Film Financing and Television Programming

A Taxation Guide

For more than a decade, the KPMG Film Financing and Television Programming Taxation Guide has been recognized as a valued reference tool for industry professionals, filled with information drawn from the knowledge of the KPMG International global network of member firm media and entertainment Tax professionals. The 2022 edition is a fundamental resource for film and television producers, studio and streaming production executives, tax executives, finance executives, and attorneys involved with the commercial side of production.

Doing business across borders can pose major challenges and may lead to potentially significant tax implications, and a detailed understanding of the full range of potential tax implications can be as essential as the actual financing of a project. The Guide helps industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in production financing, the Guide includes a robust discussion of relevant tax incentive programs in each country.

Each chapter focuses on a single country and provides a description of commonly used financing structures, as well as their potential commercial and tax implications for the parties involved. Key sections in each chapter include:

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

Key Tax Facts
At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures
Descriptions of commonly used financing structures in production and distribution, and the potential commercial tax implications for the parties involved. This section of each chapter covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-efficient 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.

Dominican Republic

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.

Streaming Tax Considerations
Provides a look at the unique tax issues that need to be addressed in this evolving segment of the industry. With considerations such as identifying tax collection and reporting obligations in a variety of jurisdictions, understanding international tax implications is essential for streaming providers.

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

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 publication 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.

Production opportunities are not limited to the 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.

We look forward to helping you with your film and television production ambitions.

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Dominican Republic

Introduction

As the largest economy in the Caribbean, the Dominican Republic serves as a strategic location for the development of many local and international film and TV projects.

Its geographical location, diverse mix of natural environments, and rich cultural history and architecture make it a prime site for filming. In addition, the Dominican Republic offers comprehensive tax and legal policies that serve to promote both national and foreign investment in this industry.

Many iconic films have been shot and/or produced in the Dominican Republic, such as Pirates of the Caribbean: Curse of the Black Pearl, The Godfather II, Jurassic Park, Apocalypse Now, Miami Vice, The Good Shepherd, Fast and Furious, The Lost City, as well as some TV projects, such as the reality series, Survivor.

In 2010, the Dominican Republic passed Law 108-10, a new film law, creating the Dominican Film Authority (DGCINE, for its acronym in Spanish) and setting out broad tax incentives concerning the production of media in the Dominican Republic as well as many tax exemptions and credits for the building of cinemas and the establishment of production companies in Dominican territory.

Additionally, Dominican film law provides for simple administrative procedures, eliminating unnecessary bureaucratic roadblocks, and facilitating the operations related to the production of audio-visual projects. These policies reflect the Dominican Republic's respect for the film industry and its eagerness to promote the seventh art, thus becoming the top destination in the Caribbean for these purposes.

Key Tax Facts

Corporate income tax (CIT) rate	27%
Highest personal income tax rate	25%
Value Added Tax ("VAT")	18%
Normal non-treaty withholding tax rates: Dividends	10%
Interest	10%
Royalties	27%
Tax year-end: Companies	There are four available tax year-ends: 31 March, 30 June, 30 September 30, and 31 December (most common).

Film Financing

Financing Structures

The production of a film and/or TV project in the Dominican Republic is commonly implemented through a joint-venture (JV) business and may be carried out through multiple corporate vehicles, such as locally incorporated companies (which may exist as independent entities or subsidiaries of existing local or foreign companies) or branches of an existing foreign company. In general, there are no restrictions regarding the type of structure to be implemented by the investor at the moment of undertaking the production of a project.

For these purposes, the JV may be made up entirely of foreign companies and physical persons.

Dominican Companies

Dominican law recognizes a variety of corporate structures or business forms that adjust to the requirements of its partners or shareholders. Generally, investors choose between a “Sociedad Anónima (S.A.)” and a “Sociedad de Responsabilidad Limitada (S.R.L.)”, which are the equivalents to a corporation and a limited liability company, respectively.

In both cases, the companies require at least two (2) shareholders to become formally incorporated and must be represented by a physical person acting as Administrator or any other similar term (Chief Executive, Executive Vice President, Executive Manager, etc.).

Pursuant to Dominican company law, shareholders are only responsible up to the amount of their participation and contributions to the company’s capital; their own personal assets are out of reach from any potential creditor of the company. Both corporate vehicles offer the same range of possibilities for doing business and operating and the same level of personal asset protection.

Branch of a Foreign Entity

Any foreign company can set up a branch in the Dominican Republic, by registering it at the corresponding Commercial Registry (normally managed by the local Chamber of Commerce and Production of the city where the production is to be carried out) and obtaining a Tax ID from the Dominican Tax Authority (DGII, for its acronym in Spanish). Additional approvals may be required in certain regulated sectors.

Local branches of foreign companies receive the same tax treatment as Dominican companies and are subject to the same local laws and regulations in matters related to labor rights. For tax purposes, they must keep separate accounts from their head office to facilitate the determination of their taxable income by the DGII.

