against tax.

The 20 percent represents a payment on account; the artist's final liability would be calculated at the applicable rates based on their total profits (together with any other income that is taxable in the U.K.). For the tax year ended April 5, 2011 the tax rate is 40 percent on any profits exceeding £37,400 and the top rate of 50 percent applies to profits exceeding £150,000. It is worth noting that these rates are applied to income after percentage commissions and other allowable expenses, and therefore the effective rate on the gross would normally be lower.

Unlike many territories, the U.K. authorities also require the filing of a final return as well as a tax payment. Whether the payments are made by a U.K. resident or not, early negotiation is recommended with the Foreign Entertainers Unit to secure a more favorable level of deductible expenses. A personal allowance may also be available depending on circumstances; for the tax year ended April 5, 2011 this is £6,475. The entertainer may be able to claim a credit for all or part of the U.K. tax deducted if he or she has sufficient tax liability in his or her country of residence.

VAT Implications

The provision of entertainment services could create a requirement to register for U.K. VAT. However, it may in certain circumstances be possible to mitigate this liability by structuring contracts so that the place of supply of the services is brought outside the U.K.. The U.K. tax authorities have recently challenged the rules concerning where entertainment services are supplied as such there is an increased risk to performers that their services may be deemed by the U.K. tax authorities to fall within the scope of U.K. VAT. We would recommend that early advice is sought in relation to any entertainment services that are to be made in the U.K.. Please note that entertainers can typically apply to be registered for U.K. VAT. As such, they would be required to charge VAT (currently 20 percent) on the services they provide within the U.K.. This would give an entertainer the right to deduct any U.K. VAT incurred in relation to their business activities (subject to certain restrictions).

Resident Artists (Self-Employed)

Income Tax Implications

A U.K. resident artist is liable to U.K. income tax in respect of all profits derived from his worldwide activities (subject to any relief available under a Double Taxation Agreement).

The rules regarding the residence status of individuals are rather complex and based on a wealth of case law. The detail is beyond the scope of this book, but individuals are regarded as tax resident in the U.K. if they spend at least 183 days in any U.K. tax year. This is an absolute rule.

Individuals should also be treated as U.K. tax resident if they spend on average 91 days in the U.K. per year (the average is taken over a maximum of four tax years). Each day on which an individual is present in the U.K. at midnight is counted as a day spent in the U.K. for the purpose of these tests.

If an individual does not meet either of these tests, he could still be treated as tax resident in the U.K. if his presence here is not for merely casual or temporary purpose(s). In particular, having available accommodation in the U.K. or having ongoing contractual commitments in the U.K. may indicate this.

However, the government has proposed to introduce statutory definitions of residency which, subject to any changes during the consultation, will apply from April 5, 2012. These rules are less subjective and will make it easier to determine whether an individual is resident in the U.K. in any given year. Under these rules, an individual will be conclusively non resident in the U.K. if:

- They were not resident in the U.K. in any of the previous three years and they are present in the U.K. for fewer than 45 days in the current tax year;
- They were resident in the U.K. in any of the previous three years and they are present in the U.K. for fewer than 10 days in the current tax year;
- leave the U.K. to carry out full-time work abroad, provided they are present in the U.K. for fewer than 90 days in the tax year and no more than 20 days are spent working in the U.K. in the tax year.

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Individuals not meeting these criteria must then consider further statutory tests to establish their residence status. There are potential tax advantages for those individuals who are not domiciled in the U.K. and careful planning can result in tax savings. The concept of "domicile" is different to that of residence for U.K. tax purposes and is can generally be regarded as the country or state which a person considers his or her permanent home.

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Chapter 35

United States

Introduction

The United States is the world's leader in film production, distribution, and technology. The United States film industry should continue to maintain its role as the international center of film production in the 21st century.

Key Tax Facts

Highest effective corporate personal income tax rate	35%*
Highest personal income tax rate	35%*
Normal non-treaty withholding tax rates: Dividends	30%
Interest	30%
Royalties	30%
Tax year-end:	Companies may choose their own tax year-end subject to certain limitations; Individuals utilize a calendar year unless they maintain appropriate books and records for a fiscal year.

* In addition to the above federal tax rates, state and municipal taxes may be imposed ranging from 0 to 12 percent.

Film Financing

Financing Structures

Co-Production

A U.S. resident investor may enter into a joint arrangement with a non-U.S. investor to finance and produce a film in the U.S. Under a co-production structure, each investor contributes funds to the project commensurate with its anticipated benefits from the exploitation of the film. The rights to exploit the film may be allocated to the partners according to their respective territories, with the remaining territories being divided or held jointly among the parties according to mutual agreement.

Where the investors contribute funds to, and share in the profits of, the project, the co-production will generally be characterized as a partnership for U.S. tax purposes. Generally, a partnership itself is not subject to federal income tax. In addition, many co-productions are carried on through a limited liability company (LLC), which can elect to be taxed as either a corporation or a partnership, the latter being the more common choice. Certain state and municipalities, however, may levy a tax on the partnership. For example, California levies an annual tax of US$800 on limited partnerships and LLC's. California also assesses an annual fee based on an LLC's gross receipts up to maximum of US$11,790. The discussion below regarding partnerships and the taxation of partners applies where the co-production is characterized as a partnership.

A significant concern in a co-production that is characterized as a partnership is whether the non-U.S. investor is considered to be engaged in a trade or business in the U.S. A partner in a partnership that is engaged in a trade or business in the U.S. is deemed to be engaged in a U.S. trade or business. Such a non-U.S. investor generally must file a U.S. income tax return reporting his distributive share of such income and pay the tax due on that amount. If considered engaged in a U.S. trade or business a non-U.S. investor is required to file a federal income tax return even though the non-U.S. investor may have no income effectively connected to the U.S. trade or business or the income is exempt under the terms of a tax treaty. In such cases the federal tax return may be limited in scope. If the non-U.S. investor is resident in a treaty country, the co-production partnership must be engaged in a trade or business through a permanent establishment before the partner is subject to federal income tax on his distributive share of the partnership's income that is attributed to the permanent establishment. Non-U.S. corporate investors may be subject to a branch profits tax and branch tax on interest at a statutory rate of 30 percent. These taxes can be reduced or eliminated by treaty in many cases.

Under certain circumstances, the co-production may not constitute a partnership for U.S. tax purposes. For example, if the co-production is conducted by a U.S. corporation, the corporation itself is subject to federal income tax, and the investors are subject to tax on dividends received (subject to potential treaty relief for non-U.S. investors) from the U.S. corporation. If the co-production is conducted by a non-U.S. corporation, U.S. investors will be concerned with an assortment of U.S. tax provisions, including, for example, the subpart F rules and the passive non-U.S. investment company rules, which may require a U.S. shareholder to report and pay tax on certain income of the non-U.S. corporation in the year that the income is earned (rather than, in a later year, when it is distributed to the shareholder as a dividend). Double taxation of the activity's income also is a risk if the foreign tax authority does not view the arrangement as a partnership.

A co-production also may be structured as a "cost-sharing arrangement." Under such an arrangement, the co-production is not treated as a partnership for U.S. tax purposes, and a non-U.S. investor is not treated as engaged in a U.S. trade or business solely by reason of its participation in the cost sharing arrangement. Under a cost-sharing arrangement, the U.S. and

non-U.S. investors split the production cost in proportion to their respective share of the reasonably anticipated benefits from the film rights developed under the cost sharing arrangement. Temporary Treasury Regulation Section 1.482-7T issued in January 2009 provides detailed rules governing cost sharing arrangements.

Assuming a U.S. participant in a cost sharing arrangement is entitled to only the U.S. distribution rights under the terms of the cost sharing arrangement, the U.S. participant is subject to federal income tax on profits arising from the exploitation of the film in the U.S. Assuming a non-U.S. participant in a cost sharing arrangement retains only the non-U.S. distribution rights and has no U.S. trade or business, such investor should not be subject to U.S. federal income tax upon distribution of the film outside the U.S.

The following are examples of relief available under selected treaties (assuming business profits are attributable to a U.S. permanent establishment and interest, dividends and royalties are not attributable to a U.S. permanent establishment):

U.K.	Branch profits tax rate generally is 5% and some U.K. companies are exempt. (Article 10). Interest withholding tax eliminated (Article 11). U.S. income tax on business profits creditable against U.K. tax (Article 24); Royalty withholding tax eliminated. (Article 12)
Netherlands	Branch profits tax rate generally is 5% and some Dutch companies are exempt (Article 11). Interest withholding tax eliminated (Article 12). Business profits exempted from tax where already taxed in the U.S. (Article 25); Royalty withholding tax eliminated, (reduction not applicable to film and television royalties; instead such royalties are treated as business profits under the treaty). (Article 13)
Australia	Branch profits tax rate generally is 5% and some Australian companies are exempt (Article 10). Interest withholding tax rate reduced to 10% (Article 11). U.S. tax on business profits creditable against Australian tax (Article 22); Royalty withholding tax reduced to 5%. (Article 12)
Japan	Branch profits tax generally is 5% and some Japanese companies are exempt. (Article 10). Interest withholding tax rate reduced to 10% (Article 11). U.S. tax on business profits creditable against Japanese tax (Article 23). Royalty withholding tax eliminated. (Article 12)

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Partnership

Financial investors from several territories and film producers may become limited and general partners, respectively, in a U.S. limited partnership formed to produce a film and contract with independent distributors to distribute the film for a fee. Each partner under this arrangement contributes funds to the partnership in return for a share of the partnership profits; the partnership may receive royalties under distribution agreements from residents of both treaty and non-treaty countries and proceeds from the sale of any rights remaining after exploitation.

Sometimes a partner in a partnership will contribute a promise to perform services in the future instead of property. If by reason of the promise, the partner is allocated a portion of the partnership capital, the partner will recognize income in an amount equal to the capital allocated, and the partner will have a basis in the partnership for the same amount. If, on the other hand, the partner receives an interest in the partnership profits only, the partner will generally not recognize any income and the partner will not have any basis in the partnership, except to the extent that in the future the partnership has undistributed profits.

Generally, a partnership itself is not subject to federal income tax. The partners in the partnership take into account their distributive share of the partnership's profits and losses when determining their tax liability. Partnership profits and losses may be allocated by the partnership agreement, but such allocations must reflect the economic substance of the partnership arrangement. Complex regulations determine the amount of partnership losses that a partner may deduct in a taxable year, but generally these losses cannot exceed a partner's capital account plus third-party loans to the partnership for which the partner is at risk (i.e., the amount the partner is personally liable to pay the creditors of the partnership). A U.S. partner's tax base for the purposes of calculating tax includes its worldwide income. A non-resident partner's taxable base, however, includes only income that is "effectively connected" with a U.S. trade or business and certain U.S. source income.

U.S. tax law requires that any partnership, whether non-U.S. or domestic, having effectively connected income that is allocable to a non-U.S. partner withhold federal taxes from that income (section 1446). The partner takes the withheld taxes into account as a credit when determining his tax liability. The amount of withholding is based on the "applicable percentage" of the effectively connected income of the partnership that is allocable to the non-U.S. partners. The applicable percentage is the highest U.S. marginal tax rate for the partner, and is dependent on the tax status (i.e., individual or corporation) of the partner. If the business profits are attributable to a U.S. permanent establishment there is no practical treaty relief for the section 1446 tax. Certain states, such as California, also impose a similar withholding requirement on partnerships with non-U.S. partners. Tax treaty benefits generally cannot be claimed where the LLC is treated as a partnership for U.S. federal income tax purposes and a U.S. corporation under the tax law of the applicable tax treaty country and not otherwise taxed as a resident of the treaty country under the treaty country's tax laws.

Limited Liability Company

The joint venture may also take the form of a limited liability company (LLC). An LLC provides limited liability to its members while being treated as a partnership for federal income tax purposes and most state income tax statutes. Although the body of law surrounding LLCs is not as developed as corporate or partnership law, the LLC has quickly become the entity of choice in many industries due to its partnership-type flexibility with regard to distributions and its corporate-type liability limitations. For federal income tax purposes, the LLC itself generally is not considered a taxable entity (although it is possible to elect to have the LLC treated as an entity taxable as a corporation), but rather the LLC's members are taxed as partners on their share of the LLC's income. Since the LLC is generally treated as a partnership and its members treated as partners for tax purposes, the preceding discussion regarding partnerships applies to LLCs as well.

Yield Adjusted Debt

A film production company may finance its films using loans obtained from financial institutions or other third parties. The loans may be secured by pre-sale contracts with respect to the film or by the general assets of the production company.

A film production company may sometimes issue a security with a yield linked to revenues from specific films. The principal amount of such a security is typically due at maturity, and the security may have a low (or even nil) rate of stated interest. The security also usually provides for a supplemental (and perhaps increasing) interest payment that becomes due when a pre-determined financial target (such as revenues or net cash proceeds) is reached or exceeded.

For U.S. tax purposes, this security might be characterized as equity because the periodic payments are dependent on the profitability of specific films. In this event, such periodic payments would be recharacterized as dividend distributions taxable to the recipient to the extent of the corporation's earnings and profits. Such distributions are not deductible in determining the corporation's taxable income for the year. The repayment of the principal amount of the security typically would be characterized as a return of capital.

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However, if the security carries both a stated interest rate that closely approximates a market rate of interest and a contingent payment, the security would be more akin to a debt instrument. In this case, all or a portion of the periodic payments would likely be deductible as interest by the production company. Various rules affect the amount and timing of such deduction (e.g., the OID rules, the earnings stripping rules, the applicable high-yield discount obligations rules, etc.).

Regardless of the characterization of a periodic payment as dividend or interest, if the payment is made to a non-U.S. person, withholding tax will be levied on the U.S. source portion of the payment, unless the payment is effectively connected with a U.S. trade or business of the payee. In addition, a treaty may reduce or eliminate the withholding tax.

Equity Tracking Shares

These shares provide for dividend returns dependent on the profitability of a film production company's business. These shares typically have the same voting rights as the production company's ordinary (i.e., common) shares, except that dividends are profit-linked and have preferential rights to assets on liquidation of the company.

If the production company is a U.S. corporation, dividends on such stock would generally be treated in the same manner as dividends on ordinary shares.

If the tracking shares are acquired by a U.S. investor and the production company is incorporated outside of the U.S., any tracking dividends received would be income to the U.S. investor in the same manner as dividends received on ordinary shares. Generally, a direct non-U.S. tax credit is allowed for withholding taxes paid on the dividend, and "deemed paid" non-U.S. tax credits may be allowed to a 10 percent or greater U.S. corporate shareholder for the amount of tax paid by the non-U.S. corporation with respect to the earning and profits out of which the dividend is paid.

Tax and Financial Incentives

Federal Incentives

The Emergency Economic Stabilization Act of 2008 (the "2008 Act") was enacted on October 3, 2008, and expanded federal tax incentives applicable to the film and television industry in the U.S.

The Act modified rules with respect to "qualified production activities" which originally stemmed from provisions originally enacted under the American Jobs Creation Act of 2004 (the AJCA). The Domestic Production Activities

Deduction under section 199 allows for a deduction in an amount equal to 9 percent (for taxable years beginning in 2010 and later) of "qualified production activities income". "Qualified production activities income" is equal to "domestic production gross receipts" reduced by the sum of (1) allocable cost of goods sold and (2) other expenses, losses, or deductions that are properly allocable to such receipts. While the eligibility of receipts must be determined on an item-by-item basis, the final regulations clarify that allocation of expenses, for example, may be performed on an aggregate basis. Two limitations apply: the deduction is the applicable percentage of the lesser of qualified production activities income or taxable income, and the deduction may not exceed 50 percent of W-2 wages. The wage limit is based on wage expense, which may include such items as stock options and designated contributions to a Roth IRA. Note that, for taxable years beginning after May 17, 2006, W-2 wages are limited to those attributable to domestic production activities. The definition of "W-2 wages" also includes any compensation paid for services performed in the United States by actors, production personnel, directors, and producers incurred in the production of "qualified film"."Qualified film" includes any motion picture film, videotape, television program, copyrights, trademarks, or other intangibles with respect to such film if 50 percent or more of the total compensation relating to the production of such property (including participations and residuals) constitutes services performed in the U.S. by actors, production personnel, directors and producers. A recent ruling holds that licensing of a programming package (a group of programs that includes programs produced by the taxpayer, programs produced by third parties, commercial advertisements, and interstitials) to customers in the normal course of business can give rise to "domestic production gross receipts."

"Domestic production gross receipts" include gross receipts derived from any lease, rental, license, sale, exchange, or other disposition to an unrelated person of a "qualified film" produced by the taxpayer. According to the Act, the deduction is not to be affected by the means and methods of distributing such "qualified film". The distribution of such film via digital distribution is thus considered to be a disposition of the film for purposes of determining domestic production gross receipts (DPGR). If the film is viewed online or downloaded, and whether or not a fee is charged, there is still considered to be a disposition of the film for purposes of calculating the deduction; this scenario is most likely distinguishable from theater showings, which the regulations indicate do not constitute dispositions.

