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.

Ireland

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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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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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Ireland

Introduction

Ireland has produced many critically acclaimed films in recent years. Notable successes have included *My Left Foot*, *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:

- *Game of Thrones* (2017, 2018) the fantasy-based television program created for HBO has been nominated for and won several international awards, including a Golden Globe award for Best Supporting Actor, several Primetime Emmy Awards, and several Screen Actors Guild Awards
- *Calvary* (2013) which starred Irish actor Brendan Gleeson, has won the Best Lead Actor (Film) award, the Best Film award, and the Best Screenplay (Film) award at the 2014 Irish Film and Television Awards and has been nominated in four categories for the British Independent Film Awards, including "Best Film."
- *The Guard* (2011) which also starred Brendan Gleeson, was nominated for a Golden Globe award for "Best Performance by an Actor in a Motion Picture – Comedy or Musical."
- *The Secret of Kells* (2009) was nominated for an Oscar for "Best Animated Feature Film of the Year" and won an Audience Award at the 2009 Edinburgh International Film Festival.
- *Once* (2007) which starred Irish actor and singer-songwriter Glen Hansard, won an Oscar for best original song written for a motion picture and a number of other awards including the Audience Award at the 2007 Sundance Film Festival for "World Cinema – Dramatic."
- *The Wind that Shakes the Barley* (2006won 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 *Calvary* (2013), *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 *Love/Hate*, *Raw*, *The Tudors*, *Vikings,* and *The Clinic* 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 Screen Ireland, a development agency. As a result, Ireland is a very attractive location for film investment and continues to be used by overseas producers.

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The key attractions of Ireland include:

- Experienced crews and facilities
- Breathtaking scenery including rolling Irish landscapes, historic castles, dramatic coastline, cityscapes, and period properties.
- Cooperative 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%
Passive income	25%[1]
Capital gains	33%
Highest personal income tax rate	From 1 January 2021: 40%
Universal Social Charge	From 1 January 2021: 0.5%, 2%, 4.5%, 8%, 11%[2]
VAT Rates	0%, 9%, 13.5%, 21/23%[3]
Annual VAT registration thresholds: Goods	EUR75,000[4]
Services	EUR37,500
Normal non-treaty withholding tax rates: Dividends	0%, 25%[5]
Interest	0%, 20%
Royalties	0%, 20%[6]
Tax year-end: Individuals	December 31

[1] 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.)
[2] From 1 January 2021, the exemption threshold is €13,000. The USC bands and rates applicable to employees will be 0.5% on all income up to €12,012, 2% on the next €8,675, 4.5% on the next €49,357, and 8% on income above €70,044. The USC rates for self-employed individuals are the same as above except that an 11% rate applies to income in excess of €100,000.
[3] The standard rate of VAT is 23%. The standard rate of VAT is temporarily reduced from 23% to 21% for a six-month period from September 1, 2020 to February 28, 2021. From November 1, 2020 to December 31, 2021, a reduced VAT rate of 9% applies for certain goods and services (mainly related to tourism) after which time it is expected that the VAT rate applicable to these items will revert to 13.5%.
[4] This threshold also applies where goods and services are supplied and at least 90% of the supplier's turnover derives from the supply of goods.
[5] Dividend Withholding Tax (DWT) applies at a rate of 25%. However, there exist a number of exemptions which may reduce the DWT rate to 0%.
[6] The 20%rate applies to patent royalties and annual payments only. In all other cases, no withholding tax should apply.

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Film Financing

Financing Structures

Various mechanisms for film financing are feasible. These would 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 again involving companies and/or individuals. The choice of structure in any particular situation normally depends on the particular circumstances of that case, although 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 among the parties. The existence of a joint venture agreement does not necessarily mean that a partnership or profit-sharing arrangement exists. Depending on the facts and circumstances, the joint venture itself is not normally taxable. Rather, each party to the joint venture must consider its respective role in the venture to assess its particular tax position.

Non-Irish resident investors in a joint venture should not normally be taxable in Ireland unless their involvement in the joint venture is such as to represent trading in Ireland through a branch or agency or otherwise gives rise to the receipt of Irish-sourced income. Where the joint venture agreement involves a foreign investor involved in a co-production in Ireland, the foreign investor may be regarded as carrying on a trade via an Irish branch and, thus, may be liable to Irish corporation tax. However, where the foreign investor's role is merely to provide finance in return for film exploitation rights in overseas territories, the foreign investor should not be liable to Irish tax on its income.