Tax and Financial Incentives

Fiscal Incentives Summary

Under Law 108-10, the Dominican government recognizes the film industry as an expression of our culture and as a sector that helps promote tourism in the Dominican Republic. Consequently, and as part of an effort to foster the industry, Law 108-10 sets forth multiple tax incentives related to the production of film and TV media, briefly detailed below:

- **Fiscal incentives for investment in the national film industry:** Companies that invest in Dominican feature film projects, previously approved by the DGCINE, are entitled to deduct 100% of the real value invested or donated for the purpose of calculating income tax charge for the tax period in which the investment is made. The amount of this investment cannot exceed 25% of the total income tax payable by the investor for the current fiscal year.

- **Transferable tax credit:** Individuals or legal entities that produce Dominican films, or foreign films in the Dominican Republic, may benefit from a 25% transferable tax credit on every expense made in the Dominican Republic. The credit may be used to compensate against income tax or may be transferred to other individuals or legal entities for the same purposes.
- **Tax exemptions on the provision of technical services:** Income earned by individuals or legal entities domiciled in the Dominican Republic for providing technical services for all films shot in Dominican territory are exempt from income tax for a period of 15 years from the effective date of the law.
- **Tax exemptions on the production of foreign films:** Foreign films produced in the Dominican Republic are deemed exempt from VAT, income tax, and any other tax, whether municipal or of other nature, in relation to filming, filming equipment, and general film production.

  Please note that, in order to benefit from the above referenced VAT exemption, the local company must be (i) registered as a "Fiscal Agent" before the DGCINE, upon completion of its corporate registration; or (ii) registered under DGCINE's Dominican Film Information and Registry System (SIRCD, for its Spanish acronym). Nevertheless, aside from the VAT exemption granted, such entity´s reporting burden/requirements would be those generally applicable to any taxpayer.

- **Incentive for the establishment of film studios in the country**: Individuals or legal entities who establish film studios in the country may enjoy an exemption of 100% from the payment of income tax from the operation of such studios for a period of 15 years from the effective date of the law.
- **Temporary importation of equipment and goods:** Equipment and consumables, or other items necessary for filming, can be imported temporarily into the country for up to a term of six months, provided that all goods imported in this way are re-exported at the end of such term.
- **Exemptions on the export or return of Dominican and foreign films:** The media materials and copies of Dominican and foreign films that are exported or returned to the country will pay no taxes, levies, or duties.
- **Reduced withholding tax rate on payments:** Payments performed in favor of foreign service providers, belonging to the film industry, are subject to a reduced withholding rate of 1.5%, which is calculated from the total value of the invoice, pursuant to one of the latest rulings issued by the DGII, interpreting Articles 276 and 309 of the Dominican Tax Code, and granting such treatment, provided that certain conditions are met.

Other Financing Considerations

FONPROCINE

In connection with financing, Law 108-10 offers an alternative source in the form of the Fund for Film Promotion (FONPROCINE, for its acronym in Spanish). This public fund is intended for, among other purposes, financing and contributing to the production, promotion, and publication of Dominican cinematographic works. FONPROCINE is run by the CIPAC, which handles all the decisions regarding the fund's use.

Currently, incentives from FONPROCINE cannot exceed 70% of the Dominican budget in the production. The incentives are granted every year to a select group of participants chosen by CIPAC, in the following categories:

- Script writing
- Project development
- Short film production

- Production of documentary feature films
- Production of fiction and animation feature films.

However, the following productions are ineligible to participate:

- Films produced for television and soap operas
- Cinematographic works financed entirely by public institutions
- Films that are deemed to contain advertising and political propaganda
- Films that violate or don't follow the Dominican legal system
- Films constituting a crime, according to a court ruling.

Furthermore, it should be noted that any national cinematographic producer that receives benefits/incentives from FONPROCINE must provide a copy of the original media to Cinemateca Dominicana.

As such, the producer must also authorize that, once a term of 18 months has passed since the first public exhibition of the film in national cinemas, the film can be exhibited to the public by DGCINE. Along with this, the producer grants authorization to project and show the film in festivals of a national or international character.

Corporate Taxation

Corporate Income Tax

Dominican companies are taxed at a rate of 27% of taxable income (generally, gross income less costs and expenses). An alternative minimum tax – known as asset tax – also applies, at a rate of 1%, for certain tangible and intangible assets, net of depreciation/amortization.

A capital gains tax (CGT) applies on the sale of certain capital assets, such as land, shares, and intangibles. In general terms, the CGT rate is 27% and is applied to the sales proceeds less the cost basis in the asset, adjusted for inflation. Capital gains may be offset against both capital and operating losses; however, capital losses may only offset capital gains. Unused capital losses may be carried forward.

Payments made abroad are generally subject to a 27% withholding tax (WHT). Interest payments to non-resident entities, and both resident and non-resident individuals, are generally subject to a 10% WHT. Dividends are generally subject to a 10% WHT over the gross amount paid.