The 2010 Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Act") was enacted on December 15, 2010, and expanded federal tax incentives applicable to the film and television industry in the U.S.
The 2010 Act further expanded upon a provision under section 181 that allows a taxpayer to elect to deduct the costs of any qualified film or television production in the year the expenditure is incurred. Under pre-2010 Act law, taxpayers could elect to expense the cost of qualified film and television productions rather than capitalizing those costs for productions commencing before January 1, 2010. The 2010 Act extended Section 181 for two years, to qualified film and television productions beginning before January 1, 2012.

For qualified film and television productions commencing after December 31, 2009, the *first* $15 million of costs ($20 million for costs incurred in certain designated low-income or distressed areas) are eligible for the election under Section 181. For purposes of this provision, a qualified film or television production is one for which at least 75 percent of the total compensation is for services performed within the United States by production personnel (not including participations and residuals). For purposes of a television series, only the first 44 episodes of the series are taken into account, and the $15 million production cost limitation and the 75 percent qualified compensation requirement are to be determined on an episode-by-episode basis.

The final regulations under Section 181 became generally effective September 29, 2011 and further clarify that (1) distribution costs are specifically excluded from the definition of production costs, (2) costs associated with acquiring a production are treated as a production costs, (3) costs associated with obtaining financing are production costs, and (4) participations and residuals costs are considered production costs, all for purposes of the production cost limitation. In addition, the final regulations further define "initial release or broadcast" as the first commercial exhibition or broadcast to an audience. Initial release or broadcast does not include certain limited exhibitions primarily for purposes of publicity, marketing to potential purchasers or distributors, determining the need for further production activity, or raising funds for the completion of production.

The final regulations apply to productions for which the first day of principal photography occurs on or after September 29, 2011. A qualified film or television production that commenced on or after October 22, 2004 and before February 9, 2007, or on or after January 1, 2009 and before September 29, 2011, may generally apply the proposed and temporary

regulations published February 9, 2007. An owner of any production commenced on or after February 9, 2007 and before September 29, 2011 may apply the final regulations.

On October 18, 2011, temporary regulations under section 181 were issued for film and television productions commencing on or after January 1, 2008 (post-amendment) and clarifies that section 181 permits a deduction for the first $15 million (or $20 million) of aggregate production costs, regardless of the total cost of the production.

The temporary regulations also state that in determining whether a production qualifies for the $20 million deduction limit, compensation to actors, directors, producers, and other relevant production personnel is allocated entirely to first-unit principal photography. The temporary regulations also clarify that the costs of a post-amendment production that are not allowable as a deduction under section 181 may be deducted under any other applicable provision of the Code.

The temporary regulations apply to qualified film and television productions for which principal photography (or if animated production, in-between animation) began on or after October 18, 2011. A taxpayer may choose to apply the temporary regulations to qualified film or television productions beginning on or after January 1, 2008, and before October 18, 2011.

The AJCA enacted on October 22, 2004, repealed the extraterritorial income exclusion (EIE), under which U.S. film producers and distributors could exclude a portion of the gross income generated from the sale or license of qualifying films or television programs for exploitation outside the U.S. However, it should be noted that EIE remains in full effect for "transactions" entered into on or before December 31, 2004. The income from these transactions should be eligible for full EIE benefits even if it is received after December 31, 2004 (for example, in the case of a long term license arrangement entered into on or before December 31, 2004, but with rights and associated revenues extending beyond this date.)

State Incentives
Approximately 40 states offer tax or financial incentives, most notably California, Georgia, Louisiana, Michigan, New Mexico, New York and Pennsylvania.

In February 2009 legislation was signed into law in **California** creating the state's first film and television production credit. The credits can be applied in tax years beginning on or after January 1, 2011. Although the California

Film Commission (CFC) will not issue credit certificates prior to January 1, 2011, the CFC will begin allocating tax credits to applicants beginning fiscal year 2009/2010 through fiscal year 2013/2014 on a first come first served basis. For each fiscal year from 2009 through 2013 credits in the amount of $100 million annually will be issued and any unallocated credits or credits that were previously allocated but not certified may be carried forward to the next fiscal year. Taxpayers may assign any portion of the credit to one or more affiliated corporations for each taxable year in which the credit is allowed. This credit will be 20 percent of the qualified expenditures attributable to the production of a "qualified motion picture" in California or 25 percent where the "qualified motion picture" is a television series that relocated to California or an "independent film". Taxpayers are allowed a credit against income and/or sales and use taxes, based on qualified expenditures, for taxable years beginning on or after January 1, 2011. Credits applied to income tax liability are not refundable. Only tax credits issued to an "independent film" may be transferred or sold to an unrelated party. Other taxpayers may carryover tax credits for 5 years and transfer tax credits to an affiliate.

A "qualified motion picture" is defined as a motion picture that is produced for distribution to the general public, regardless of the medium, that is one of the following:

1) A feature with a minimum production budget of $1 million and a maximum production budget of $75 million.

2) A movie of the week or miniseries with a minimum production budget of $500,000.

3) A new television series produced in California with a minimum production budget of $1 million licensed for original distribution on basic cable.

4) An independent film.

5) A television series that relocated to California.

An "independent film" is defined as a motion picture with a budget between $1 million and $10 million that is produced by a company that is not publicly traded or more than 25 percent owned directly or indirectly by a publicly traded company. The CFC will set aside up to $10 million of motion picture tax credits each year for independent films. To qualify as a "qualified motion picture" several conditions must be met, including the requirement that "at least 75 percent of the production days occur wholly in California or 75 percent of the production budget is incurred for payment for services performed within the state and the purchase or rental of property used within the state."

"Qualified expenditures" are amounts paid or incurred to purchase or lease tangible personal property used within California in the production of a qualified motion picture and payments, including qualified wages, for services performed in California in the production of a qualified motion picture. The following expenses are not allowed as qualified expenditures – state and federal income taxes, CPA expenses for Section 5506 reports, expenditure for services performed out-of-state and expenditures for exhibiting the qualified motion picture.

Georgia offers a tax credit to commercial, video, movie, and television production companies and their affiliates for qualified production activities in Georgia. The production company must invest at least $500,000 in a state-certified production approved by the Department of Economic Development. Projects over a single tax year may be aggregated to meet the $500,000 threshold. The production company and/or affiliate(s) must not be in default on any tax obligation of the state or have a loan made or guaranteed by the state.

The credit computation is based on the amount of total production expenditures in the current year ("base investment") over the production expenditure incurred during 2002, 2003 and 2004 as follows:

1. If annual total production expenditures in 2002, 2003, and 2004 were $30 million or less, a credit of 20% of the base investment in Georgia. An additional 10% of the excess base investment may be claimed if the production activities include a qualified Georgia promotion.

2. If annual total production expenditures in 2002, 2003, and 2004 were $30 million or greater, a credit of 20% of the base investment in Georgia. An additional 10% of the excess base investment may be claimed if the production activities include a qualified Georgia promotion.

"Base investment" is the amount actually invested or expended as production expenditures. The "excess base investment" is defined as the current year production expenditures minus the average of the annual total production expenditures for 2002, 2003, and 2004.

Qualified production expenditures include new film, video and digital projects produced in Georgia (in whole or in part) such as feature films, series, pilots, movies for television, commercial advertisements, music videos, interactive entertainment, or sound recording projects. The projects recorded in Georgia can be in short or long form, animation or music, or fixed on a delivery system and must be intended for multimarket commercial distribution via theatres, licensing for exhibition by individual television stations, corporations, live venues, the internet, or any other channel of exhibition. Television coverage of news and athletic events do not qualify. Pre-production, production, and post-production costs incurred in Georgia and used directly in a qualified activity are eligible.

The credit is first taken in the year the production company meets the investment requirement. The credit may be claimed against 100% of the company's Georgia corporate income tax liability and any excess credit may be taken against Georgia payroll tax withholding. Any unused credit may be carried forward for 5 years. Further, unused film credits may be sold or transferred, in whole or part, to another Georgia taxpayer, subject to certain conditions.

Georgia also provides a sales and use tax exemption to film, video, broadcast and music production companies working in the state on immediate point-of-purchase savings on most materials and service purchases, leases and rentals. The exemptions applies to both Georgia state and local sales taxes, resulting in up to an 8% exemption per purchase. The production company must apply to the Georgia Film, Video and Music Office for an exemption certificate, which is presented at the time of purchase to the seller.

Louisiana offers a motion picture investor tax credit which has two components as follows:

1. *Motion Pictures* – For the investment in a state-certified production approved by the Governor's Office of Film and Television Development, the taxpayer is entitled to an *income* tax credit as follows:
   a) For state certified productions approved on or after January 1, 2006, but before July 1, 2009, if the investment is greater than $300,000, a credit of 25 percent of the actual base investment made in the state of Louisiana may be granted.
   b) For state certified productions approved on or after July 1, 2009 - for investments of $300,000 or more in a state-certified production a credit of 30 percent of the investment may be granted.
2. *Employment of Louisiana Residents* –To the extent that the base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production:
   a) That is approved on or after January 1, 2006 but before July 1, 2009, each investor may be eligible for an *income tax* credit of 10 percent of the Louisiana payroll (excluding salary of any one person exceeding $1 million).
   b) That is approved on or after July 1, 2009, each investor may be eligible for an *income tax* credit of 5 percent of the Louisiana payroll (excluding salary of any one person exceeding $1 million).

Note that the credits are fully transferable and may be sold to another Louisiana taxpayer subject to certain conditions.

New Mexico offers four incentive programs. First, a film production tax refundable credit is available for up to 25 percent of all production expenditures (including New Mexico labor) incurred within the state. Note that the credit amount is limited to 20 percent if the taxpayer also receives a credit pursuant to the federal new markets tax credit program. Second, a production company can receive a gross receipts tax (i.e., sales tax) exemption at point of purchase by presenting the vendor with a "nontaxable transaction certificate." Production companies intending to take the film production tax refundable credit may not use the gross receipts tax exemption. Third, New Mexico offers fixed rate (National Prime Rate plus 1.5%) production loans capped at $15 million provided certain criteria are met. Fourth, New Mexico offers a 50 percent wage reimbursement to production companies that hire and provide on-the-job training for upgrading crew members and new trainees.

To encourage the production of motion pictures, television programs, music videos, and other similar ventures in **Michigan**, the Michigan Business Tax Act was amended to provide additional tax incentives to encourage film and television production within the state.

For qualified eligible production companies, a film production company "certified" tax credit equal to 40 percent (42 percent if the qualifying expenditures are made in a designated Core Community) of direct production expenditures is allowed for payments to Michigan vendors related to the production or distribution of the production and for payments and compensation made to certain production personnel that are residents of Michigan. In addition, for personnel expenditures related to nonresidents of Michigan an eligible production company may claim a credit equal to 30 percent of such qualified personnel expenditures. Qualified personnel expenditures relate only to payments and compensation made to nonresidents of Michigan. For direct production and personnel expenditures made on and after May 26, 2011, an agreement with the Michigan film office should be made in concurrence with the State Treasurer.

A film infrastructure credit is also available under Michigan law. The Michigan Film Office may grant an eligible taxpayer a nonrefundable "certified" tax credit equal to 25 percent of the taxpayer's base investment in a qualified film and digital media infrastructure project in Michigan. In addition, the Michigan Film Office may grant an eligible production company a nonrefundable tax credit equal to 50 percent of the qualified job training expenditures, subject to certain requirements. This credit may not be claimed for any direct expenditure or qualified personnel expenditure for which the production company is also claiming a credit under the Film Production Credit. This nonrefundable credit may be carried forward up to 10 tax years against the MBT.

The Michigan corporate income tax, which is effective January 1, 2012, does not provide for Michigan film production company and film infrastructure credits. Taxpayers who wish to continue claiming these "certified" credits may elect to continue to file under the MBT instead of the CIT. The election must be made for the first tax year ending after Dec. 31, 2011. The taxpayer must continue to file under the MBT until that certified credit and all carryforwards expire. Taxpayers can continue to claim a credit for film/television job training expenditures against the MBT until all "certified" credits are used up that were the basis for filing the MBT instead of the CIT.

New York State offers a refundable production tax credit equal to 30 percent of the qualified production costs incurred for a qualified film or television production. The amount of the credit is allocated annually by the New York State Governor's Office for Motion Picture and Television Development. Applications must be submitted to that agency within certain strict time limits, prior to starting principal and ongoing photography. A meeting is then held with the agency, prior to the start of photography. A final application is then submitted no more than 60 days after the completion of the project.

In order to qualify, all productions must incur at least 75 percent of its qualified production costs (excluding post-production costs) at a qualified production facility in New York. If such costs are less than $3 million, the production must shoot at least 75 percent of its location days in New York to qualify; if not, the credit is available only for qualified production costs incurred at the qualified production facility. "Qualified production costs" generally means below-the-line costs incurred in the production (including pre-production and post-production) of the qualified film or television production.

August 2010 legislation was signed into law by New York State, authorizing the aggregate funds cap, for all applicants, available for the film production tax credit, in the 2010 through 2014 tax years, to be $420 million annually (i.e., $2.1 billion over that five year period).

Of the total allocation, $35 million in total (i.e., $7 million annually) is devoted to a new "post production" tax credit. Companies that are ineligible for the basic film production credit can still qualify for the post production credit. The post production credit equals 10% of qualified post production costs paid in the production of a qualified film at a qualified post production facility, which is generally a facility in New York State. To be eligible, the costs at such facility must at least equal 75% of the total post production costs at any post production facility.

The basic film production and post production credits are generally claimed on the applicant's tax return in the later of the tax year in which the production is completed or the tax year immediately following the allocation year from which the taxpayer was awarded credit. Effective for tax years beginning on or after January 1, 2009, a credit that is more than $1 million, but less than $5 million must be claimed over a two year period, with half of the state credit claimed each year, and a credit that is at least $5 million must be claimed pro rata over a three year period, with one-third claimed each year. If the credit is less than $1 million the entire credit can be claimed in the tax year in which the film is completed.

The 2010 legislation extended the film credit to qualified independent film production companies. Requirements are that such company have a maximum budget of $15 million, have control over the film during production, and not be a publicly-traded entity or have no more than 5% beneficial ownership held by a publicly-traded entity. Independent film production companies, and shooting of pilots, will not be required to meet a further eligibility test – that at least 10% of total principal photography shooting days be spent at a qualified production facility.

New York treats the creation of a feature film, television film, commercial and similar film and video production as manufacturing activities that result in the production of tangible personal property. Accordingly, a taxpayer producing a film for sale is afforded the same exemptions available to New York's manufacturers. In addition to covering purchases of machinery, equipment, parts, tools, and supplies used in production, the exemption also covers services like installing, repairing, and maintaining production equipment. Film and video production receive a sales tax exemption for all production consumables and equipment rentals and purchases as well as related services, so long as such are used directly and predominantly in the actual filming process. Thus, for example, a rented truck used 70% for transporting set props and only 30% during actual film-making would not qualify for the sales tax exemption.

Pennsylvania provides a film production tax credit ("credit") for investments made towards film production expenses. A taxpayer may apply to the Department of Revenue ("Department") for a credit of up to 25% of "qualified film production expenses" that may be applied against personal income tax, corporate net income tax, or capital stock and franchise tax. A taxpayer that has received a film production grant under Pa. Stat. Ann. 12 § 4106 may not claim a film production credit for the same film.

The tax credit must be applied against the taxpayer's qualified tax liability for the year in which the credit certificate is issued. Any carryover credits from previous years will be applied on a first-in, first-out (FIFO) basis and may be carried forward for up to three tax years. Unused credits may not be carried back. Additionally, a taxpayer claiming the credit who fails to incur the amount of qualified film expense agreed to in the contract must repay the amount of credit to the Commonwealth.

"Qualified film production expenses" for which a credit can be claimed include all Pennsylvania production expenses if Pennsylvania production expenses make up at least 60% of the total production expenses of the film, but may not include more than $15 million in aggregate compensation paid to individuals or to entities representing an individual for services provided in the production of the film. A "Pennsylvania production expense" means a production expense incurred in Pennsylvania. The term includes the following:

1. Compensation paid to an individual on which Pennsylvania personal income tax will be paid;
2. Payment to a personal service corporation representing individual talent if Pennsylvania corporate net income tax will be paid or accrued on the net income of the corporation for the taxable year;
3. Payment to a pass-through entity representing individual talent if Pennsylvania personal income tax will be paid or accrued by all of the partners, members or shareholders of the pass-through entity for the taxable year;
4. The cost of transportation incurred while transporting to or from a train station, bus depot or airport, located in Pennsylvania;
5. The cost of insurance coverage purchased through an insurance agent based in Pennsylvania;

6. The purchase of music or story rights if: (a) the purchase is from a resident of this commonwealth, or (b) the purchase is from an entity subject to tax in Pennsylvania and the transaction is subject to corporate or personal income tax or capital stock and franchise tax in Pennsylvania;
7. The cost of rental of facilities and equipment rented from or through a Pennsylvania resident or an entity subject to tax in Pennsylvania.