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

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on ordinary shares. Any tax withheld should be dealt with according to the dividend article of the appropriate double tax treaty.

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 revenue 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% 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% 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. BES was replaced by the Employment and Investment Initiative (EII) and by the Start-up Refunds for Entrepreneurs (SURE) scheme (formerly known as the Seed Capital Scheme). Film production falls within the qualifying trades to avail of these reliefs. 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 Relief was restructured into a producer-based tax credit in 2015.

Section 481, Taxes Consolidation Act (TCA 1997)

General Overview

The Irish Revenue, with the consent of the Minister for Finance and for Culture, Heritage and the Gaeltacht (the “Minister”), provides for corporation tax relief for the production of films by film production companies. The relief is available provided certain conditions, as laid out in statutes and regulations, and as specified in a certificate issued by the Minister, are met.

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Previously, Section 481, TCA 1997 provided for tax relief for investment in films for both individuals and companies where certain conditions were met. Significant changes were made to how Section 481 film relief operates from 10 January 2015. These changes result in the previous investor-based relief model being replaced by a 32%-37% tax credit for production companies (i.e., a producer-led tax credit model).

Film Relief (available from 10 January 2015)

Under the producer-based credit scheme, the relief is available as a tax credit of 32%-37% of qualifying expenditure, as detailed below, to the producer company (as defined in Appendix A) in question. The revised relief will operate by allowing the credit to first reduce the balance of corporation tax payable by the producer company, and any excess tax credit will then be repaid as a payable credit to the producer company. From March 27, 2019, the administration of the film relief credit has moved to a self-assessment basis.

Film corporation tax credit

The “film corporation tax credit” in relation to a “qualifying film” (as defined in Appendix A), means an amount equal to 32% of the lower of:

a) The eligible expenditure amount,

b) 80% of the total cost of production of the film, or

c) €70,000,000.

Relief is given at an elevated percentage (up to 37%, the “Regional Film Development Uplift”) in respect of films primarily produced in an “assisted region” which meet certain requirements in relation to training in that locale.[7]

The Uplift operates as an increased rate of film corporation tax credit as follows:

- For claims made on or before December 31, 2021 the rate of the credit is 37%
- For claims made from January 1 to December 31, 2022 the rate is 35%
- For claims made from January 1 to December 31, 2023 the rate is 34%
- For claims made after this date the rate reverts to 32%.

Eligible expenditure is the amount expended on the production of a qualifying film, by the “qualifying company” on:

1. The employment of eligible individuals (i.e., individuals who exercise their employment in Ireland in the production of the qualifying film)

2. The provision of certain goods, services and facilities which are provided by a person carrying on business in Ireland and used and consumed in Ireland as part of the production of the qualifying film.

A list of ineligible expenditure is included in Part 7 of the 2019 Film Regulations.[8] The Regulations also require records to be kept of the Eligible Expenditure and for a notification to be sent to the Revenue Commissioners within seven days of the eligible expenditure first being incurred.

[7] An ‘assisted region’ is an area specified in paragraph (1) of the Annex to the Commission Decision C(2014)3153.

[8] 2019 Film Regulations: http://www.irishstatutebook.ie/eli/2019/si/119/made/en/print

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In order for the relief to be available, the eligible expenditure must not be less than €125,000. Furthermore, the total cost of the film must not be less than €250,000.

Qualifying Company

A qualifying company is a company which exists solely for the purposes of the production of only one film. The producer company (i.e., the company applying for film relief) must hold all of the share capital of the qualifying company. The legislation is constructed so that the producer company claiming relief under Section 481 must incorporate a new qualifying company for each production of a film it undertakes. In order for the company incorporated by the producer company to be a qualifying company it must also be:

a) Incorporated and tax-resident in the State, or carrying on a trade in the State through a branch or agency

b) It must not contain in its name the words “Ireland,” “Irish,” “Eireann,” “Eire,” or “National.”

Certification Process

In order to claim the relief, a producer company must submit a successful application for the certification of the film to the Minister Once a production company has received the cultural certificate and complies with other conditions set out in Section 481, it may claim the film corporation tax credit by amending its corporation tax return.