Recognition of Income

Film Production Company – Production Fee Income

The profit on a production generated by a company that is a resident of the Dominican Republic, and non-resident companies carrying out business through a permanent establishment in the country, is taxed at the CIT rate of 27%. Taxable income is generally calculated on an accrual basis.

Film Production Company – Sale of Distribution Rights

If a Dominican resident company (or permanent establishment) sells distribution rights of a film or television program to another company, the payments it receives are to be treated as royalty income, subject to the general CIT described above.

Net Operating Losses

Net operating losses may be carried forward up to five years, with a maximum of 20% eligible for deduction each year. Additional limits are imposed on these losses in their fourth and fifth years of deduction. No carryback of losses is allowed.

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. In general, for an expense to be deductible it must, among other requirements:

- Be necessary to obtain, maintain, and conserve taxable income in the Dominican Republic;
- Be related to the activities of the entity;
- Be of a reasonable amount;
- Have adequate supporting documentation, in conformance with the DGII's format requirements; and
- Be reported in the corresponding tax forms, if applicable.

Depreciation

Depreciation is calculated on a percentage basis, for tax purposes. Assets are classified in three categories, with different annual depreciation rates:

- Category 1: Buildings and structural components – 5%
- Category 2: Light vehicles, office equipment and furniture, computers, information technology systems, and data processing equipment – 25%
- Category 3: All other depreciable assets – 15%
- Land is not depreciable.

Amortization

Intangible assets (such as patents, copyrights, and other similar rights) are amortized on a straight-line basis, over their useful life. Intangibles without a clearly defined useful life are not eligible for amortization.

Indirect Taxation

Value Added Tax (VAT)

The standard VAT rate is 18%. A reduced rate of 16% applies to the supply of certain goods and services.

Although the film production is liable to VAT, any company producing media under Law 108-10 may benefit from a VAT exemption on the transfer of all goods, services, and rentals in direct connection with the preproduction, production, and postproduction of a film or TV project, subject to previous approval from DGCINE.

Imports of Goods and Customs Duties

In general, goods imported into the Dominican Republic may be subject to VAT and customs duties as provided by law. The VAT may be refundable or compensable, but customs duties are not.

Nevertheless, a company may, temporarily, import the equipment and/or consumable goods necessary for filming, free of any VAT or customs duties, subject to previous approval from DGCINE and to a condition of returning the equipment and goods back to their country of origin within six months of their import.

Personal Taxation

Resident

Residents of the Dominican Republic, regardless of whether they are Dominican citizens or foreign residents, are subject to personal income tax. This personal income tax covers all types of independent professionals; private and public employees; and generally, any person generating income from a commercial, industrial, mining, or farming activity, among others.

Personal income tax rates and amounts are determined based on a progressive scale provided by law and regularly updated by the Dominican tax authority (DGII).

As with companies, physical persons are also subject to a 27% CGT on the sale of certain capital assets, such as land, shares, and intangibles.

Residence and Work Permits

If a person is not a resident of the Dominican Republic, in order to work legally, the person needs to procure a Business Visa for Labor Purposes, which is valid for one year and is renewable. Failure to obtain proper travel and work permits for the members of a production could result in the closing of the operations by the Ministry of Labor and/or the National Migration Directorate.

Employees

Income Tax Implications and Other Deductions

In the Dominican Republic, employers have an obligation to act as withholding agents with respect to their employees. The amount to be withheld is subject to a progressive scale provided by law and adjusted by the Dominican tax authorities (DGII), and it is reported through a unified system that combines labor and social security registries.

In addition, through their employers, employees may be subject to deductions in the form of contributions to their employees' respective pension and social security funds.

Furthermore, an individual will be considered a resident, for fiscal purposes, of the Dominican Republic, after remaining in the Dominican territory for a period exceeding one hundred eighty-two (182) days, consecutive or not, during a fiscal year; after which time the individual will be treated equally as a Dominican national for tax purposes.

Foreigners who become residents of the Dominican Republic are subject to the same taxes as natural persons residing in the country (i.e., income tax, contributions to social security, and fringe benefits tax).

Digital Media

Domestic tax laws and commercial regulation have not been modified to reflect the taxation and legal management of electronic services and digital media. Such services are therefore subject to the general rules.

Nevertheless, in March 2022, the Dominican executive branch released, for public consultation, a draft regulation that proposes a framework for applying a VAT at a rate of 18% regarding digital services provided from abroad. The draft regulation also proposes a registration and payment mechanism for non-resident digital services providers to follow to comply with their VAT obligations.

The draft regulation would establish an illustrative, non-exclusive list of services that would be within the scope of VAT and would include streaming services. As a result, non-resident digital services providers would have to register before the National Taxpayers' Registry (RNC, per its Spanish acronym), under a specialized VAT registry. This VAT registration would not trigger or constitute a permanent establishment in the Dominican Republic.

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