A "film" is defined to include a feature film, television film, television talk show or game show series, television commercial, television pilot, or each episode of a television series that is intended as programming. Pennsylvania excludes from the term "film", a production featuring news, current events, weather and market reports, or public programming, sports events, awards shows or other gala events. Additionally, productions that solicit funds, contain obscene material or performances, or productions made primarily for private, political, industrial, corporate or institutional purposes are also excluded from the credit.

To obtain the credit, a qualified taxpayer must file an application for the credit with the Department. Once an application for credit is approved, the Department will enter into a contract with the taxpayer. The contract contains an itemized list of production expenses incurred or to be incurred; an itemized list of Pennsylvania production expenses incurred or to be incurred; a commitment to incur the itemized expenses if the film has not been completed prior to the contract; the start date of production and any other information the Department deems appropriate. The Department will then issue a tax credit certificate to the taxpayer.

Pennsylvania provides grants for a portion of qualified film production expenses incurred while making a motion picture in the state. The amount of the grant may not exceed 20% of a taxpayers qualified film production expenses.

To apply for the grant, the taxpayer must submit an application to the Department of Community and Economic Development at any time within 60 days of the completion of the production of the film. The applicant must sign a contract with the Department upon approval of the grant.

Qualified production expenses include wages and salaries of individuals employed in the production of the film (excluding salaries of individuals who earn $1 million or more), and costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe, accessories, rental facilities, and equipment.

Other Financing Considerations

Exchange Controls and Regulatory Rules

The U.S. does not have any exchange control regulations.

Corporate Taxation

Recognition of Income

Production Fee Income

U.S. Resident Production Company

A special purpose company may be set up in the U.S. for the limited purpose of producing a film, video, or television program, without acquiring any rights in the product (i.e., a "work for hire" company). Such a special purpose company would be required to disclose transactions with its foreign related parties. Consequently, the Internal Revenue Service (IRS), the U.S. taxing authority, would be notified of income received from a non-U.S. related party and would be able to scrutinize the allocation or attribution of income to the special purpose company.

U.S. tax law requires that payments made pursuant to transactions between the special purpose company and its non-U.S. affiliates be equal to the amount that would have been paid or charged for "the same or similar services in independent transactions with or between unrelated parties under similar circumstances" -the so-called arm's length standard. Taxpayers ordinarily carry out economic studies to document the arm's-length nature of their significant intercompany transactions in order to mitigate potential penalties in the event the IRS successfully adjusts the income or deductions arising from such transactions.

It also is possible to obtain an Advance Pricing Agreement (APA), in which the U.S. (or the both the U.S. and another country) agree as to the arm's length charge due in a particular intercompany transaction, e.g., the amount or percentage of income to be attributed to the special purpose company. The APA process can be costly and time-consuming and may be impractical for a "work for hire" company organized to produce a single film.

Non-U.S. Resident Production Company with an Office in the U.S.

A non-U.S. company that has a production office in the U.S. to administer location shooting in the U.S. may be subject to U.S. tax if its activities amount to a U.S. trade or business that produce effectively connected income. In general, operating a production office to oversee U.S. location shooting may constitute a U.S. trade or business. Also, some of the income earned

by the production company may be effectively connected with that trade or business. Whether the income in fact is effectively connected will depend upon the character of the income generated by the production company once the film is complete (e.g., rental or royalty income or gain from the sale of property) and the source of such income (e.g., domestic or non-U.S.). U.S. taxation may turn on whether the production company continues to have an office in the United States at the time the income is realized.

Even if some of the income generated by the non-U.S. production company is effectively connected with a U.S. trade or business, if the company is resident in a treaty country and is eligible to claim the benefits of that treaty, the U.S. may not tax that income unless the activities of the production company create a permanent establishment in the U.S. and the income is attributable to the permanent establishment. Generally, if the production company has a U.S. office through which it carries on business it will have a permanent establishment in the U.S. Whether the income is attributable to the permanent establishment generally will depend upon the same factors that determine whether the income is effectively connected. However, some recent U.S. income tax treaties follow the "authorized OECD approach" for attributing profits and losses to a permanent establishment.

Non-U.S. Resident Production Company without an Office in the U.S.

A non-resident company that does not maintain a production office but undertakes location shooting in the U.S. may be considered engaged in a U.S. trade or business and, as discussed above, income generated by the production company may be considered effectively connected with that trade or business. If the company is resident in a country that does not have an income tax treaty with the U.S., the company's effectively connected business income will be taxed on a net basis at U.S. corporate tax rates. U.S. source fixed or determinable, annual or periodical income (e.g., rents and royalties that are not effectively connected) earned by the production company will be subject to a 30-percent gross-basis withholding tax.

If the company is resident in a country that has an income tax treaty with the U.S., the company's effectively connected business income will be taxed only if the company has a permanent establishment in the U.S. In general, location shooting should not create a permanent establishment if it takes place at multiple locations for a limited period of time. If, however, the activity is carried on in a single location the risk of such activity creating a permanent establishment would increase as the duration of the activity increases. The factors bearing on whether the income of the production company may be attributable to a permanent establishment are discussed above.

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Transfer of Distribution Rights

Income arising from the transfer of all, or substantially all, copyright rights to exploit or distribute a film or television program within a specified geographic area for the remaining life of the copyright is gain from the sale of property under U.S. tax law. As discussed below, the U.S. does not tax gain realized by a non-US person from the sale of intangible property, provided the consideration is not contingent on the productivity or use of the transferred intangible. In determining whether a transfer will be treated as either a sale or a license certain factors are considered, including: whether all or part of the rights to the film or television program are transferred; whether key rights have been reserved by the transferor; whether the transfer covers specific geographic regions; whether the transfer is exclusive or nonexclusive, and whether the rights are transferred for the remaining life of the copyright.

If a transfer of copyright rights by a non-US person is characterized as a license, and not as a sale for U.S. tax purposes, the U.S. will tax the U.S. source royalty generated by the license. In addition, gain realized by a non-U.S. person from the sale or exchange of intangible property for a series of payments contingent on the productivity or use of the property in the U.S. (e.g., based on revenues generated by the property for use in the U.S.), is taxed in the same manner as U.S. source royalty income.

U.S. income tax treaties generally tax transfers of intangible property in a manner consistent with U.S. domestic tax law. Some treaties, however, distinguish the license of film rights from other intangible assets in the royalties article of the treaty for purposes of determining the rate of tax at source, and some treaties consider income from the license of film rights as business profits, not royalties.

Various rules apply to the transfer of intangible assets by a U.S. person to a non-U.S. person. If the transferee is a related party, U.S. transfer pricing rules require the consideration received by the transferor be commensurate with the income derived from the intangible. Under this rule the IRS, under certain conditions, may adjust the income received by the transferor taking into account the income realized from the intangible in years after the transfer. Also, a transfer of an intangible asset to a non-U.S. corporation in a nonrecognition transaction (such as in tax-free exchange for shares or in a tax-free reorganization) generally is treated as a sale of the intangible for payments contingent upon its productivity or use. The consideration received by the transferor also may be adjusted by the IRS.

U.S. Resident Production Company – Transfer of Distribution Rights to Non-U.S. Person

Generally, a transfer of distribution rights is characterized as either a sale or a license for U.S. tax purposes. Whether a sale or a license produces a potentially more favorable tax result depends on various factors, including the non-U.S. tax credit position of the transferor, the terms of any applicable income tax treaty and treatment of the transaction in the transferee's jurisdiction. Transfers of distribution rights are subject to the rules generally applicable to the transfer of intangible assets described above.

U.S. Resident Distribution Company – Acquisition of Distribution Rights

The timing of the deduction of the payments for tax purposes depends on whether the distribution rights are purchased or licensed and on whether the transferee is a cash or accrual method taxpayer.

Whether the acquisition of the distribution rights is treated as a purchase or license, both cash and accrual method taxpayers must capitalize the payments for the distribution rights. The acquisition costs, then, may be depreciated by one of two methods: the straight-line method (which allows equal amounts of depreciation over the useful life of the intangible right or over a 15-year period if the rights are acquired in connection with the acquisition of a trade or business or substantial portion thereof) or the income-forecast method (which allows as depreciation a percentage of capitalized distribution costs equal to the year's actual revenues divided by the total projected revenues). See discussion below regarding "Amortization of Expenditure".

For contingent royalty payments, whether paid under a purchase or license of a film, the timing of the deduction of payments made depends on whether the company uses the cash or accrual method. Generally, the cash method company may deduct payments when paid. Conversely, the accrual method company will be able to deduct only that portion of the license payment that relates to the current tax year.

If the payments constitute advances, the federal tax rules suggest that the payments should be amortized over the term of the license using the straight-line method. However, industry practice has been to amortize the payments over the term of the license using the income forecast method because it provides for much closer matching of deductions with income. An argument also exists for amortizing the payment over the term of the recoupment of the advance.

The type of income arising from exploiting rights in a given country depends on the applicable treaty and the characterization of the acquisition of such rights as either a purchase or a license. Certain treaties characterize income from either the purchase (including contingent payments) or the license of films rights as royalties. Under other treaties, all payments from either a sale or a license of the use or right to use cinematographic films or films used for television broadcasting are excluded from the definition of "royalties" and instead are treated as trading income (business profits).

Non-U.S. Resident Company

If the company is resident in a non-treaty country, the analysis is the same. The income from exploiting the distribution rights generally is treated as royalty income or capital gain, depending on the specific facts involved.

Transfer of Distribution Rights Between Related Parties

Where a worldwide group of companies holds rights to films and videos, and grants sublicenses for the exploitation of those rights to a U.S. resident company, care needs to be taken to ensure that the profits in the various entities can be justified. Upon examination, the IRS typically will query the level of profit earned by the U.S. sublicensee by examining the payments made to related non-U.S. companies. Generally, the amount of the license fee must be commensurate with the income generated by the intangible, as discussed above.

The IRS may assess substantial penalties if it determines that the transfer of property (e.g. a sale or a license) between related parties was not for arm's length consideration. However, certain penalties do not apply if the taxpayer attempted to ascertain the appropriate arm's length charge and contemporaneously documented its transfer pricing methodology in accordance with the regulations.

Amortization of Expenditures

Treatment of Production Costs

A film producer who retains film rights may incur substantial costs over a period of several years in connection with the production of a film. Two methods are available to the film producer for the amortization of the production costs of the film—the income forecast method and the straight-line method. As discussed above, a film producer may elect for any "qualifying film and television productions" for which production commences after October 22, 2004 and before January 1, 2012 to deduct as incurred the cost of productions up to $15 million ($20 million incurred in certain low-income or distressed areas), in lieu of capitalizing the cost and recovering it through amortization.

Under Section 263A, all direct and indirect costs of producing property, including films, videotapes, or similar property, must be capitalized. Expenses related to the marketing, selling, advertising, and distributing a film are not required to be capitalized.

Income Forecast Method

Typically, the film and television industry claims amortization deductions for production costs under the "income forecast" method. Under this method, taxpayers determine the amortization deduction for a taxable year by multiplying the capitalized production cost of the property by a fraction, the numerator being the current year income and the denominator being the forecasted total income.

For films and television programs released on or before October 22, 2004, "current year income" means the net income generated by the property in the current taxable year (gross income less distribution costs for such year), and "forecasted total income" equals the sum of the current year income for the year the property is released plus all reasonably estimated net income (gross income less distribution costs) from subsequent years up to and including the tenth taxable year after the year the property is released. For films and television programs released after October 22, 2004, gross income, not net income, from the property is used to calculate current year income and forecasted total income for purposes of computing the allowable deduction under the income forecast method.

Determination of Income (Current Year and Forecasted Total)

In the case of films, television programs, and other similar property, income (current year and forecasted total) includes, but is not limited to: income from foreign and domestic theatrical, television and other releases and syndications; income from releases, sales, rentals, and syndications of video tape, DVD, and other media; and income from the financial exploitation of characters, designs, titles, scripts and scores earned from ultimate sale to, or use by, unrelated third parties. Examples of this third income category include the sales of toy figurines related to animated films or television programs, or licensing income from the use of an image.

In the case of a television series produced for distribution on television networks, income (current year and forecasted total) need not include income from syndication of the television series before the earlier of the fourth taxable year beginning after the date the first episode in the series is placed in service, or the earliest taxable year in which the taxpayer has an agreement to syndicate the series.

The forecasted total income from the film or television program for purposes of the income forecast method includes all income expected to be generated by the production up to and including the tenth taxable year after the year of release. Any income expected to be earned after this term is not included in the formula. Forecasted total income is based on the conditions known to exist at the end of the tax year of release (subject to revision in later years). These rules also apply to the "look back" method described below.

Revised Forecasted Total Income

Pursuant to proposed Treasury regulations, if information is discovered in a taxable year following the year in which the property is placed in service that indicates that forecasted total income is inaccurate, a taxpayer must revise the forecasted total income. Under the revised computation, the unrecovered depreciable basis of the property is multiplied by a fraction, the numerator of which is the current year income and the denominator of which is obtained by subtracting from revised forecasted total income the amounts of current year income for prior taxable years.

The revised computation must be used in any taxable year following the year in which the income forecast property is placed in service if forecasted total income (or, if applicable, revised forecasted total income) in the immediately preceding taxable year is either less than 90 percent of the revised forecasted total income for the taxable year, or greater than 110 percent of the revised forecasted total income for the taxable year.

Determination and Treatment of Basis of Property

The basis of the property includes only costs that have been incurred pursuant to section 461 of the Code. For that purpose, the economic performance requirement can be met at different times depending on the facts and circumstances of a transaction. For example, if a taxpayer incurs a non-contingent liability to acquire property, economic performance is deemed to occur when the property is provided to the taxpayer. In addition, the rules of IRC Section 461(h)(3) relating to the recurring item exception may apply.

The following costs incurred after the property is placed in service are treated as a separate piece of property:

- Any costs incurred with respect to any property after the tenth taxable year beginning after the taxable year in which the property was placed in service
- Any costs incurred after the property is placed in service and before the close of the aforementioned tenth taxable year if such costs are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property

If costs are incurred more than ten years after the property was originally placed in service and no resulting income is expected, such costs are deducted as incurred. At this time there is no comprehensive guidance on what constitutes a "significant" cost or increase in income.

Finally, any adjusted basis of the production not recovered by the tenth taxable year after the property was placed in service can be taken as a depreciation deduction in that year. Presumably, this deduction ignores salvage value.

Look-Back Method

Taxpayers that use the income forecast method for amortization of production costs are required to apply the "look-back" method of accounting. The "look-back" method requires a taxpayer to pay or receive interest by recalculating amortization deductions (and the corresponding increase/decrease in tax) using newly revised forecasted total income from the property. It is applicable to any "recomputation year," defined generally as the third and tenth taxable year after the taxable year the property was placed into service. This requirement does not apply when forecasted total income or revised forecasted total income for preceding taxable years is within 10 percent of revised forecasted total income for the potential recomputation year. For purposes of applying the look-back method, income from the disposition of the property is taken into account in determining revised forecasted total income.

In applying the "look-back" method, any costs not treated as separate property and taken into account after the property was placed in service can, if so elected, be taken into account by discounting such cost to its value as of the date the property was placed into service. This discounting is based on the Federal mid-term rate determined under IRC Section 1274(d). The "look-back" method does not apply to property with a total capitalized cost basis of $100,000 or less as of the close of a potential recomputation year.

Treatment of Participations and Residuals

For purposes of computing the allowable deduction under the income forecast method, participations and residuals may be included in the adjusted basis of the eligible property beginning in the year such property is placed in service. The provision applies only if such participations and residuals relate to income that would be derived from the property before the close of the

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tenth taxable year following the year the property was placed in service. Alternatively, the taxpayer may choose, on a property-by-property basis, to exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year paid.

Straight-Line Method

Under the straight-line method, depreciation for the year is computed by dividing a film's production costs over the film's estimated useful life. A film's useful life for depreciation purposes has been the subject of controversy. A film based on a contemporary theme may have a shorter useful life than one based on a historical event.

If a film right is acquired as a part of the acquisition of assets constituting a trade or business or substantial portion thereof, the cost of such film right must be amortized over a period of 15 years.

Treatment of Pre-Production Costs of Creative Properties

The IRS has provided clarification on the treatment by a film producer of costs incurred in acquiring and developing screenplays, scripts, treatments, motion picture production rights to books, plays and other literary works, and other creative properties.

A film producer is generally required to capitalize creative property costs and, unless a film is produced from the creative property, is not permitted to recover those costs through depreciation or amortization deductions. However, a film producer is now permitted to amortize ratably over a 15-year period the costs for creative properties that are not scheduled for production within three years of acquisition.

Additionally, a film producer may not deduct the capitalized costs of acquiring or developing creative properties as a loss under IRC Section 165(a) unless the producer establishes an intention to abandon the property and an affirmative act of abandonment occurs, or identifiable events evidencing a closed and completed transaction establishing worthlessness occur.