The first step is for the producer company to submit an application in relation to a film project for a certificate stating that the film is qualifying film for the purpose of the credit to the Minister at least 21 working days prior to the commencement of the main body of the Irish production. A producer company may specify in the application if the Regional Film Development Uplift should apply to the film.

The process of application for a certificate is set out by the Department of Culture, Heritage and the Gaeltacht (DCHG) in their guidance note.[9] An application for a cultural certificate must be made directly to the Minister using the form set out by the DCHG and accompanied by such information and supporting documentation as prescribed in the Regulations and required in the application form.

A cultural certificate is a statement that a film is a qualifying film for the purposes of the credit and may entitle the producer company to make a claim for the credit. A cultural certificate issued by the Minister will place conditions on the producer company; key personnel on the project; the nature of the acknowledgement required in the opening or closing credits of the film; and certain requirements in relation to the skills development of personnel on the project.

A cultural certificate is issued on the basis of the information supplied during the application process. Any material change in the information supplied that may arise as the project progresses must be notified to the Minister. If the information on which the certificate is based is incorrect, misleading, or incomplete, or the Minister is not notified of material changes to the production, the certificate may not be valid for the purposes of making a claim for the film corporation tax credit.

Notification Process

The producer company must notify the Minister in writing of the completion of the qualifying film and provide copies of the film within six months of its completion.

It must also submit a compliance report declaring that the conditions of the relief have been adhered to.

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[9] The DCHG guidance note is available here: https://www.gov.ie/en/service/444ca-how-to-qualify-for-the-film-corporation-tax-grant/.

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Claiming the Relief
Claims under Section 481 are made on a self-assessment basis. The issue of a certificate by Minister entitles a producer company to claim a credit against its corporation tax liability in the qualifying period. The producer company is required to have all records necessary to support their claim for relief available for consideration by Revenue at the point of making the claim.

The qualifying period referred to is the accounting period in respect of which the corporation tax filing deadline immediately precedes the date of application for a film certificate by a producer company. Irish corporation tax returns are generally due to be filed no later than the 23rd day of the ninth month following the accounting period end. For example, if an application for a film certificate is made on 30 June 2021 by a producer company that has a 31 December year end, the return filing date that precedes this application date is 23 September 2020, and this relates to the accounting period ending on 31 December 2019. Thus, the tax credit would be available for the period ending on 31 December 2019 in this example.

The claim can be made either:

- Within six months of completion,[10] in full for 100% of the credit due based on actual expenditure; or
- During the course of the production for 90% of the budgeted credit due subject to certain conditions, with the balance claimed within six months of completion. In order to obtain the 90% advance instalment, some documentation must be provided to the tax authorities, as outlined in Appendix C.

Where the relief available per the certificate is in excess of the company's tax liability net of tax paid in respect of that liability, a cash refund will be available of this excess, known as the "specified amount."

EU State Aid
The film corporation tax credit is considered to be "State Aid" under EU guidelines. Under EU rules, the accumulation of State Aid cannot exceed 50% of the production budget of a film. Any direct aid from an EU state or input from a State-funded agency, such as Screen Ireland, is also considered to be State Aid. This limit may not apply to films classified as difficult (a high-quality film facing limited prospects of commercial finance and/or achieving wide commercial distribution) or low budget (budget less than €3m).

Other Financial Incentives

Screen Ireland
Screen Ireland (formerly known as the Irish Film Board), under the Department of Culture, Heritage, and the Gaeltacht (DCHG), was set up to aid the development of the Irish film industry. The primary function of Screen Ireland 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.

Screen Ireland's total Capital grant aid allocation for 2019, which is invested in film, television, and animation projects, amounts to approximately €16.2 million. DCHG also allocated €3.8 million to Screen Ireland's administration and training budget.

As mentioned above, Screen Ireland provides two forms of financial assistance to independent Irish filmmakers:

- Production Loans

[10] "Completion" is defined in the 2019 Regulations as the point at which a) any commissioning party confirms delivery and acceptance of the qualifying film in accordance with written agreements, or b) the date upon which the film has been screened or broadcast in a public viewing.

