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MEDIA AND ENTERTAINMENT

Film Financing and Television Programming

A Taxation Guide

Sixth Edition

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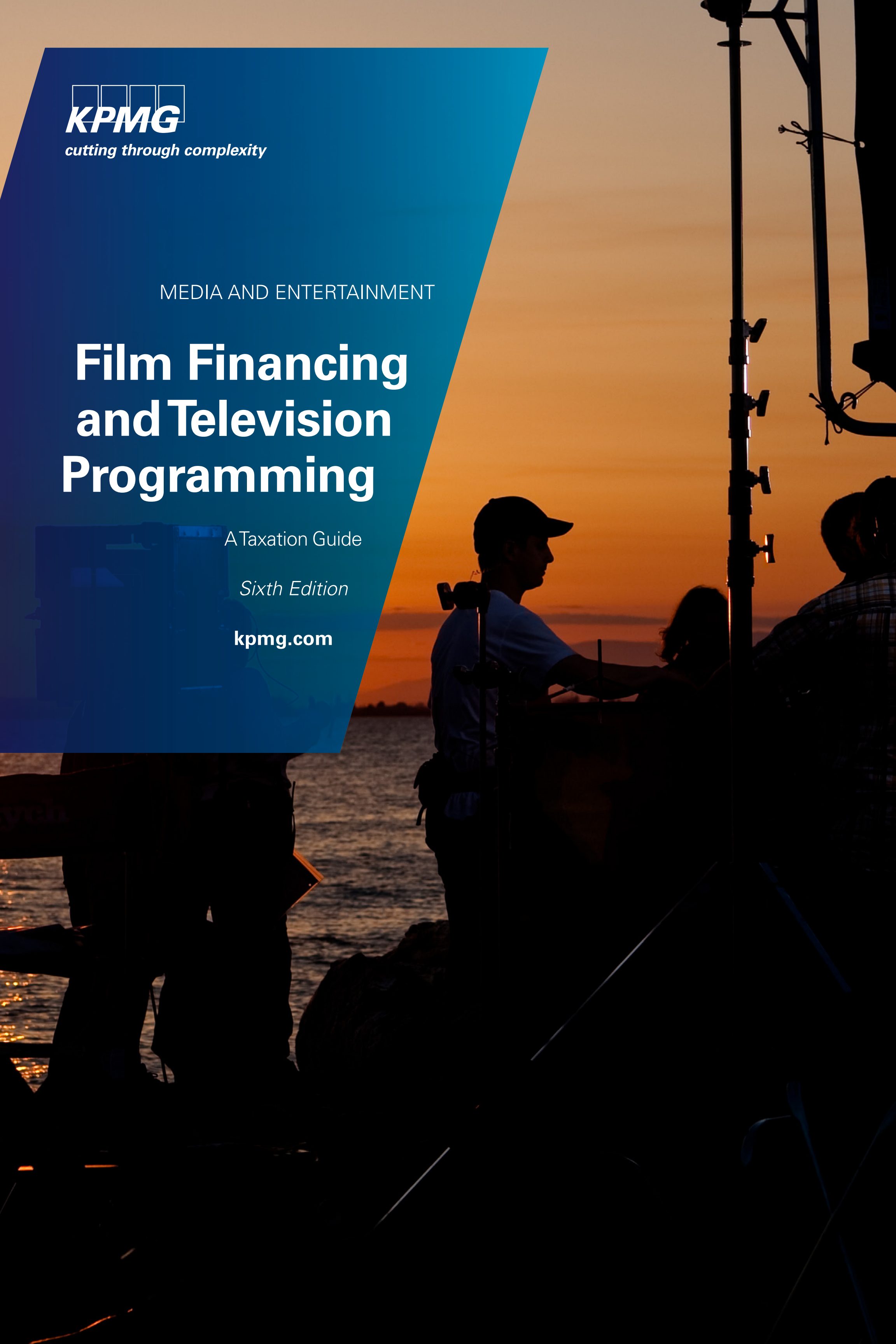

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Preface

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 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.

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

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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.

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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[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.

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].

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[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].

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[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]

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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.

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[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).

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[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.

[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.

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[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

[28] With effect from 1 May 2008

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.

[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.

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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