Other Expenditures

Neither a film distribution company nor a film production company has any special status under U.S. law. Consequently, they are subject to the same rules as any other U.S. company, and are generally allowed to deduct the expenses of running their day-to-day operations to the extent such expenditures are ordinary and necessary and not of a capital nature.

Certain expenditures of U.S. companies can never be deducted. The following are some examples of such non-deductible expenditures: fines, penalties, bribes, certain executive life insurance, a portion of meals and

entertainment, country club membership dues, and certain related party losses. In addition, other expenditures cannot be currently deducted, such as capital expenditures, but must be deducted over the time period of their benefit to the company.

Losses

Net operating losses (i.e., losses from operations) may be carried forward for twenty years to offset future income, or may be carried back for two years and offset against prior year's income, resulting in a refund of tax. Some states also allow the carryforward and carryback of net operating losses.

Losses attributable to the sale of certain assets used in the taxpayer's trade or business may be currently deducted. Capital losses on investment assets, however, are only deductible to the extent that there are capital gains for the year. An excess capital loss may be carried back three years or forward five years. States generally follow the federal treatment.

Foreign Tax Relief

Foreign tax relief is provided to U.S. taxpayers by allowing such taxpayers a foreign tax credit or foreign tax deduction for foreign taxes paid. Generally, the foreign tax credit provides the greatest relief from double taxation.

If foreign tax is paid directly by a U.S. taxpayer, a direct credit is allowed, but the credit is generally limited to the amount of U.S. tax that would have been paid had the income been earned in the U.S. If a 10 percent or greater U.S. corporate shareholder receives a dividend from a foreign subsidiary, a "deemed paid" credit may be allowed for the amount of income tax paid by the foreign corporation which is related to the income out of which the dividend is being paid.

Indirect Taxation

Value Added Tax (VAT)

The U.S. has no VAT on the sale of goods or services.

Sales/Use Tax

Sales taxes are generally imposed on sales of tangible personal property and selected services. A complementary use tax is imposed on property purchased for storage, use or other consumption in the state if sales tax was not paid on the purchase. Most states allow for an offsetting credit against the use tax for any sales taxes legally imposed and paid.

All states except Alaska, Delaware, Montana, New Hampshire and Oregon impose sales/use taxes. In addition, many local governments impose sales/use taxes. Rates range from 3 to 10.25 percent.

As a general rule, most states impose sales/use tax on the sale or use of production equipment and supplies. If a production company is providing services and without the sales of tangible personal property, then production services are likely exempt from sales and uses taxes. Production labor is also taxable in many states. Production companies typically are required to register for sales/use tax purposes in states where filming or production work is performed.

Customs Duties

For 2011 the following customs duty rates are generally applied for the described goods:

35 mm or wider positive release prints	Free
Negatives, 35 mm or wider	Free
Sound recordings on motion picture film 35 mm or wider suitable for use with motion picture exhibits	1.4% of dutiable value (NAFTA Free)
Video tape recordings (VHS), between 4 mm and 6.5 mm	33 cents per linear meter
Video discs	Free
Publicity materials (e.g., posters, promotional, flyers, etc.)	Free

Personal Taxation

Income Tax Implications

Non-Resident Artists

The U.S. taxes non-resident artists on their income originating in the U.S. An artist's income "effectively connected" with a U.S. trade or business is taxed at the graduated income tax rates. Effectively connected income includes income earned by a non-resident artist performing or providing services in the U.S. An income tax exception applies for non-residents present in the U.S. for a period of 90 days or less during the taxable year performing services on behalf of a non-U.S. person and earning less than $3,000 in the aggregate. When the non-resident artist performs services within and outside the U.S. during the taxable year, the income received must be allocated between U.S. and foreign sources in a way that most

accurately reflects the proper source of the income based on the facts and circumstances of the particular case. In many cases, the facts and circumstances will be such that an allocation on the time basis is appropriate.

Generally, U.S.-source income other than effectively connected income – royalties, for example – is subject to withholding and ultimate tax at a 30-percent rate, unless an applicable treaty reduces this rate.

Self-Employed

While a self-employed artist's income effectively connected with a U.S. trade or business is ultimately subject to the U.S. graduated income tax rates when the tax return is filed, initially it is subject to withholding at a rate of 30 percent (absent the application of a more favorable treaty provision). Income from self-employment usually falls under the Independent Personal Services or Business Income provisions of treaties. Under these provisions, income arising from services rendered by a non-resident artist in the U.S. usually will be taxable in the U.S. only if the individual has a fixed base or permanent establishment in the U.S.

Employees

Treaty relief may be available for relatively short (generally less than 183 days) periods of presence in the U.S.

However, some treaties contain an "artists and athletes" clause that overrides the otherwise applicable treaty protection for both employees and self-employed artists in the U.S. The artists and athletes clauses often preserve the treaty protection only if specific income or physical presence limitations are not exceeded.

Resident Artists

Artists resident in the U.S. generally must pay taxes in the same manner as other U.S. residents. Consequently, the resident artist would be subject to U.S. taxation on worldwide income. Double tax relief is provided by allowing U.S. resident taxpayers a foreign tax credit or foreign tax deduction for non-U.S. income taxes paid; however, the foreign tax credit is limited to the U.S. tax attributable to the non-U.S. source income. Under domestic law, residency is determined under the "substantial presence test" or the "lawful permanent residence test." Under the substantial presence test, an individual will be considered a resident of the U.S. if present in the U.S. for 183 days during a calendar year, or for at least 31 days during the current calendar year and a total of 183 days for the current and 2 preceding calendar years. For purposes of this 183-day requirement, the number of days present in the U.S. is determined by adding the days present in the current year, one-third of the days present in the immediately preceding year and one-sixth of the days present in the second preceding year. Under the lawful permanent residence test, any foreign citizen who is a lawful permanent resident–a "green card" holder–in the U.S. will be a resident for tax purposes regardless of the time actually spent in the U.S. Many exceptions apply to these rules, and tax treaties may override the resident definition in domestic law.

Self-Employed

Self-employed individuals are required to make estimated income tax payments on a quarterly basis if they expect their annual combined income and self-employment tax liability, after credit for withheld taxes, to equal or exceed $1,000.

Employees

Employers with employees resident in the U.S. are obliged to make regular, periodic payments to both the federal government and, possibly, state and local governments with respect to the employee's personal tax liabilities arising from wages paid by the employer. An employer makes these payments to the federal and state governments with moneys withheld from the employee's wages.

The amount of income tax required to be withheld and remitted to the government is generally set forth in tax schedules provided by the government. Salaries and wages include both cash remuneration and generally the value of fringe benefits. However, reimbursements of deductible employee business expenses are non-taxable as are certain fringe benefits if they are of a de minimis value.

Social Security Tax Implications

Employees

For resident artists working in the U.S. as employees, the Social Security and Medicare taxes are divided equally into employer and employee shares. Employers are required to withhold the employee's share of Social Security and Medicare taxes from the employee's salary and to submit this amount along with the employer's share to the proper tax authorities. For 2011, Social Security tax is computed at 6.2 percent for the employer and 4.2 percent for the employee (10.4 percent total) up to a taxable annual wage base of $106,800. Medicare withholding is computed at 1.45 percent for both the employer and employee (2.9 percent total) with no applicable wage base limitation.

Non-residents working in the U.S. as employees are generally subject to income tax withholding, Social Security withholding, and Medicare withholding in the same manner as U.S. resident employees (discussed above).

Partial or complete relief from U.S. social security taxes may be available to both resident and non-resident artist employees pursuant to a Social Security Totalization Agreement.

Self-Employment

In addition to income taxes, self-employment tax, at a rate of 15.3 percent, is imposed on net earnings from self-employment. The self-employment tax is made up of a 12.4-percent component imposed on earnings within a specified earnings base that is indexed for inflation ($106,800 for 2011), and a 2.9-percent component imposed without limit.

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Appendix A

Table of Film and TV Royalty Withholding Tax Rates

Receiving Country / *Paying Country*	Australia	Belgium*	Brazil	Canada	China	Colombia	Cyprus*	Czech Republic*	France*	Germany*	Greece*	Hong Kong
Domestic withholding Rate **	30	15	15 q)	25	10	33	0 p) 5 p)	15 t)	33.3	15 i)	25 v)	4.95 m) 16.5 m)
Australia		10	15	10	10	33	5	10	10	0	25	4.95 m) 16.5 m)
Belgium*	10		15	0 z) 10	10	33	0	0 dd)	0	0	5	5
Brazil	30	10 y) 15 y)		15	10	33	5	15	10	15	25	4.95 m) 16.5 m)
Canada	10	0 z) 10 z)	15		10	33	5	10	0 ff) 10 ff)	10	10 oo)	4.95 m) 16.5 m)
China	10	10	15	10		33	5	10	10	10	10	4.95 m) 7 w)
Colombia	30	15	15	25	10		5	15	33.3	15 i)	25	4.95 m) 16.5 m)
Cyprus*	30	0	15	10	10	33		0	0 ll) 5	0 ll) 5	5 j)	4.95 m) 16.5 m)
Czech Republic*	10	0 ll) 10	15	10	10	33	0		0 n), ll)	0 ll) 5	0	4.95 m) 16.5 m)
France*	5	0	10 15 bb)	10	10	33	0 ll) 5	0 n)		0	5	4.95 m) 16.5 m)
Germany*	10	0	15	10	10	33	0 ll) 5	0 ll) 5	0		0	4.95 m) 16.5 m)
Greece*	30	0 ll) 5	15	0 oo) 10 oo)	10	33	0 ll) 5	0	0 ll) 5	0		4.95 m) 16.5 m)
Hong Kong	30	5	15	25	7 w)	33	5	15	33.3	15 i)	25	
Hungary*	10	0	15	10	10	33	0	0 ll) 10	0	0	0	4.95 m) 16.5 m)
Iceland	30	0	15	10	10	33	5	0 ll) 10	0	0	10	4.95 m) 16.5 m)

Receiving Country / *Paying Country*	Hungary*	Iceland	India	Ireland*	Israel	Italy*	Japan	Luxembourg*	Mexico	Netherlands*	New Zealand	Norway	Romania*	Singapore	South Africa	Sweden*	United Kingdom*	United States
Domestic withholding Rate **	0 d)	20 e)	10 h)	20 jj)	15 uu) 25	22.5 hh)	20	0	25 s) 28 s) 40 s)	0	15	0	16 mm)	10 u)	12	0 a)	20	30 nn)
Australia	0	20 e)	10	0 ii) 10 ii)	25	10	5	0	10	0	5 kk)	0	10	10	5	0	5	5
Belgium*	0	0	10	0	10	0 ll) 5	10	0	10	0	10	0	0 ll) 5	5	0	0	0	0
Brazil	0	20 e)	10	20 jj)	10	15	15	0	10	0	15	0	16	10	10	0	20	30
Canada	0	10	10	0 ii) 10 ii)	15	10	10	0	10	0	15	0	10	10	10	0	10	10
China	0	10	10	10	10	10	10	0	10	0	10	0	7	10	10	0	10	10
Colombia	0	20 e)	10	20 jj)	25	22.5	20	0	25 s) 28 s) 40 s)	0	15	0	16	10	12	0	20	30
Cyprus*	0	20 e)	10	0 ll) 5 f)	25	0	20	0	25 s) 28 s) 40 s)	0	15	0	0 ll) 5	10	0	0	0 ll) 5	0
Czech Republic*	0	10	10	0 ll) 10	5	0	0	0	10	0	10	0	0 ll) 10	10	10	0	0 ee) 10 ee)	0 ss)
France*	0	0	10	0	10	0 ll) 5	0	0	10	0	10	0	0 ll) 10	0	0	0	0	0
Germany*	0	0	10	0	5	0	10	0	10	0	10	0	0 ll) 3	8	0	0	0 aa)	0 vv)
Greece*	0	10	10	0 ll) 5	10	0	20	0	10	0	15	0	0 ll) 5	10	5	0	0	30 gg)
Hong Kong	0	20 e)	10	20 jj)	25	22.5	20	0	25 s) 28 s) 40 s)	0	15	0	16	10	12	0	3 x) 20 x)	30
Hungary*		10	10	0	0	0	0	0	25 s) 28 s) 40 s)	0	15	0	0 ll) 10	5	0	0	0	0
Iceland	0		10	0 ii) 10 ii)	25	22.5	20	0	10	0	15	0	5	10	12	0	0	5 jj)

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Receiving Country / *Paying Country*	Australia	Belgium*	Brazil	Canada	China	Colombia	Cyprus*	Czech Republic*	France*	Germany*	Greece*	Hong Kong
India	15	15	15	15	10	33	5	10	10 l)	10	25	4.95 m) 16.5 m)
Ireland	10	0	15	10	10	33	0	10	0	0	5	4.95 m) 16.5 m)
Israel	30	10	10 bb) 15 bb)	15	10	33	5	5	10	5	10	4.95 m) 16.5 m)
Italy	10	5	15	10	10	33	0	0	5	0	0	4.95 m) 16.5 m)
Japan	5 x)	10	12.5 cc) 15 cc)	10	10	33	5	0	0	10	20	4.95 m) 16.5 m)
Luxembourg	30	0	15	10	10	33	5	0	0	5	5	3
Mexico	10	10	15	10	10	33	5	10	0 ff) 10 ff)	10	10	4.95 m) 16.5 m)
Netherlands	10	0	15	10	10	33	5	5	0	0	5	4.95 m) 16.5 m)
New Zealand	10	10	15	15	10	33	5	10	10	10	20	4.95 m) 16.5 m)
Norway	5	0	15	10	10	33	0	0	0	0	10	4.95 m) 16.5 m)
Romania	10	5	15	10	7	33	5	10	10	3	5	4.95 m) 16.5 m)
Singapore	10	5	15	15	10	33	5	10	33.3	8	20	4.95 m) 16.5 m)
South Africa	5 aa)	0	15	10	10	33	0	10	0	0	5	4.95 m) 16.5 m)
Sweden	10	0	15	10	10	33	0	0	0	0	5	4.95 m) 16.5 m)
United Kingdom	5	0	15	10	10	33	5	0 ee) 10 ee)	0	0	0 k)	4.95 m) 16.5 m)
United States	5	0	15	10	10	33	0	0 ee) 10 ee)	0	0	10	4.95 m) 16.5 m)

Receiving Country	Hungary*	Iceland	India	Ireland*	Israel	Italy*	Japan	Luxembourg*	Mexico	Netherlands*	New Zealand	Norway	Romania*	Singapore	South Africa	Sweden*	United Kingdom*	United States
India	0	10		0 ii) 10 ii)	10	20	10	0	10 pp)	0	10	0	16	10	10	0	15	15
Ireland	0	10	10		10	0	10	0	10	0	10	0	0	10	0	0	0	0
Israel	0	15 e) 37.2 e)	10	0 ii) 10 ii)		10	10	0	10	0	15	0	10	5	4.4 o) 12 o)	0	15	10
Italy	0	5	10	0	10		10	0	15	0	10	0	10	10	6	0	8	8
Japan	0	15 e) 37.2 e)	10	0 ii) 10 ii)	10	10		0	10	0	15	0	10	10	10	0	0	0
Luxembourg	0	0	10	0	5	10	10		10	0	15	0	10	10	0	0	5	0
Mexico	0	10	10	0 ii) 10 ii)	10	15	10	0		0	10	0	15	10	12	0	10	10
Netherlands	0	0	10	0	10	5	10	0	10		10	0	0 b) 3	0	0	0	0	0 w w)
New Zealand	0	15 e) 37.2 e)	10	0 ii) 10 ii)	25	10	20	0	10	0		0	16	10	10	0	10	10
Norway	0	0	10	0	10	5	10	0	10	0	10		10	7	0	0	0	0 c)
Romania	0	5	10	0	10	10	10	0	15	0	15	0		5	12	0	10	10
Singapore	0	15 e) 37.2 e)	10	20 jj	0	20	10	0	10	0	15	0	5		5	0	10	30
South Africa	0	15 e) 37.2 e)	10	0	15	6	10	0	25 s) 28 s) 40 s)	0	10	0	15	5		0	0	0
Sweden	0	0	10	0	0 g)	5	10	0	10	0	10	0	10	0	0		0	0
United Kingdom	0	0	10	0	. 15	8	0	0	10	0	10	0	10	10	0	0		0
United States	0	5	10	0	10	8	0	0	10	0	10	0	10	10	0	0	0	

* Designates an EU member state. If certain conditions are met, the EU Parent Subsidiary Directive is applicable. As a result, royalties can be exempted from withholding tax if paid between related companies in the EU.