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- Development Loans

Production Loans[11]

- For a fictional Irish production, the maximum funding available is outlined below:
  - For projects with budgets of more than €100,000 and not more than €1,500,000, Screen Ireland can provide up to 65% of the budget, with a maximum of €650,000.
  - For projects with budgets of more than €1,500,000 and not more than €2,000,000, Screen Ireland can provide up to 65% of the budget, with a maximum of €700,000.
  - For projects with budgets of more than €2,000,000 and not more than €3,000,000, Screen Ireland can provide up to 65% of the budget, with a maximum of €750,000.
  - For projects with budgets of more than €3,000,000 and not more than €5,000,000, Screen Ireland can provide up to 65% of the budget, with a maximum of €800,000.
  - For projects with budgets of more than €5,000,000, Screen Ireland can provide up to €900,000.
- For other schemes, the maximum funding is outlined below:
  - Fiction: Creative Co-Production, up to €350,000 per project
  - TV Drama Production, up to €600,000
  - Animation TV Production, up to €350,000
  - Documentary Production, up to 65% of the budget, likely not to exceed €150,000
  - Completion, up to €50,000 for a live action or animated feature length film, and up to €15,000 for a feature length documentary

Both the fictional Irish productions and documentary productions are eligible for enhanced production funding for female talent.[12]

- European Commission regulations allow Screen Ireland to provide 100% production funding to film projects capable of being realized and delivered for a total production cost of not more than €100,000.
- It is a condition of Screen Ireland Funding that the production budget must contain adequate line items for the making of marketing materials unless the budget is less than €100,000.

Development Loans[13]

- Development Loans up to €100,000, for any one project are available.
- It is important to note that development funding of above €50,000 to any one project must be matched by funding from other sources. It is also important to note that Screen Ireland development loans must be included as a production budget line item and repayment made in full by the first day of principal photography.

[11] https://www.screenireland.ie/images/uploads/general/Production_Funding_Guidelines_2019_UPDATED_29.07.2019.doc

[12] Further detail is available here: https://www.screenireland.ie/images/uploads/general/Enhanced_Production_Funding_Female_Talent_UPDATED_29.07.2019.doc

[13] https://www.screenireland.ie/funding#development

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International Co-Production[14]

The Irish Government has entered into official co-production arrangements with Australia, New Zealand, Luxembourg, 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 program 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 programs which are available in these co-production countries.

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 July 6, 2020, there were 39 member states of Eurimages.[15] Irish films that have been in receipt of Eurimages funding are *Wolf, I Never Cry (2019), The Last King, Wait for Me (2014), The Lobster (2013), The Invisible Boy (2013), Kongens Nei (2013), A Thousand Times Goodnight (2012), Moscow Never Sleeps (2012), Le Temps de l'Aventure (2012), Menu Degustacio (2012), and Nico A Family Affair (2011)*.[16]

Corporate Taxation

General

Ireland's current rate of corporation tax for trading income is 12.5%. This rate is EU approved. Income from non-trading activities (i.e. passive income) is subject to a corporate tax rate of 25%. In general, capital gains are chargeable to tax at 33%.

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% tax rate should be available to both Irish resident and non-resident companies where the company or a branch of the foreign company is viewed as trading in Ireland.

Recognition of Income

Irish-resident companies (i.e. Irish incorporated companies[17] and foreign incorporated companies that are managed and controlled in Ireland) 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.

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[14] https://www.screenireland.ie/filming/international-co-production
[15] http://www.aic.sk/aic/en/eurimages/
[16] https://www.screenireland.ie/filming/european-funding
[17] Any companies incorporated in Ireland after January 1, 2015 will automatically be considered Irish tax resident except where the company is a resident of another jurisdiction under a tax treaty.

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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., expenses are matched with revenue). Any profit arising is recognized on a similar basis.

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 accrual basis and tax depreciation allowances equal to 12.5% of the cost of producing the master negative are allowed on a straight-line basis over the eight years of the film’s life.

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% 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, in order for it to 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% 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 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.