** With countries where a treaty rate is higher than the statutory withholding rate, the latter applies and is shown in the table.

a) Under domestic law, there is no withholding tax on royalties. However, a nonresident recipient of royalties is deemed to have a PE in Sweden in respect of royalties received. Thus, the recipient would be taxed in Sweden on the net royalty income (i.e. the gross royalty less expenses related to the royalty) at the ordinary corporate income tax rate (26.3%).

b) The 0% rate applies if the Netherlands does not levy a withholding tax on royalties paid to a resident of Romania.

c) Payments of any kind made as a consideration for the use of or the right to use copyrights of motion picture films or films or tapes used for radio or television broadcasting are not covered under "Royalties" article. Instead, they are covered under the "Business profits" article and generally are not subject to withholding tax unless they are derived from a permanent establishment in the paying country.

d) As from 1 January 2011, a flat 16% withholding tax rate replaces the progressive rates applicable on royalties paid to nonresident natural persons.

e) (Iceland) The withholding tax rate on royalty paid to an individual was lowered from 37.2% to 20% while the royalties paid to a corporation has increased from 18% to 20% as from January 1, 2011.

f) A 5% rate may be imposed on the gross amount of any payment of any kind received by a resident of the other Contracting State as a consideration for the use of, or the right to use, motion picture films (other than films for exhibition on television).

g) Film royalties are not exempt; however, no specific rate is provided under the treaty.

h) Under Indian domestic law, the withholding tax rate for royalties paid outside of India is 10%, plus a 2.5% surcharge

(if payment exceeds INR 10 million) and a 3% CESS, provided certain conditions are satisfied. The withholding tax is, therefore, 10.3%/10.5575%.

i) The withholding tax on royalties paid to nonresident corporations is 15% (15.825%, including the solidarity surcharge). The rate is 30% (31.65%, including the solidarity surcharge) if paid to nonresident natural persons. The rate is 0% if the royalties qualify under the EC Interest and Royalties Directive.

j) Applicable to royalties from films other than films shown on TV.

k) The domestic withholding tax rate of 25% apply to interest and royalty payments in excess of fair and reasonable compensation.

l) The general rate under the treaty is 20% on royalties. However, by virtue of a most-favoured-nation clause (Protocol Para. 7), the rate is reduced to 10% (Under the treaty between India and Germany, for example, the rate is currently 10%).

m) If the royalty is paid to an overseas associate and the intellectual property that generates the royalty has been wholly or partly owned by a person carrying on business in Hong Kong, 100% of the royalty payment would be deemed to be assessable. As the current corporate tax rate in Hong Kong is 16.5%, the effective tax rate on the royalty payment would be 16.5%. In any other situation, 30% of the royalty payment would be deemed to be assessable. This will give rise to an effective tax rate of 4.95% (i.e., 30% x 16.5%).

n) Royalties from artistic and literary copyrights, with the exception of those relating to software, are exempt from withholding tax.

o) The rate is 4.4% for royalties on cinematographic or television films. Otherwise, even though the treaty provides for a 15% rate, the domestic rate of 12% applies because it is lower.

p) Royalties paid to nonresidents for the use of rights outside Cyprus are exempt from withholding tax. Where royalties are earned on rights used within Cyprus, there is a withholding tax rate of 5% form film and TV rights.

q) The rate on royalty payments is increased to 25% if the recipient is resident in a jurisdiction that is deemed to be a low tax jurisdiction.

r) The 2008 Second protocol to the 1982 U.S. – New Zealand entered into force on 12 November 2010 and applies with respect to withholding taxes for amounts paid or credited on or after 1 January 2011. The royalty withholding tax rate is reduced from 10% to 5%.

s) The 28% rate applies to royalties paid for the use of patents and trademarks; the 25% rate applies to all other royalties and technical assistance; the 40% rate applies to royalties paid to residents of countries with a preferential tax regime.

t) The Czech Republic has been granted a transition period to fully apply the EC Interest and Royalties Directive with respect to royalties. The country may levy a withholding tax until 30 June 2011; thereafter, such payments will be exempt provided the requirements for application of the Directive are met.

u) The 10% rate applies provided the income is not derived by the nonresident through its operations carried out in or from Singapore. Where operations are carried out in or from Singapore, royalty income will be taxed at the prevailing corporate tax rate.

v) For payments made after 23 April 2010, the statutory withholding tax on royalties paid to a foreign entity without a PE in Greece is increased from 20% to 25%, unless the rate is reduced under an applicable tax treaty. The EC Interest and Royalties Directive allows Greece to continue to apply a 10% withholding tax until 30 June 2009, and 5% until 30 June 2013.

w) The new double tax arrangement between China and Hong Kong came into effect on 8 December 2006 and provides for a 7% rate (for income arising in Hong Kong for the year of assessment 2007/08 onward). The lower domestic effective rate of 4.95% would apply to unaffiliated nonresidents receiving payments from Hong Kong payors.

x) According to the treaty, as from 1 April 2011, the payments from Hong Kong to U.K. are subject to the reduced rate of 3% from 4.95%. For the payments from U.K. to Hong Kong, the rate is reduced to 3% from 20% as from 6 April 2011.

y) The 10% rate applies to copyrights royalties (including films, etc.). The 20% rate applies to trademark royalties (the rate was reduced from 25% to 20% by a protocol that entered into force on 1 January 2008). However, since domestic rate is lower (at 15%), 15% applies.

z) The 0% rate applies to (a) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films or royalties in respect film or videotape or other means of reproduction for use in connection with television broadcasting). Otherwise, the rate is 10%.

aa) The 2010 treaty between the U.K. and Germany to replace the 1964 treaty entered into effect on 30 December 2010 and applies in both countries to taxes withheld at source as from 1 January 2011 (with general application from that date in Germany and from 1 April 2011 (corporate taxes) and 6 April 2011 (income and capital gains) in the U.K.). Under the new treaty, the royalty withholding tax rate remains at 0%.

bb) The 15% rate applies to trademark royalties, and the 10% rate applies in all other cases.

cc) The rate is 15% for film and broadcasting royalties and copyright royalties on literary, artistic and scientific works; 25% on trademark royalties; and 12.5% in all other cases. Under domestic law, the withholding tax on trademark royalties is 15% so the domestic rate, rather than the treaty rate, applies.

dd) Under the Belgium-Czech Republic treaty, a 10% rate applies to royalties paid for the use of, or the right to use, a copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for television or radio broadcasting, any software, patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. However, under the protocol to the Belgium-Czech Republic treaty, if the Czech Republic concludes a treaty that provides a lower rate for royalties, that rate will apply to Belgium. The new Czech treaty with Slovak Republic does provide for a lower rate of 0% on copyright royalties, including film, etc. So that rate also applies to Belgium.

ee) The 0% rate applies to royalties paid in respect of copyrights; otherwise the rate is 10%.

ff) The 0% rate applies to copyright royalties, except royalties concerning cinematograph films and films or tapes for television broadcasting. Otherwise, the rate is 10%.

gg) The domestic rate applies to motion picture film royalties.

hh) A 30% withholding tax is imposed on royalty payments to nonresidents, which is generally only applied to 75% of the gross amount, giving rise to an effective rate of 22.5%.

ii) The rate for patent royalties and annual payments is 10%. In all other cases, royalties are exempt from tax.

jj) While royalties are generally exempt, the following items are subject to a rate not to exceed 5%: trademarks and any information concerning industrial, commercial or scientific experience provided in connection with a rental or franchise agreement that includes rights to use a trademark, or (as previously excluded from reduced rates) a motion picture film or work on film or videotape or other means of reproduction for use in connection with television.

kk) The new tax treaty between New Zealand and Australia entered into force on 19 March 2010 with the new withholding tax rates applying as from 1 May 2010. According to the treaty, the rates are reduced to 5% from 10%.

ll) The 0% rate applies if the conditions under EC Interest and Royalties Directive are met.

mm) Romania levies a 16% withholding tax on royalties paid to nonresident companies, unless an applicable tax treaty provides for a lower rate. Under transitional rules in the EC Interest and Royalties Directive, Romania is authorized not to apply the exemption from withholding tax until 31 December 2010.

nn) Royalties derived by a resident or corporation of a Contracting State from a trade or business through a permanent establishment in the US are governed by the business profits provision and not subject to the withholding of US tax at source.

oo) The 2009 first-time tax treaty between Canada and Greece entered into force 16 December 2010 and applies as from 1 January 2011.

Royalties are subject to withholding at a rate of 10%, except in the case of exempt copyright royalties and other like payments in respect of the production or reproduction of any cultural or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting).

pp) The 2007 treaty between Mexico and India entered into force on 1 February 2010 and applies in Mexico as from 1 January 2011 (in India as from 1 April 2011). According to the treaty, the rate is reduced from 40% to 10% in Mexico. The rate remains unchanged in India.

qq) The 2009 treaty between Mexico and South Africa entered into force on 22 July 2010, and applies as from 1 January 2011. The rate is reduced from 40% to10% in Mexico. In South Africa, the rate is reduced from 12% to 10%.

rr) The 2009 treaty and protocol between New Zealand and Singapore entered into force on 12 August 2010. The treaty, which replaces the existing treaty dating from 1973, generally applies in New Zealand as from 1 October 2010 for withholding taxes and from 1 April 2011 for other taxes. The royalty withholding tax rate is reduced from 15% to 5%. However, the treaty rate will apply as from 1 January 2012 in Singapore.

ss) Copyright royalties for literary, artistic or scientific work, including film and other means of image or sound reproduction, are exempt; otherwise, the rate is 10%.

tt) The 2010 first-time treaty between Singapore and Ireland entered into force 8 April 2011 and retroactively applies from 1 January 2011. In Ireland, the rate is reduced to from 20% to 5%. In Singapore, the rate is reduced from 10% to 5%.

uu) A 15% withholding tax is levied on royalty payments to nonresidents if the payor is an "approved enterprise".

vv) Payments of any kind made as a consideration for the use of or the right to use cinematographic films, or works on film, tape, or other means of reproduction for use in radio or television broadcasting are not covered under "Royalties" article. Instead, they are covered under the "Business profits" article and generally are not subject to withholding tax unless they are derived from a permanent establishment in the paying country.

ww) Payments of any kind made as a consideration for the use of or the right to use motion pictures or works on film, tape or other means of reproduction used for radio or television broadcasting are not covered under "Royalties" article. Instead, they are covered under the "Business profits" article and generally are not subject to withholding tax unless they are derived from a permanent establishment in the paying country.

Film Financing and Television Programming
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Appendix B

Table of Dividend Withholding Tax Rates

Receiving Country / Paying Country	Australia	Belgium*	Brazil	Canada	China	Colombia	Cyprus*	Czech Republic*	France*	Germany*	Greece*	Hong Kong
Non-treaty rate **	0 30 xx)	10 m) 25	0 qq)	25	10 jjj)	0 ddd) 33 ddd)	0	15	25	25 a)	21 eee)	0
Australia		15	0	5 b) 15	10	0 ddd) 33 ddd)	0	5 cc) 15	0 lll) 5 lll) 15 lll)	15	21	0
Belgium*	15		0	5 b) 15	10	0 ddd) 33 ddd)	0	0 www) 5 d) 15	0 w) 10 b) 15	0 w) 15	0 w) 5 d) 10	0
Brazil	30	10 b) 15		15 b) 25	10	0 ddd) 33 ddd)	0	15	15	25 a)	21	0
Canada	5 yy) 15	5 b) 15	0		10 b)	0 ddd) 33 ddd)	0	5 b) 15	5 b) 15	5 b) 15	5 d), uuu) 10	0
China	15	10	0	10 b) 15		0 ddd) 33 ddd)	0	10	10	10	5 d) 10	0
Colombia	30	10 m) 25	0	25	10		0	15	25	25 a)	21	0
Cyprus*	30	0 w) 10 d) 15	0	15	10	0 ddd) 33 ddd)		0 www) 10	0 w) 10 b) 15	0 w) 10 d) 15	0 w) 21	0
Czech Republic*	5 zz) 15	0 w) 5 d) 15	0	5 b) 15	10	0 ddd) 33 ddd)	0		0 ww), w) 10	0 w) 5 d) 15	0 w) 21	0
France*	0 bbb) 5 bbb) 15 bbb)	0 w) 10 b) 15	0	5 b) 10 q) 15	10	0 ddd) 33 ddd)	0	0 ww), www) 10		0 w) 5 b) 15	0 w) 21	0
Germany*	15	0 w) 15	0	5 b) 15	10	0 ddd) 33 ddd)	0	0 www) 5 d) 15	0 b), w) 15		0 w) 21	0
Greece*	30	0 w) 5 d) 15	0	5 d), uuu) 15	5 d) 10	0 ddd) 33 ddd)	0	0 www) 15	0 w) 25	0 w) 25		0

Receiving Country / Paying Country	Hungary*	Iceland	India	Ireland*	Israel	Italy*	Japan	Luxembourg*	Mexico	Netherlands*	New Zealand	Norway	Romania*	Singapore	South Africa	Sweden*	United Kingdom*	United States
Non-treaty rate **	0	18 y)	0 r)	20	20 ggg) 25	12.5 kkk) 27	7 z) 15 z) 20	0 u) 15 u)	0	15	15 dd) 30	25	0 mm) 10 16	0	0	30	0	30
Australia	0	18	0 r)	0 fff) 15	20 ggg) 25	15	0 f) 5 b) 10 15 ee)	0 u) 15 u)	0	15	0 f) 5 b) 15	0 bb) 5 b) 15	5 b) 15	0	0	15	0	0 f) 5 b) 15
Belgium*	0	5 b) 15	0 r)	0 vvv) 20	15	0 w) 15	10 d) 15	0 u), w) 10 t) 15	0	0 w) 5 b) 15	15	5 d) 15	0 w) 5 d) 15	0	0	0 w) 5 d) 15	0	0 f) 5 kk) 15
Brazil	0	18	0 r)	0 vvv) 20	10 d) 15	15	12.5	0 u) 15	0	15	15 dd) 30	25	0 mm) 10 16	0	0	15 ss) 25	0	30
Canada	0	5 b) 15	0 r)	5 d) 15	15	15	10 d) 15	0 hh) 5 b) 15	0	5 i) 15	15	5 b) 15	5 b) 15	0	0	5 i) 15	0	5 b) 15
China	0	5 d) 10	0 r)	5 d) 10	10	10	10	5 d) 10	0	10	15	15	10	0	0	5 d) 10	0	10
Colombia	0	18	0 r)	0 vvv) 20	20 ggg) 25	12.5 27	20	0 u) 15 u)	0	15	15 dd) 30	25	0 mm) 10 16	0	0	30	0	30
Cyprus*	0	18	0 r)	0	20 ggg) 25	0 w) 15	20	0 u), w) 15 u)	0	0 w) 15	15 dd) 30	0 e) 5	0 w) 10	0	0	0 w) 5 i) 15	0	5 b) 15
Czech Republic*	0	5 d) 15	0 r)	0 w) 5 d) 15	5 c) 15	0 w) 15	10 d) 15	0 u), w) 5 d) 15	0	0 d), w) 10	15	0 b) 15	0 w) 10	0	0	0 d), w) 10	0	5 b) 15
France*	0	5 b) 15	0 r)	0 vvv) 20	5 b) 10 hhh) 15	0 w) 5 b) 15	0 c) 5 b) 10	0 u), w) 5 v) 15	0	0 w) 5 d) 15	15	0 sss) 5 sss) 15	0 w) 10	0	0	0 b), w) 15	0	0 f) 5 ppp) 15
Germany*	0	5 d) 15	0 r)	0 vvv) 20	20 ggg) 25	0 w) 10 d) 15	10 d) 15	0 u), w) 10 d) 15	0	0 w) 10 d) 15	15	0 d) 15	0 w) 5 b) 15	0	0	0 b), w) 15	0	0 f) 5 b) 15
Greece*	0	5 d) 15	0 r)	0 w) 5 d) 15	20 ggg) 25	0 w) 15	20	0 u), w) 7.5	0	0 w) 5 d) 15	15 dd) 30	20	0 w) 16	0	0	0	0	30

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Receiving Country / Paying Country	Australia	Belgium*	Brazil	Canada	China	Colombia	Cyprus*	Czech Republic*	France*	Germany*	Greece*	Hong Kong
Hong Kong	30	0 d) 5 b) 15	0	25	5 d) 10	0 ddd) 33 ddd)	0	15	25	25 a)	21	
Hungary*	15	0 w) 10	0	5 d) 10 rr) 15	10	0 ddd) 33 ddd)	0	0 www) 5 d) 15	0 w) 5 d) 15	0 w) 5 d) 15	0 w) 21	0
Iceland	30	5 b) 15	0	5 b) 15	5 d) 10	0 ddd) 33 ddd)	0	0 www) 5 d) 15	5 d) 15	5 d) 15	5 d) 15	0
India	15	15	0	15 b) 25	10	0 ddd) 33 ddd)	0	10	10	10	21	0
Ireland	15	0 w) 15	0	5 b) 15	5 d) 10	0 ddd) 33 ddd)	0	0 www) 5d) 15	0 w) 10 gg) 15	0 w) 10 qqq) 15	0 w) 5 d) 10	0
Israel	30	15	0	15	10	0 ddd) 33 ddd)	0	5c) 15	5 b) 10 ff) 15	25	0 w) 21	0
Italy	15	0 w) 15	0	15	10	0 ddd) 33 ddd)	0	0 www) 15	0 w) 5 b) 15	0 w) 15	0 w) 15	0
Japan	0 g) 5 g) 10 g) 15 g)	5 d) 15	0	5 d) 10	10	0 ddd) 33 ddd)	0	10 d) 15	0 mmm) 5 b) 10	15	21	0
Luxembourg	30	0 w) 10 t) 15	0	5 b) 10 ccc) 15	5 d) 10	0 ddd) 33 ddd)	0	0 www) 5 d) 15	0 w) 5 d) 15	0 w) 10 d) 15	0 w) 21	0
Mexico	0 b) 15	5 d) 15	0	5 b) 15	5	0 ddd) 33 ddd)	0	10	0 b) 5 nnn) 15	5 b) 15	10	0
Netherlands	15	0 w) 5 b) 15	0	5 i) 10 tt) 15	10	0 ddd) 33 ddd)	0	0 d), www) 10	0 w) 5 d) 15	0 w) 10 d) 15	0 w) 21	0
New Zealand	0 f) 5 b) 15	15	0	15	10	0 ddd) 33 ddd)	0	15	15	15	21	0
Norway	0 f) 5 b) 15	5 d) 15	0	5 b) 15	10	0 ddd) 33 ddd)	0	0 b) 15	0 b) 15	0 d) 15	21	0

Receiving Country	Hungary*	Iceland	India	Ireland*	Israel	Italy*	Japan	Luxembourg*	Mexico	Netherlands*	New Zealand	Norway	Romania*	Singapore	South Africa	Sweden*	United Kingdom*	United States
Hong Kong	0	18	0 r)	0 vvv) 20	20 ggg) 25	12.5 27	20	0 ll) 10	0	15	15 dd) 30	25	0 mm) 10 16	0	0	30	0	30
Hungary*		5 d) 10	0 r)	0 w) 5 b) 15	5 b) 15	0 w) 10	10	0 u), w) 5 d) 15	0	0 w) 5 d) 15	15 dd) 30	10	0 w) 5 ii) 15	0	0	0 w) 5 d) 15	0	5 b) 15
Iceland	0		0 r)	5 d) 15	20 ggg) 25	5 b) 15	20	0 u) 5 d) 15	0	0 x) 15	15 dd) 30	0 b) 15	5 d) 10	0	0	0 b), w) 15	0	5 b) 15
India	0	10		10	10	15 b) 25	10	0 u) 10 u)	0	15	15	15 d) 25	15 d) 16	0	0	10	0	15 b) 25
Ireland	0	5 d) 15	0 r)		10	0 w) 15	10 d) 15	0 u), w) 5 d) 15	0	0 d), w) 15	15	5 b) 15	0 w) 3	0	0	0 d), w) 5 b) 15	0	5 b) 15
Israel	0	18	0 r)	0 n) 10		10 d) 15	5 d) 15	0 U) 5 d) 15	0	5 ttt) 10 ttt) 15	15 dd) 30	5 e) 15	15	0	0	5 e) 15	0	12.5 b),o) 25
Italy	0	5 b) 15	0 r)	0 w) 15	10 d) 15		10 d) 15	0 u), w) 15	0	0 w) 5 s) 10 s) 15	15	15	0 w) 10	0	0	0 w) 10 e) 15	0	5 d) 15
Japan	0	18	0 r)	20	5 d) 15	10 d) 15		0 u) 5 d) 15	0	5 d) 15	15	5 d) 15	10	0	0	0 oo) 5 d) 15	0	0 e), f) 5 b) 10
Luxembourg	0	5 d) 15	0 r)	0 vvv) 20	5 b) 10 hhh) 15	0 w) 15	5 d) 15		0	0 w) 2.5 d) 15	15 dd) 30	5 d) 15	0 w) 5 d) 15	0	0	0 w) 15	0	5 b) 15
Mexico	0	5 b) 10	0 r)	5 b) 10	5 b) 10	15	0 h) 5 d) 15	0 u) 5 b) 15		5 b) 15	0 f) 5 b) 15	0 d) 15	10	0	0	0 pp) 5 b) 15	0	0 f) 5 b) 10
Netherlands	0	0 b) 15	0 r)	0 d), w) 15	5 d) 10 hhh) 15	0 w) 5 e) 10 b) 15	5 d) 15	0 u) 2.5 d) 15	0		15	5 d) 15	0 d), w) 5 b) 15	0	0	0 d), w) 15	0	0 f) 5 b) 15
New Zealand	0	18	0 r)	0 jj)	20 ggg) 25	15	15	0 u) 15 u)	0	15		15	0 mm) 10 16	0	0	15	0	0 f) 5 b) 15
Norway	0	0 b) 15	0 r)	5 b) 15	20 ggg) 25	15	5 d) 15	0 u) 5 d) 15	0	0 d) 15	15		10	0	0	0 b) 15	0	10 nn) 15

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Receiving Country / *Paying Country*	Australia	Belgium*	Brazil	Canada	China	Colombia	Cyprus*	Czech Republic*	France*	Germany*	Greece*	Hong Kong
Romania	5 b) 15	0 w) 5 d) 15	0	5 b) 15	10	0 ddd) 33 ddd)	0	0 www) 10	0 w) 10	0 w) 5 b) 15	0 w) 21	0
Singapore	15	0 d) 5 b) 15	0	15	5 d) 10	0 ddd) 33 ddd)	0	5	10 b) 15	5 b) 15	21	0
South Africa	5 b) 15	5 d) 15	0	5 b) 15	5	0 ddd) 33 ddd)	0	5 d) 15	5 b) 15	7.5 d) 15	5 d) 15	0
Sweden	15	0 w) 5 d) 15	0	5 i) 10 uu) 15	5 d) 10	0 ddd) 33 ddd)	0	0 d), www) 10	0 b), w) 15	0 b), w) 15	0 w) 21	0
United Kingdom	0 f) 5 b) 15	0 w) 5 d) 15	0	5 b) 15	10	0 ddd) 33 ddd)	0	0 www) 5 d) 15	5 b), w) 15	0 w) 5 b) 10 rrr) 15	0 w) 21	0
United States	0 f) 5 b) 15	0 f) 5 b) 15	0	5 b) 15	10	0 ddd) 33 ddd)	0	5 b) 15	0 f) 5 ppp) 15	0 f) 5 b) 15	21	0

Receiving Country / *Paying Country*	Hungary*	Iceland	India	Ireland*	Israel	Italy*	Japan	Luxembourg*	Mexico	Netherlands*	New Zealand	Norway	Romania*	Singapore	South Africa	Sweden*	United Kingdom*	United States
Romania	0	5 d) 10	0 r)	0 w) 3	15	0 w) 10	10	0 u), w) 5 d) 15	0	0 d) w) 5 b) 15	15 dd) 30	10		0	0	0 w) 10	0	10
Singapore	0	18	0 r)	0 vvv) 20	5 b) 10	10	5 d) 15	0 u) 5 b) 10	0	0 d) 15	5 b) 15	5 d) 15	5		0	10 d) 15	0	30
South Africa	0	18	0 r)	0	20 ggg) 25	5 d) 15	5 d) 15	0 u) 5 d) 15	0	0 x) 15	15	5 d) 15	15	0		0 d) j) 7.5 k) 15	0	5 b) 15
Sweden	0	0 b) 15	0 r)	0 vv)	0 iii) 25	10 e) 15	0 h) 5 d) 15	0 u), w) 15	0	0 d) w) 15	15	0 b) 15	0 w) 10	0	0		0	0 f) 5 b) 15
United Kingdom	0	5 b) 15	0 r)	5 b) 15	15	0 w) 5 b) 15	0 aa) 5 b) 10	0 u), w) 5 d) 15	0	0 b), w) 10 15 o oo)	15	5 b) 15	0 w) 10 d) 15	0	0	0 b), w) 5		0 f) 5 b) 15
United States	0	0 aaa) 5 b) 15	0 r)	5 b) 15	12.5 b),o) 15 b), p) 25	0 l) 5 d) 15	0 e) 5 b) 10	0 u) 5 d) 15	0	0 f) 5 b) 15	0 f) 5 b) 15	15	10	0	0	0 f) 5 b) 15	0	

* Designates an EU member state. If certain conditions are met, the EU Parent Subsidiary Directive is applicable. As a result, dividends can be exempted from withholding tax if paid between related companies in the EU.

** With countries where a treaty rate is higher than the statutory withholding rate, the latter applies and is shown in the table.

a) The withholding tax on dividends is 25% (26.375%, including the solidarity surcharge), with a possible 40% refund for nonresident corporations, giving rise to an effective rate of 15.825%.

b) Minimum ownership of 10% is necessary to qualify for this rate.

c) Minimum ownership of 15% is necessary to qualify for this rate, 6 months duration for treaty between Japan and France.

d) Minimum ownership of 25% is necessary to qualify for this rate. In addition, for treaties between Japan and certain countries, the following conditions apply: 12 months duration for treaties between Japan and the following countries: Germany, U.K., 6 months duration for treaties between Japan and the following countries: Canada, Ireland, Israel, Mexico, Netherlands, Norway, South Africa and Sweden.

e) Minimum ownership of more than 50% (for the Sweden-Israel treaty: at least 50%; for the Sweden – Italy treaty: at least 51%) is necessary to qualify for this rate.

f) Generally applies to certain qualified entities that satisfy an 80% ownership in the companies that pay the dividend. The U.S. income tax treaty with Japan imposes a 50% ownership threshold (as opposed to an 80% ownership test) for purposes of determining eligibility for a zero withholding tax rate on dividends.

g) The 0% rate applies to intercorporate non-portfolio dividends where the recipient holds directly at least 80% of the voting power of the dividend-paying company. The 5% rate applies on all other non-portfolio intercorporate dividends where the recipient holds directly at least 10% of the voting power of the company paying the dividend. The 15% rate applies to the gross amount of a distribution from an Australian REIT. All other dividends are subject to a 10% rate.

h) The dividends are exempt from tax, however, if following conditions are satisfied on the date of payment: (1) the shares issued by the recipient are regularly traded on a recognized stock exchange of that state; and (2) more than 50% of the total shares issued by the recipient is owned by: (a) the government, political subdivisions or local authorities thereof or institutions wholly owned by the government, or by political subdivisions or local authorities thereof; (b) one or more individuals who are residents of that state; (c) one or more companies, the shares issued by which are regularly traded at a recognized stock exchange of that state, or more than 50% of the total shares issued by which is owned by one or more individuals who are residents of that state; or (d) any combination of the government, political subdivisions, local authorities, institutions, individuals and companies mentioned in (a), (b) or (c).

i) Lower rate applies where the shareholding gives at least 10% of the voting rights or 25% of the share capital.

j) 0% applies if the dividends are tax exempt in South Africa.

k) 7.5% applies to non-exempt companies with a minimum of a 25% holding.

l) The 0% rate applies where the beneficial owner of dividends is a qualified governmental entity that holds directly or indirectly less than 25% of the voting stock of the payer.

m) Dividends paid by resident companies to non-resident shareholders are subject to withholding tax at a rate of 25%. The rate is reduced to 10% if the dividends result from a (partial) redemption of shares.

n) Dividends paid by a company which is a resident of Ireland and which is beneficially owned by a resident of Israel shall be exempt from any tax in Ireland which is chargeable on dividends

o) A rate of 12.5% applies if (i) at least 10% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient; and (ii) not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50% or more of the outstanding shares of the voting stock of which is owned by the paying corporations at the time such dividends or interest is received).

p) 15% applies to dividends received from certain approved enterprises under Israel law that are entitled to the reduced tax rate.

q) (France-Canada) Applicable to dividends paid by a Canadian resident investing company belonging to non residents to a French corporate resident which controls directly or indirectly at least 10% of the voting rights of the Canadian company.

r) (India) Dividends declared by an Indian Company are tax-free for the recipients. However, the Indian Company is required to pay a dividend distribution tax of 16.99% (inclusive of surcharge and education) on such dividends declared/ distributed/paid.

s) The 5% rate applies where the beneficial owner is a company that owns more than 50% of the voting stock of the company paying the dividends for a 12-month period preceding the date on which the dividend distribution was voted; the 10% rate applies where the beneficial owner is a company that does not meet the above requirements but that owns 10% or more of the voting stock of the company paying the dividends for a 12-month period preceding the date on which the dividend distribution was voted;

t) Rate applies if the recipient company owns at least 25% of the distributing company's capital or if the recipient company's direct holding has a purchase price of at least € 6,197,338.

u) Dividends paid to a nonresident company are generally subject to a 15% withholding tax, unless the rate is reduced under an applicable tax treaty. Dividends paid by an SPF or a 1929 holding company or paid to a qualifying EU parent company under the EC Parent-Subsidiary Directive are exempt from withholding tax.

From 1 January 2009, no withholding tax will be levied on dividends distributed by a Luxembourg company to a parent company located in a treaty country if conditions similar to those in the Luxembourg participation exemption regime are satisfied. The requirements for the exemption are that the parent company (i) holds at least 10% of the company paying the dividends or a participation acquired for at least €1.2 million; (ii) holds or commits to hold the shares for an uninterrupted period of at least one year; (iii) has a legal form similar to the one of the forms listed in the Luxembourg corporate income tax code; and (iv) is subject to a tax similar to the Luxembourg corporate income tax.

v) (Luxembourg) The 5% rate only applies if the recipient company owns at least 25% of the distributing company's capital, or if two or more recipient companies together do so, provided one of those owns more than 50% of the other(s).

w) The 0% rate applies if the conditions under the EC Parent-Subsidiary Directive are satisfied.

x) The 0% rate applies where the beneficial owner is a company (other than a partnership) that holds directly at least 10% of the capital of the company paying the dividends;

y) The 18% rate was increased from 15% as from 1 January 2011.

z) The withholding tax on dividends from certain listed shares is reduced to 7% until 31 December 2011, and to 15% thereafter.

aa) The 0% rate applies where the beneficial owner is either (i) a company that has owned shares representing directly or indirectly, for the six-month period ending on the date entitlement to the dividends is determined, at least 50% of the voting power of the company paying the dividends, or (ii) a pension fund provided the dividends are not related to the carrying on of the pension fund's business.

bb) The 0% rate applies where the beneficial owner has owned shares representing 80% or more of the voting power of the company paying the dividends for a 12-month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends (a) has its principal class of shares listed on a recognized stock exchange as specified in the treaty and is regularly traded on one or more recognized stock exchanges; (b) is owned directly or indirectly by one or more companies whose principal class of shares is listed on a recognized stock exchange and is regularly traded on one or more recognized stock exchanges; or (c) does not meet the requirements of (a) or (b) but the competent authority of the first-mentioned Contracting State determines, in accordance with the law of that State, that the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention.

cc) (Czech Republic) Minimum 20% ownership to qualify for this rate.

dd) (New Zealand) This reduces to 15% if fully imputed, fully dividend withholding payment credited, or fully conduit tax-relief credited.

ee) The 15% rate applies to distributions that are paid by a Japanese company that is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in Japan where more than 50% of that company's assets consist of real property in Japan.

ff) (France-Israel) 10% rate applies where the beneficial owner is a company that holds directly at least 10% of the voting power of the company paying the dividends and the payor is a resident of Israel and the dividends are paid out of profits that are exempt from tax or subject to a tax rate in Israel that is lower than the normal rate of Israeli company tax due to provision to encourage investment.

gg) (France-Ireland) Applicable to dividends distributed by a company being a resident of France to a company being a resident of Ireland with a minimum ownership of 50% held for at least a year.

hh) The 0% rate applies if (i) the Canadian company has owned directly at least 25% of the voting stock in the Luxembourg company for at least 2 years and (ii) the dividends are paid out of profits derived from the active conduct of a trade or business in Luxembourg; and if the dividends are exempt in Canada.

ii) (Hungary-Romania) Minimum ownership is 40% to qualify for this rate.

jj) Dividends derived from a company which is a resident of Ireland and which are beneficially owned by a resident of New Zealand shall be exempt from any tax in Ireland which is chargeable on dividends

kk) A rate of 5% applies if (i) at least 10% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient; and (ii) not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50% or more of the outstanding shares of the voting stock of which is owned by the paying corporations at the time such dividends or interest is received).

ll) The 0% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payor company or a participation. In the Hong Kong - Luxembourg treaty a 0% rate will apply if there are acquisition costs of at least €1.2 million

mm) Dividends paid to non-resident companies are subject to a 16% final withholding tax, unless a lower treaty rate applies. As of 1 January 2009, the rate is reduced to 10% on dividends paid to EEA companies that do not qualify for exemption (see below).