In certain circumstances, an Irish-resident company may elect for any dividends received from non-Irish-resident subsidiaries to be taxable at 12.5%, rather than the standard rate of 25% for passive income, provided certain conditions are met. The conditions are as follows:

- The dividend must be paid out of the trading profits of the subsidiary.
- Throughout the period out of the profits of which the dividend is paid:
  - The company paying the dividend must be a resident for the purposes of tax in an EU country, a country with which Ireland has a tax treaty (DTA), or a country that has ratified the Convention on Mutual Administrative Assistance in Tax Matters, or
  - The principal class of the shares of the company paying the dividend (or its 75% parent) must have been substantially and regularly traded on a recognized stock exchange in Ireland, the EU, a DTA country, or a country that has ratified the Convention on Mutual Administrative Assistance in Tax Matters.

Unilateral credit relief and pooling relief is also available for foreign branch profits.

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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.

A production company should take care to minimize foreign taxes suffered. To the extent that foreign taxes exceed 12.5%, they may constitute a real cost to the company. However, "dividend pooling" provisions help reduce the impact of this real cost where the foreign tax is suffered on dividend income. 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% and those taxable at 12.5%.

Film Distribution Companies

The same rules in relation to relief for foreign taxes apply to film distribution companies as apply to film production companies.

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 fulfil 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 to 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 throughout.

Qualifying R&D activities can fall into any one of three categories: basic research, applied research, or experimental development. Currently, a tax credit of 25% 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 or the U.K.[18]

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 2020 must be submitted by 31 December 2021).

- 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% of such remaining excess may be claimed following the relevant CT filing date for the period in which the R&D expenditure was incurred.

[18] The EEA includes all EU member states plus a number of EFTA Member states. EFTA states include Iceland, Norway, Switzerland, and Liechtenstein.

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- 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% 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 (pay-related social insurance), and the universal social charge payable); 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.

Furthermore, expenditure which has already been met with grant assistance cannot qualify for the R&D Tax Credit.

Cumulatively, the credit of 25% together with the deduction for qualifying R&D expenditure in the calculation of trading profits (12.5%) can result in an effective tax relief of up to 37.5% for companies engaged in qualifying R&D activities.

New measures to enhance the R&D tax credit for small and microcompanies were introduced in the Finance Act 2019. These measures, which include an increase of the R&D credit to 30% for these companies, are subject to a commencement order and therefore are not yet in effect.

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.

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From 10 January 2015 onwards, payments made to non-Irish-resident artistes (or representatives of that artiste) from outside the EU/EEA who have been engaged by a qualifying company to appear in a film or television production are subject to withholding tax at the standard rate of tax, (i.e., 20%). While there is no legislative definition of an "artiste," Irish Revenue have issued guidance that the definition does not extend to support staff such as directors, producers, cameramen, etc., and as such, it will only include actors appearing in qualifying films or productions.[19]

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. 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. It should be noted that foreign employment income attributable to duties performed in Ireland is Irish source income.

Irish-resident individuals, whether domiciled in Ireland or not, can generally avail of Ireland's broad range of double tax treaties.

Artist's Exemption

From 1 January 2015, Irish-resident individuals who are not resident elsewhere should be able to avail of an exemption from Irish income tax on the first €50,000 of profits per annum 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 up to €50,000 but will be taxable in the normal way on profits in excess of €50,000 and any other earnings derived as a performer.

From 1 January 2015, artists that are resident or ordinarily resident in another EU Member State, an EEA State or the UK following Brexit will also be eligible for the relief where they have income within the Irish tax net. 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 Culture, Heritage, and the Gaeltacht.

[19] https://www.revenue.ie/en/companies-and-charities/reliefs-and-exemptions/film-relief/film-withholding-tax.aspx

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The 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 €80,000 and 20% of the adjusted income, (i.e., the income before the relief). Where the relief is restricted in a given tax year, it can be carried forward and offset against taxable income in future periods.

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

€13,000 per annum (€250 per week). The universal social charge (USC) is deducted from gross salary and wage payments (including notional pay). The rates applicable are outlined above. In addition, production companies have an obligation to pay employer social security contributions for its employees at the rate of 11.05% 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, among 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.

Indirect Taxation

Value Added Tax (VAT)

General

Irish VAT is chargeable on the supply of goods or services in Ireland 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[20] with regard to the supply of goods (€75,000) and services (€37,500) in Ireland, an obligation to register for Irish VAT and to charge Irish VAT at the applicable rate arises.

[20] With effect from May 1, 2008.