Under the domestic law implementing the provisions of the EC Parent-Subsidiary Directive (90/435/EEC, as amended), dividends paid by a Romanian company to a company that has a legal form listed in the Directive and is subject to a corporate income tax are exempt from the Romanian withholding tax if the recipient company has held at least 10% (15% before 2009) of the share capital of the Romanian distributing company continuously for at least 2 years. As of 1 January 2009, the exemption is extended to dividends paid to qualifying parent companies resident in all EEA countries.

nn) A rate of 10% applies if (i) at least 10% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient; and (ii) not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50% or more of the outstanding shares of the voting stock of which is owned by the paying corporations at the time such dividends or interest is received).

oo) 0% if the Japanese company has owned at least 25% of the voting power in the Swedish company for at least 6 months and the shares of the Japanese company are traded at a Japanese stock exchange or that more than 50% thereof is owned by Japanese residents being (a) individuals, (b) companies whose shares are traded at a Japanese stock exchange or (c) companies more than 50% of whose shares are owned by individuals resident in Japan.

pp) 0% if the Mexican company owns directly at least 25% of the voting power in the Swedish company, and at least 50% of the Mexican company is owned by Mexican residents.

qq) No withholding tax is imposed on dividend distributions to nonresidents that are paid out of profits earned as from 1 January 1996.

rr) 10% of the gross amount of the dividends if the dividends are paid by a company that is a resident of Canada and a non-resident owned investment corporation to a company that is a resident of the Republic of Hungary that controls directly or indirectly at least 25% of the voting power in the company paying the dividends and is the beneficial owner of such dividends.

ss) The 15% rate applies if the recipient is a company (excluding a partnership); and the 25% rate applies in all other cases.

tt) 10% if the dividends are paid by a non-resident-owned investment corporation that is a resident of Canada to a beneficial owner that is a company (other than partnership) that is a resident of the Netherlands and that owns at least 25% of the capital of, or that controls directly or indirectly at least 10% of the voting power in, the company paying the dividends.

uu) 10% if the dividends are paid by a non-resident-owned investment corporation that is a resident of Canada to a beneficial owner that is a resident of Sweden and that controls directly at least 10% of the voting power, or that holds directly at least 25% of the capital, of the corporation paying the dividends.

vv) Dividends paid by a company which is a resident of Ireland and which are beneficially owned by a resident of Sweden shall be exempt from any tax in Ireland which is chargeable on dividends.

ww) The first-time France-Czech Republic income and capital tax treaty and protocol, signed on 28 April 2003, was ratified by France on 14 March 2005. The treaty will provide for a 10% rate on dividends in general and 0% on dividends paid to companies holding at least 25% of the capital of the company paying the dividends.

xx) Dividends paid to non-residents (other than to an Australian permanent establishment of a non-resident) are subject to a final withholding tax of 30% of the gross amount, which may be reduced under a tax treaty. Certain dividends are not subject to tax, for example fully franked dividends, distributions of conduit income.

yy) 5% of the gross amount of the dividends if the dividends are paid by a company that is a resident of Australia and controls directly at least 10% of the voting power in the company paying the dividends and is the beneficial owner of such dividends

zz) A rate of 5% applies for dividends where the rate of tax does not exceed 5% under Australian law.

aaa) Dividends paid to qualifying pensions and employee benefit organizations are exempt.

bbb) The 0% rate applies where dividends are paid to a company that holds directly at least 10% of the voting power of the company paying the dividends and the dividends are paid out of profits that have borne the normal rate of company tax. The 5% rate applies where the recipient is the beneficial owner and the above ownership requirements are met; the rate is 15% in all other cases.

ccc) 10% if the dividends are paid by a non-resident-owned investment corporation that is a resident of Canada to a beneficial owner that is a resident of Luxembourg that controls directly or indirectly at least 25% of the voting power, in company paying the dividend.

ddd) Dividends paid to foreign companies or entities not domiciled in Colombia may be remitted abroad free of tax if the profits from which the dividends are paid have already been taxed at the corporate level. Otherwise, tax is imposed at the 33% corporate tax rate. Colombia currently has no tax treaty with any of the countries listed in the table. As such, the statutory rate of 33% is shown in the table.

eee) For 2011, the dividend withholding tax rate was increased to 21% unless the dividend qualifies for application of the EC Parent-Subsidiary Directive. The rate increases to 25% as from 1 January 2012.

fff) (Ireland-Australia) 0% if dividends are paid by a company which is a resident of Ireland, for the purpose of Irish tax, to a beneficial owner that is a resident of Australia.

ggg) The 20% rate applies to dividends paid to individuals or foreign corporations. However, the rate is 25% in the case of a significant shareholder (i.e. one that holds more than 10% of the payor company).

hhh) 10% rate applies where the beneficial owner is a company that holds directly at least 10% of the voting power of the company paying the dividends and the payor is a resident of Israel and the dividends are paid out of profits that are exempt from tax or subject to a tax rate in Israel that is lower than the normal rate of Israeli company tax.

iii) Dividends paid by an Israeli company to a resident of Sweden out of income that has been subject to Israeli income tax are exempt. If the income has not been subject to income tax in Israel, the dividends may be subject to income tax in Israel at a rate not exceeding the rate of income tax normally imposed on the income of an Israeli company.

jjj) Dividends paid to non-residents, are subject to a withholding tax at 10% on the gross amount. Dividends declared from pre-2008 earnings are exempt from withholding tax.

kkk) In general, dividends distributed to non-residents are subject to a final withholding tax of 27%. For dividends on saving shares (shares without voting rights), the rate of withholding is 12.5%.

lll) The 2006 treaty and protocol between France and Australia to replace the current treaty enters into force on 1 June 2009. The new treaty will apply generally in France as from 1 January 2010. The treaty provides for a 0% rate on dividends where the recipient holds directly at least 10% of the voting power of the company paying the dividends and the dividends are paid out of profits that have borne the normal rate of company tax. The rate is 5% where the recipient is the beneficial owner and the above ownership requirements are met; and the 15% rate applies in all other cases.

mmm) Dividends are exempt if the beneficial owner is a company that holds, directly or indirectly, at least 15% of the capital of the company paying the dividends during the six months preceding the date the decision is made to distribute the dividends.

nnn) 5% rate applies if the recipient is a Mexican company whose capital is controlled for more than 50% by one or more residents of third states.

ooo) The 15% rate applies where the dividends are derived from immovable property by an investment vehicle which distributes most of its income annually and whose income from such immovable property is tax-exempt.

ppp) The withholding tax rate remains at 5% if the beneficial owner is a company that owns directly at least 10% of the voting stock (in the case of the U.S.) or 10% the capital (in the case of France).

qqq) 15% is reduced to 10 %, if and when, in the Federal Republic, the rate of corporation tax on distributed profits ceases to be lower than that on undistributed profits or the difference between those two rates diminishes to 5% or less.

rrr) The 10% rate applies when the dividends are paid to a pension scheme.

sss) The 0% rate applies if the recipient company owns at least 25% of the capital in the Norwegian company; the 5% rate applies if it owns at least 10% of the capital in the Norwegian company.

ttt) The 5% rate applies where the recipient is a company whose capital is wholly or partly divided into shares and that holds directly at least 25% of the capital of the company paying the dividends; the 10% rate applies to dividends that are either exempt from tax in Israel or taxed at a rate lower than the standard Israeli rate.

uuu) The 2009 first-time tax treaty between Canada and Greece entered into force 16 December 2010 and applies as from 1 January 2011. Dividends are limited to a withholding tax of 5% if the beneficial owner is a company that holds directly or indirectly at least 25% of the capital of the company paying the dividends; otherwise the rate is 15%.

vvv) There is no requirement to deduct withholding tax where the recipient is nonresident, provided certain formalities are complied with and the following conditions are satisfied: 1) If the recipient is not a company, the recipient is resident in a treaty country or an EU Member State; or 2) If the recipient is a company, it is under the control of persons resident in a treaty country or in an EU member state or the principal class of shares in the company or its 75% parent is substantially and regularly traded on the stock exchange in a treaty country or EU member state.

www) (Czech Republic) Under the EC Parent-Subsidiary Directive, dividends paid by a Czech company to a parent company (as defined in the directive) located in other EU Member States are exempt from withholding tax if the parent company holds at least 10% of the distributing company for an uninterrupted period of at least 12 months. As from 2009, the exemption applies to dividends paid to parent companies from Iceland, Norway and Switzerland. Further, dividends are exempt if paid by a subsidiary that: is tax resident in a non-EU country with which the Czech Republic has concluded a tax treaty; has a specific legal form; satisfies the conditions for the exemption under the EC Parent-Subsidiary Directive; and is subject to home country tax similar to Czech income tax at a rate of at least 12%.

Appendix C

Table of Interest Withholding Tax Rates

Receiving Country / Paying Country	Australia	Belgium*	Brazil	Canada	China	Colombia	Cyprus*	Czech Republic*	France*	Germany*	Greece*	Hong Kong
Non-treaty rate **	10	15	15 25 bb)	0 25 cc)	10	0 r) 33	0	15	0 i)	0 25 dd)	0 g), h) 5 ll) 40 a)	0
Australia		10	15	0 10 cc)	10	0 r) 33	0	0 g) 10	0	0	40 a)	0
Belgium*	10		10 p) 15	0 10 cc)	10	0 r) 33	0	0 g), ll) 10	0	0	0 b) 5 ll) 10	0
Brazil	10	10 p) 15		0 15 cc)	10	0 r) 33	0	0 g) 10 w) 15	0	0 25 dd)	40 a)	0
Canada	10	10	15		10	0 r) 33	0	0 g) 10	0	0	10 xx)	0
China	10	10	15	0 10 cc)		0 r) 33	0	0 g) 10	0	0	10	0
Colombia	10	15	15	0 25 cc)	10		0	15	0	0	40 a)	0
Cyprus*	10	0 h), ll) 10	15	0 15 cc)	10	0 r) 33		0 ll), oo)	0	0	5 ll) 10	0
Czech Republic*	10	0 ll) 10	10 p) 15	0 10 cc)	10	0 r) 33	0		0	0	5 ll) 10	0
France*	10	0 ll) 15	10 p) 15	0 10 cc)	10	0 r) 33	0	0		0	5 ll) 10	0
Germany*	10	0 q), ll) 15	15	0 10 cc)	10	0 r) 33	0	0	0		5 ll) 10	0
Greece*	10	0 ll) 10	15	0 10 mm)	10	0 r) 33	0	0 ll) 10	0	0		0

Receiving Country / Paying Country	Hungary*	Iceland	India	Ireland*	Israel	Italy*	Japan	Luxembourg*	Mexico	Netherlands*	New Zealand	Norway	Romania*	Singapore	South Africa	Sweden*	United Kingdom*	United States
Non-treaty rate **	0 vv)	18 tt)	20	0 gg) 20	25	0 y) 12.5 y) 27 y)	15 hh) 20 hh)	0 s)	4.9, 10 15, 21 28 v)	0	2 x) 15	0	0 b), e) 16	15	0	0	0 e) 20	30 ***k)
Australia	0	18	15	10	25	10	0 g) 10	0 s)	10 j), o) 15	0	10	0	10	10	0	0	0 b), g) 10	0 b), g) 10 15 yy)
Belgium*	0	10	10 f) 15	0 e), ll) 15	15	0 ll) 12.5	10	0 s)	10 f) 15	0	10	0	0 ll) 10	5	0	0	0 ll) 15	0 15 aa)
Brazil	0	18	15	20	15	12.5	12.5	0 s)	15	0	2 x) 15	0	0 b), e) 16	15	0	0	0 e) 20	30
Canada	0	10	15	0 g), j) 10	15	0 g) 12.5	10	0 s)	0 g) 10	0	15	0	0 g) 10	15	0	0	10	0 jj) 10 15 zz)
China	0	10	10	10	7 b) 10	10	10	0 s)	10	0	10	0	10	7 b) 10	0	0	10	0 g) 10
Colombia	0	18	20	20	25	0 y) 12.5 y) 27 y)	15 hh) 20 hh)	0 s)	4.9, 10 15, 21 28 v)	0	2 x) 15	0	0 b), e) 16	15	0	0	0 e) 20	30
Cyprus*	0	18	10	0	25	0 ll) 10	15 hh) 20 hh)	0 s)	4.9, 10 15, 21 28 v)	0	2 x) 15	0	0 ll) 10	7 b) 10	0	0	0 ll) 10	0 g), aaa) 10
Czech Republic*	0	0	10	0	0 g), h) 10	0	10	0 s)	10	0	2 x) 15	0	0 ll) 7	0	0	0	0	0
France*	0	0	10 t) 15	0	0 g) 5 j) 10	0 c), ll) 10	10	0 s)	0 g) 5 kk)	0	10	0	0 ll) 10	10	0	0	0	0 15 yy)
Germany*	0	0	10	0	0 b) 15	0 c), ll) 10	10	0 s)	0 g) 10 b) 15	0	10	0	0 ll) 3 z)	8	0	0	0	0 30 zz)
Greece*	0	8	20	0 ll) 5	10	0 g), ll) 10	15 hh) 20 hh)	0 s)	10	0	2 x) 15	0	0 ll) 10	15	0	0	0	0 n)

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Paying Country / Receiving Country	Australia	Belgium*	Brazil	Canada	China	Colombia	Cyprus*	Czech Republic*	France*	Germany*	Greece*	Hong Kong
Hong Kong	10	0 h) 10	15	0 25 cc)	7	0 r) 33	0	15	0	0 25 dd)	40 a)	
Hungary*	10	0 ll) 15	10 p) 15	0 10 cc)	10	0 r) 33	0	0	0	0	5 ll) 10	0
Iceland	10	0 h) 10	15	0 10 cc)	10	0 r) 33	0	0	0	0	0 g) 8	0
India	10	10 b) 15	15	0 15 cc)	10	0 r) 33	0	0 g) 10	0	0	40 a)	0
Ireland	10	15	15	0 10 cc)	10	0 r) 33	0	0	0	0	5	0
Israel	10	15	15	0 15 cc)	7 b) 10	0 r) 33	0	0 c), g) 10	5 f) 10	0	10	0
Italy	10	15	15	0 15 cc)	10	0 r) 33	0	0	10	0	0 g) 10	0
Japan	10	10	12.5	0 10 cc)	10	0 r) 33	0	0 g) 10	0 h) 10	0	25	0
Luxembourg	10	0 q) 15	10 p) 15	0 10 cc)	10	0 r) 33	0	0	0	0	8	0
Mexico	10	10 b) 15	15	0 10 cc)	10	0 r) 33	0	10	0 g) 5 c), h) 10	0	10	0
Netherlands	10	0 b) 10	10 p) 15	0 10 cc)	10	0 r) 33	0	0	10	0	8 b) 10	0
New Zealand	10	10	15	0 15 cc)	10	0 r) 33	0	10	10	0	25	0
Norway	0 b), g) 10	0 f) g) 15	15	0 10 cc)	10	0 r) 33	0	0	0	0	10	0
Romania	10	10	15	0 10 cc)	10	0 r) 33	0	7	10	0	10	0

Paying Country / Receiving Country	Hungary*	Iceland	India	Ireland*	Israel	Italy*	Japan	Luxembourg*	Mexico	Netherlands*	New Zealand	Norway	Romania*	Singapore	South Africa	Sweden*	United Kingdom*	United States
Hong Kong	0	18	20	20	25	0 y) 12.5 y) 27 y)	15 hh) 20 hh)	0 s)	4.9, 10 15, 21 28 v)	0	2 x) 15	0	0 b), e) 16	15	0	0	0 uu)	30
Hungary*		0	10	0	0	0	10	0 s)	4.9, 10 15, 21 28 v)	0	2 x) 15	0	0 ll) 15	5	0	0	0	0
Iceland	0		10 ee)	0	25	0	15 hh) 20 hh)	0 s)	0 g) 10	0	2 x) 15	0	3	15	0	0	0	0
India	0	10		10	0 b), g) 10	0 g) 12.5	10	0 s)	10 qq)	0	10	0	15	10 b) 15	0	0	10 b) 15	0 g) 10 b) 15
Ireland	0	0	10		5 j) 10	10	10	0 s)	0 g) 5 b) 10	0	10	0	3	15	0	0	0	0 15 d)
Israel	0	0	10	5 c), f) 10		10	10	0 s)	0 g) 10	0	2 x) 15	0	5 j) 10	7	0	0	15	0 g) 10 h) 17.5
Italy	0	0	15	10	10		10	0 s)	0 g) 10	0	10	0	0 g) 10	12.5	0	0	0 c) 10	0 g) 15
Japan	0	0	10 b) 15	10	10	10		0 s)	10 j), o) 15	0	2 x) 15	0	10	10	0	0	0 b, g) 10	0 b), g), j) 10
Luxembourg	0	0	20	0	5 f) 10	0 g) 10	10		0 g) 10	0	2 x) 15	0	10	10	0	0	0	0 15 yy)
Mexico	0	0	20	5 b) 10	10	10 g) 12.5	10 g), h) 15	0 s)		0	10	0	15	5 b) 15	0	0	j) 5 b), o) 15	o) 10 j) 15
Netherlands	0	0	10 t) 15	0	10 b) 15	0 g) 10	10	0 s)	b) 10 j) 15		10	0	0 z) 3	10	0	0	0	0 dddd)
New Zealand	0	0	15	10	25	0 g) 12.5	15 hh) 20 hh)	0 s)	0 g) 10	0		0	0 b), e) 16	15	0	0	10	0 g) 10 15 zz)
Norway	0	0	15	0	25	0 g) 12.5	10	0 s)	0 g) 10 b) 15	0	10		10	7	0	0	0	0 b), g) j) 10
Romania	0	0	15	3	0 b), g) 5 j) 10	0 g) 10	10	0 s)	15	0	2 x) 15	0		5	0	0	10	0 g) 10

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Film Financing and Television Programming
Appendix C

Paying Country / *Receiving Country*	Australia	Belgium*	Brazil	Canada	China	Colombia	Cyprus*	Czech Republic*	France*	Germany*	Greece*	Hong Kong
Singapore	10	5	15	0 15 cc)	7 b) 10	0 r) 33	0	0	10	0	25	0
South Africa	10	0 h) 10	15	0 10 cc)	10	0 r) 33	0	0	0	0	0 g) 8	0
Sweden	10	0 h) 10	15	0 10 cc)	10	0 r) 33	0	0	0	0	10	0
United Kingdom	0 b), g) 10	15	15	0 10 cc)	10	0 r) 33	0	0	0	0	0 m)	0
United States	0 b), g) 10	0 15 aa)	15	0 10 cc)	10	0 r) 33	0	0	0	0	0 l)	0

Paying Country / *Receiving Country*	Hungary*	Iceland	India	Ireland*	Israel	Italy*	Japan	Luxembourg*	Mexico	Netherlands*	New Zealand	Norway	Romania*	Singapore	South Africa	Sweden*	United Kingdom*	United States
Singapore	0	0	10 b) 15	20	7	12.5	10	0 s)	5 b) 15	0	15	0	5		0	0	10	30
South Africa	0	0	10	0	25	0 g) 10	10	0 s)	4.9, 10 15, 21 28 v)	0	10	0	15	0		0	0	0 15 zz)
Sweden	0	0	10	0	25	0 g) 12.5	10	0 s)	0 g) 10 b) 15	0	10	0	10	10 ii) 15	0		0	0 ccc)
United Kingdom	0	0	0 g) 15	0	15	0 c) 10	10	0 s)	0 g), 5 b) 10 j), 15	0	10	0	10	10	0	0		0 15 bbb)
United States	0	0	0 ff) 10 b) 15	0	10 h) 17.5	12.5	0 b), g), j) 10	0 s)	0 g), 4.9 b), 10 h), j), 15	0	10	0	10	15	0	0	0	

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* Designates an EU member state. If certain conditions are met, the EU Parent Subsidiary Directive is applicable. As a result, interest can be exempted from withholding tax if paid between related companies in the EU.

** With countries where a treaty rate is higher than the statutory withholding rate, the latter applies and is shown in the table.

***There are certain statutory exemptions.

a) For payments made after 23 April 2010, the statutory withholding tax on interest paid to a foreign entity without a PE in Greece is increased from 25% to 40%.

b) Generally applies to interest paid to banks (or a specific bank under some treaties), approved financial institutions / insurance companies or certain qualified projects.

c) Applies to interest on public bonds, trade credits, or sale of equipment.

d) Depending on the facts and circumstances, the rates of 5% and 15% could, in the case of the U.S., apply to income from shares or other rights, not being debt-claims and any income or distribution treated as income from shares.

e) Applies to interest on bonds, bank deposits etc.

f) Depending on the specific treaty, this applies to interest on loans which are either, 1) not represented by bearer securities and granted by banking enterprises; or, 2) loans of whatever kind granted by a bank from the other contracting state.

g) Applies to interest paid to a government agency, political subdivision, local authority or instrumentality of a Contracting State that is not subject to taxation by that State.

h) Applies to interest paid by banks, authorized financial institutions or insurance companies. Some treaties specify which banks or institutions qualify for treaty benefits.

i) From 1 March 2010, no withholding tax is levied on interest paid to non-resident companies.

j) Applies if the beneficial owner is not a bank or an insurance company and the interest is: 1) paid by a bank or, 2) paid by the purchaser of machinery and equipment to the seller in connection with a sale on credit.

k) Interest derived by a resident or corporation of a Contracting State, from a US trade or business through a permanent establishment, is taxed as effectively connected income and not subject to the general 30% withholding tax at the source of payment.

l) Domestic withholding rate applies to interest in excess of 9% annually and where the recipient US Corporation has more than 50% interest in the Greek paying company.

m) The domestic withholding tax rates apply to interest and royalty payments in excess of fair and reasonable compensation.

n) (Greece) The exemption applies to interest received from sources within the US by a resident or corporation of Greece. It does not apply to interest paid by a US subsidiary corporation to its Greek parent corporation controlling directly or indirectly, more than 50% of the voting power in the paying corporation.

o) Applies to interest derived from: (i) loans granted by banks and insurance companies; and (ii) bonds or securities that are regularly and substantially traded on a recognized securities market.

p) The lower rate applies to interest on long-term loans granted by a bank to finance the purchase of equipment, or the study, installation or supplying of industrial or scientific complexes or public works. The term of such loans varies by treaty.

q) 0% applies for interest paid between unrelated companies (less than 25% participation).

r) (Colombia) Interest payments to non-residents are subject to a general 33% final withholding tax. Certain interest payments are not treated as Colombian-source income and are exempt both from the ordinary withholding tax. Examples of exempt interest are: 1) interest on short-term import loans (not exceeding 12 months); 2) interest on loans to finance or pre-finance exports; 3) interest on bank overdrafts and on foreign credits granted to banks and financial entities; and 4) interest on foreign credits granted to Colombian companies whose activities are for economic and social development in accordance with the National Council of Economic and Social Politics (CONPES).

s) (Luxembourg) There is no withholding tax on ordinary interest paid to non-resident companies. However, interest on profit-sharing bonds is subject to the same withholding tax as dividends.

t) (India) The lower treaty rates apply to interest on loans made or guaranteed by a bank or other financial institution carrying on a bona fide banking or financing business or by an enterprise which holds directly or indirectly at least 10% of the capital of the company paying the interest.

u) The 0% rate applies under the following circumstances: 1) the interest is beneficially owned by a qualified governmental entity that holds, directly or indirectly, less than 25% of the capital of the payor; 2) the interest is paid with respect to debt obligations guaranteed or insured by a qualified governmental entity; 3) the interest is paid or accrued with respect to a sale on credit of goods, merchandise, or services provided by one enterprise to another enterprise; or 4) the interest is paid or accrued in connection with the sale on credit of industrial, commercial, or scientific equipment.

v) (Mexico) The withholding rate is 10% for interest paid to a non-resident bank, a financial institution owned by a foreign state or certain limited financial institutions, a non-resident institution that places or invests capital in Mexico, interest relating to securities publicly traded through banks and stock brokerage firms in a country with which Mexico does not have a tax treaty, or interest relating to eligible financial derivatives, provided certain conditions are met. During 2009, interest paid to registered foreign banks may be subject to a 4.9% rate instead of 10%, provided that

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the beneficial owner of such interest is a resident of a country with which Mexico has a tax treaty in force. The withholding rate is 4.9% on interest paid in respect to publicly traded securities in Mexico and securities publicly traded abroad through banks and stockbrokerage firms in a country with which Mexico has a tax treaty, and interest paid to non-resident financial entities in which the federal government has a capital interest. The withholding rate is 15%: interest paid to reinsurance companies. The rate is 21% on interest not subject to the 4.9% or 10% rates mentioned above and interest paid to non-resident suppliers financing the acquisition of machinery and equipment. For all other income, the withholding rate is 28%.

w) (Czech Republic-Brazil) 10% in respect of interest from loans and credits granted by a bank for a period of at least 10 years in connection with the selling of industrial equipment or with the study, the installation or the furnishing of industrial or scientific units, as well as with public works.

x) (New Zealand) The payee may elect for approved issuer levy (AIL) to be deducted from the interest received at a rate of 2% if the interest is paid between non-associated parties. If this election is made, the recipient may not be able to claim a foreign tax credit for the amount deducted.

y) (Italy) Interest payments to non-resident companies are subject to a final withholding tax at the same rates as interest paid to residents. However, no withholding tax applies to interest paid to non-resident companies on: 1) deposit accounts and current accounts with banks and post offices and, 2) bonds issued by the state, banks or listed companies if the beneficial owner is resident in a country with which Italy has an adequate exchange-of-information system. Non-exempt interest, on deposit and current accounts and bonds, is subject to a 27% withholding tax. For bond interest, the rate is reduced to 12.5% if other conditions under the Treaty are satisfied. Other types of interest paid to non-resident companies, including interest on loans, are subject to withholding tax at a 12.5% rate (27% if paid to a resident of a jurisdiction with a preferred tax regime (i.e., low-tax or tax haven jurisdiction).

z) (Romania) The withholding rate is 0% as long as the other Contracting State, under local law, does not levy withholding tax on interest paid to Romanian residents. Under Romania-Netherlands Treaty, interest is exempt from withholding tax if: 1) interest is paid to a bank, financial institution or insurance company; or, 2) interest paid on a loan made for a period of more than 2 years.

aa) (Belgium-US) For contingent interest arising in Belgium from related party sales income or dividend / partnership distributions, US residents are taxed under Belgium law at a rate not exceeding 15%. For "contingent interest" arising in the US that does not qualify as portfolio interest under US law, Belgian residents are taxed at a rate not exceeding 15%.

bb) (Brazil) The 25% withholding rate on interest applies to residents of a low-tax jurisdiction. Under Brazilian law, jurisdictions that do not tax income, or which tax income at a maximum rate lower than 20%, are deemed to be low-tax jurisdictions.

cc) (Canada) As of 1 January 2008, interest paid to an arm's length non-resident party is exempt from withholding tax. Interest paid to non-arm's length non-residents remains subject to a 25% withholding tax rate (subject to reduction by any applicable tax treaty). Interest is also exempt from withholding tax if it is payable on various bonds, debentures, notes and mortgages issued or guaranteed by the Canadian government or if issued by provincial governments. The treaty rates shown in the table would apply to non-exempt interest subject to withholding tax.

dd) (Germany) Withholding tax is imposed on interest from convertible bonds, profit-sharing bonds, participation loans, as well as income from the participation of silent partners in a trade or business. The rate is 25% (26.38% including the 5.5% solidarity surcharge). In addition, interest on coupons of bearer bonds not credited to a bank account with a foreign bank (i.e., anonymous over-the-counter transactions) is subject to the same higher withholding tax rate. The withholding tax rate of 25% on regular bank interest for residents does not apply to payments to non-residents.

ee) (India-Iceland) The benefits under the articles for dividends, interest and royalties do not apply if: 1) by reason of special measures the tax imposed on the recipient corporation by its country of residence with respect to the dividends, interest and royalties, is substantially less than the tax generally imposed on corporate profits; and, 2) 25% or more of the capital of the recipient corporation is owned directly or indirectly by one or more persons who are not individual residents of the corporation's country of residence.

ff) (India-US) With interest payments arising in India, interest from loans or credit extended or endorsed by the Export Import Bank of the United States and by the EXIM Bank of India is exempt from withholding tax.

gg) (Ireland) Interest payments are exempt from the general 20% withholding tax rate in the following cases: 1) interest on profit-sharing loans (treated as dividends); 2) interest on quoted Eurobonds held in a recognized clearing system or held by a non-resident who has filed a prescribed declaration; 3) interest paid to a company resident in another EU Member State or in a tax treaty country in the ordinary course of the payer's business; 4) interest paid to a bank carrying on a business in Ireland; 5) interest paid by a resident bank on deposits) to a non-resident company; and, 6) interest paid by SFAZ and IFSC companies.

hh) (Japan) The withholding tax rate on interest on Japanese government bonds (JGBs), municipal bonds, corporate bonds and savings or deposits placed with entities located in Japan is 15%, while interest on loans to a person who uses the loan for operating a business in Japan is 20%.

ii) (Singapore) The lower rate applies to interest paid to a financial institution in respect of an industrial undertaking.

jj) (Canada-US) The 0% rate applies to interest paid or credited between unrelated persons on or after January 1, 2008. A 7% rate applies to interest paid or credited between related persons, as defined in the treaty, during the 2008 calendar year. A 4% rate applies to interest paid or credited between related persons during the 2009 calendar year. A 0% rate applies to interest paid or credited between related persons on or after 1 January 2010.

kk) (Mexico-France). The general rate under the treaty is 15%. However, by virtue of a most-favored nation clause, the general rate is reduced to 5% for interest paid to banks and insurance companies and for interest from quoted bonds, and to 10% in other cases.

ll) Rate applies in appropriate cases under the EC Interest and Royalties Directive.

mm) The 2009 first-time tax treaty between Canada and Greece entered into force 16 December 2010 and applies as from 1 January 2011. According to the treaty, the rates are reduced from 25% to 10%.

nn) The 2008 treaty between India and Luxembourg entered into force on 9 July 2009 and applies generally as from 1 April 2010 for India (1 January 2010 for Luxembourg). According to the treaty, the rate is reduced to 10%.

oo) Interest may only be taxed by the state of residence of the recipient.

pp) The 2010 treaty between Ireland and Singapore entered into force 8 April 2011 and retroactively applies from 1 January 2011. According to the treaty, the rates are reduced from 20% to 5% in Ireland and from 15% to 5% in Singapore.

qq) The 2007 treaty between Mexico and India entered into force on 1 February 2010. The treaty applies in Mexico as from 1 January 2011 with a royalty withholding rate of 10%. The treaty rate applies in India as from 1 April 2011 and once in effect, reduces the rate from 20% to 10% on royalty payments made from India.

rr) The 2009 treaty between Mexico and South Africa entered into force on 22 July 2010, and applies as from 1 January 2011. According to the treaty, the royalty withholding rate is 10%.

ss) The 2008 Second Protocol to the 1982 New Zealand-U.S. treaty entered into force on 12 November 2010 and applies with respect to withholding taxes for amounts paid or credited on or after 1 January 2011. For all other taxes, the protocol will generally have effect as from 1 April in New Zealand and in the U.S. for taxable periods starting on or after 1 January 2011. A 0% withholding tax applies on interest paid to lending or finance businesses, provided the 2% Approved Issuer Levy is paid on New Zealand-source interest; 10% applies in all other cases.

tt) The rate was increased to 18% from 15% as from 1 January 2011.

uu) The treaty applies as from 1 April 2011 in Hong Kong and for corporate taxes in the U.K. (as from 6 April 2011 for income and capital taxes in the U.K.). According to the treaty, the reduced rate of 0% (from 20%) is applied as from 1 April 2011 for the payments from U.K. to Hong Kong. For the payments from Hong Kong to U.K., the rate remains unchanged at 0%.

vv) As from 1 January 2011, a flat 16% withholding tax rate replaces the progressive rates applicable on interest paid to nonresident natural persons.

ww) The treaty calls for reciprocity and Norway currently exempts interest from taxation, resulting in the U.S. applying a zero rate on withholding. A rate may not be imposed in excess of 10% and other exemptions would apply if the 10% rate were imposed.

xx) The 2009 first-time tax treaty between Greece and Canada entered into force 16 December 2010 and applies as from 1 January 2011.

yy) (U.S.) A 15% rate applies to interest that is determined with reference to the profits of the issuer or of one of its associated enterprises.

zz) (U.S.) This rate applies to contingent interest that does not qualify as portfolio interest. The Internal Revenue Code generally defines contingent interest as any interest if the amount of such interest is determined by reference to: (a) any receipts, sales or other cash flow of the debtor or a related person; (b) any income or profits of the debtor or a related person; (c) any change in value of any property of the debtor or a related person; (d) any dividend, partnership distributions, or similar payments made by the debtor or a related person; or (e) any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of U.S. federal income tax. Section 871(h)(4)(A)(i) and (ii).

aaa) Interest beneficially derived by the following persons is exempt from tax: (i) a bank or other financial institution; and (ii) a resident of the U.S. or Cyprus with respect to debt obligations arising in connection with the sale of property or the performance of services.

bbb) A 15% rate applies to interest that is determined by reference to: (i) receipts, sales, income, profits or other cash flow of the debtor or a related person; (ii) any change in the value of any property of the debtor or a related person or to any dividend; (iii) partnership distribution or similar payment made by the debtor or a related person.

ccc) Depending on the facts and circumstances, the rates of 0%, 5% and 15% could, in the case of the U.S., apply to contingent interest of a type that would not qualify as portfolio interest

ddd) Depending on the facts and circumstances, the rates of 0%, 5% and 15% could, in the case of the U.S., apply to income from debt obligations carrying the right to participate in profits.

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