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Where the relevant thresholds have not been breached, an Irish established business making VAT-able supplies has the option to elect to register for Irish VAT. A “nil” VAT registration threshold applies for non-established businesses if they are supplying taxable goods/services in Ireland on which they are accountable for VAT. However, subject to certain conditions, the reverse charge procedure applies to many supplies by non-Irish established suppliers to Irish-established business recipients which, if applicable, avoids the requirement for the non-Irish-established supplier to be VAT registered if the supplier is only engaged in those supplies in Ireland.

In general, once a business is registered for VAT in Ireland, Irish VAT incurred on costs directly relating to that business’s VAT-able 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. VAT is not recoverable in respect of VAT exempt supplies (with limited exceptions) or private activities.

Supply of a Completed Film

The supply of cinematographic and video film in Ireland which records particular persons, objects or events which is supplied under an agreement to photograph those persons, objects, or events, is a supply of goods liable to Irish VAT at the reduced rate (currently 13.5%). The supply of video content through media other than cinematographic and video film is generally liable to VAT at the standard rate. In addition, where the producer/maker of the program grants only limited rights to the program (e.g. to broadcast the program for a specified period of time) this is not a supply of a goods and Irish VAT at the standard rate would ordinarily apply, subject to the VAT place of supply rules.

As previously noted, the standard rate is ordinarily 23%. At the time of writing, this rate has been temporarily reduced to 21% with effect from September 1, 2020 to February 28, 2021. For ease of reference, we refer to the 23% VAT rate below and this should be read as meaning the temporary 21% rate during the relevant six-month period.

In general, VAT is due in the VAT return corresponding to 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. If payment is received in advance of delivery of a completed film, VAT becomes due in the VAT return corresponding to the time of the prepayment.

Generally, Irish VAT returns are submitted on a bimonthly basis, with a VAT return due for submission to Revenue by the 23rd day of the month following the end of the bimonthly VAT period (e.g., the January/February VAT return would be due for submission by March 23). This deadline applies to Irish VAT returns submitted to the Irish Revenue electronically through the Revenue Online Service. Mandatory electronic filing of VAT returns and payment of VAT liabilities was introduced in phases and now applies to all VAT registrations. All VAT on sales (i.e., Output VAT) and deductible VAT incurred on purchases (i.e., Input VAT) arising and incurred within the relevant bimonthly VAT period should be recorded in the respective VAT return.

Where an Irish-established company delivers goods (e.g., cinematographic and video film as described above) from Ireland to a recipient established in another EU Member State (the recipient), Irish VAT should be chargeable at the zero-rate provided the recipient’s non-Irish VAT number is obtained by the Irish company by the time of supply and stated on the Irish company’s invoice, the film is physically dispatched from Ireland to the other EU Member State within three months of the supply, the supply is recorded on the Irish company’s statistical VAT VIES return (described further below) and evidence of the dispatch is retained by the Irish company. In this scenario, the recipient is deemed to be making an

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intracommunity 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 goods are supplied and dispatched from Ireland to a person registered for VAT in another EU Member State, the supplier is required to file quarterly VIES returns (often referred to as EC Sales Lists in other jurisdictions). Where the value of supplies of goods by an Irish-established business to VAT-registered persons in other EU Member States exceeds €50,000 in any of the previous four calendar quarters, the VIES return must be filed on a monthly basis. The Irish-established company will have to record the value of the zero-rated supplies of goods made per reporting period to each of its VAT-registered customers located within the EU.

In addition, where the value of goods supplied from Ireland to VAT-registered persons in other EU countries exceeds €635,000 annually, the Irish-established business will also be required to prepare a monthly dispatch INTRASTAT return. If an Irish-established business acquires goods into Ireland dispatched from other EU Member States, the value of which exceeds €500,000 annually, an obligation to file a monthly arrivals INTRASTAT return would arise. Details of supplies of goods dispatched from Ireland to VAT-registered customers located within the EU and the acquisition of goods into Ireland from the EU should also be recorded on the face of the bimonthly VAT return in Box E1 and E2 respectively. Similarly, details of supplies of services supplied from Ireland to VAT-registered customers in other EU Member States and the acquisition of services into Ireland from the EU should be recorded on the face of the bimonthly VAT return in Boxes ES1 and ES2 respectively.

The delivery of goods from Ireland to a customer in Northern Ireland should currently be treated in the same manner as an intra-EU supply, as described above. However, starting January 1, 2021, the delivery of goods from Ireland to a customer in Great Britain is a delivery to a non-EU country, as described further below.

Where an Irish-established business supplies and delivers goods 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 is a requirement to retain proof of dispatch of the goods and customs export declarations.

Invoicing

There is a requirement under Irish law to issue a valid VAT invoice for supplies of goods and services to other Irish VAT-registered businesses and to businesses registered for VAT in other EU Member States. There are certain requirements for an invoice to be a valid VAT invoice, and these are set out in Appendix D.

Pre-Sale of Distribution Rights

VAT is chargeable at the standard rate of 23% 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 (including from January 1, 2021 a purchaser in Northern Ireland or Great Britain), is not within the scope of Irish VAT. However, the business customer, on receipt of the distribution rights, would generally be required to self-account for any VAT arising in their Member State. VAT incurred by the Irish 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 business pays a royalty to another Irish-established business, VAT arises at the standard rate (23%).

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Where a business established in Ireland receives a right or service, in return for the payment of a royalty, from a business established outside of Ireland, VAT at the rate of 23% must be accounted for by the Irish business on the “reverse charge basis.” Where the Irish company is engaged in fully VAT-able 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 business supplies a right or service, in return for the payment of a royalty, to a business established in another EU Member State, or to any person outside the EU, no Irish VAT is chargeable. However, an EU business recipient of the service may be obliged to self-account for VAT in its own Member State under the reverse charge basis. Where an Irish-established business provides a service to a non-business person located within the EU, Irish VAT at the standard rate of 23% is generally chargeable by the supplier.

Where an Irish VAT-registered business supplies services to VAT- registered customers in other EU Member States on which the customer must self-account for VAT in their own Member State, the Irish business must provide details of these supplies in its VIES return on a quarterly or monthly basis. The Irish business must also record the value of taxable reverse charge services supplied to or received from VAT registered customers in other EU countries in Box ES1 and ES2 of the VAT return respectively.

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, currently, printed books and booklets are liable to VAT at 0%; sheet music, magazines, periodicals and certain e-books and e-periodicals are liable to VAT at 9%; while audio/visual CDs/DVDs are liable to VAT at 23%. 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 23%, with certain exceptions such as children’s clothing and footwear, which are generally liable to VAT at 0%. The rules with regard to the supply of goods to EU and non-EU recipients set out above in respect of supplies of films should also apply to the sale of goods and merchandise.

Promotional Goods or Services

Gifts of taxable goods (i.e., promotional goods) made in the course or in furtherance of business will give rise to an Irish VAT liability on the cost of the goods (at the rate of Irish VAT attaching to the goods in question) unless their cost to the donor (excluding VAT) is €20 or less or the goods are considered “industrial samples.”

Catering Services to Film Crew and Artists

In general, the supply of catering services is chargeable to VAT at 13.5% (temporarily reduced to 9%, effective from November 1, 2020 to December 31, 2021) 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 the 13.5% (or temporary 9%) rate would generally 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 €37,500. However, it should be noted that certain food and drink items (e.g., soft drinks) 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.

Import of Goods

Goods imported into Ireland from outside the European Union will be subject to VAT at the rate of VAT applicable to the domestic supply of the goods in question. In addition, depending on the nature of the goods, customs, and/or excise duty may also be payable on importation.

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Prior to January 1, 2021, import VAT was generally payable at the point of importation (unless Revenue agreement was obtained for import VAT deferral). The Irish company could generally recover the import VAT through its periodic VAT return although any customs/excise duty paid is not recoverable. With effect from January 1, 2021, Irish VAT registered businesses may, subject to certain conditions, choose to avail of postponed VAT accounting in respect of import VAT. Where the postponement procedure is adopted, the import VAT is not paid at import but is instead recorded as a reverse charge in the importer's VAT return. Therefore, imports are recorded in a VAT cash flow neutral manner where the importer has full VAT recovery entitlement. Prior approval from Revenue may be required in certain cases in order to qualify for postponed VAT accounting.

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.

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Appendix A – Definitions

Producer Company

A “producer company” refers to a company which:

- Is resident in the State, or is resident in an EEA State other than the State and carries on business in the State through a branch or agency;[21]
- Is engaged in producing films on a commercial basis for exhibition to the public in cinemas or by way of TV broadcasting. Private films or films made for some incidental purpose other than the profitable exploitation of the film are excluded;
- Is not a company, or a company connected to a company that is:
  - a) A broadcaster,
  - b) A company whose business consists wholly or mainly of transmitting films on the internet, or
  - c) A company connected to another company where the aggregate of the activities carried on by the company and every company to which it is connected consists wholly or mainly of transmitting films on the internet;
- Holds all of the shares in the qualifying company;
- Enters into a contract with a qualifying company in relation to the production of the qualifying film; and Provides an amount not less than the specified amount to the qualifying company[22];
- Carries on a trade of producing films on a commercial basis;
- The producer company must continue to carry out the trade of producing films for a period of 12 months after the date of completion;
- Has delivered to the Collector General on or before the relevant return deadline, a return, in respect of the accounting period immediately preceding the date the application was made; and
- Is not “undertaking in difficulty”, in accordance with EU State aid guidelines, the company cannot be an.

Furthermore, a company may cease to be regarded as a producer company for the purposes of a qualifying film if it does not continue to meet certain requirements:

- Providing the required records when requested by Revenue;
- Failing to meet the conditions of the Minister’s certificate;
- Failing to notify the Minister of completion, in writing, of the date of completion of the film and providing copies of the film to the Minister within six months of that completion date;
- Making a claim without having a compliance report prepared to submit should it be requested by Revenue;

21 Following Brexit, film production companies resident in the UK and carrying on a business through a branch or agency in Ireland will no longer qualify for the film tax credit.

22 The specified amount arises where the producer company has made a claim for the film corporation tax credit, and the amount of the credit exceeds the corporation tax of the qualifying period, as reduced by the corporation tax paid by the company before the deduction of the film corporation tax credit. This excess shall be paid to the producer company by the Revenue Commissioners.

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- Ceasing the trade of producing films on a commercial basis on a date earlier than 12 months after completion of the film;
- If the producer company disposes of shares in the qualifying company on a date earlier than 12 months following completion of the film; or
- Failing to enter into a contract with the qualifying company in relation to the production of the qualifying film or providing an amount less than the specified amount to the qualifying company for the production of the film.

Where a company ceases to be regarded as a producer company, any claim for credit relief will be invalidated and result in the withdrawal of any credit already claimed in relation to that qualifying film.

A Qualifying Film

A qualifying film means a film in respect of which the Minister for Culture, Heritage, and the Gaeltacht has issued a certificate which has not been revoked. The film must be one that 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 (this does not include online streaming), but does not include a film made for exhibition as an advertising program or as a commercial. The film must be one which is included within the categories of films eligible for certification which are outlined below (see Part 3 of the 2019 Regulations for further detail).

(i) Feature films

(ii) Short films of feature quality

(iii) Television drama (feature length or series)

(iv) Animations (whether computer generated or otherwise, but excluding computer games)

(v) Certain “creative” documentaries, where specific conditions are met.

The following types of film will not be eligible for certification, and include:

- Films comprising or substantially based on:
  - Films made for exhibition as an advertisement or advertising program,
  - Reality television whether scripted or unscripted,
  - Production, other than a documentary, all or substantially all of which consists of stock footage,
  - Current affairs programming which may feature a variety of formats, including live or pre-recorded news reporting, interviews, debates, round-table discussions, documentary segments, open forums and panel discussions
  - Talk show formats that may involve one or more hosts and are largely unscripted
  - Review, magazine style, or lifestyle programs,
  - Localized versions of licensed international formats
  - Films comprising or substantially based on public or special performances staged for filming or otherwise, sporting events, games or competitions or contests, demonstration programs for tasks, hobbies or projects, live programming.

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Appendix B – Specific requirements for authorization of a film

Under the Film Regulations 2019, the Minister cannot grant authorization to a film unless:

- The film is eligible for certification as outlined in Appendix A
- The film will either –
  - Act as an effective stimulus to film making in the State through, among other things, the provision of quality employment and training and skills development opportunities (referred to as the "Industry development test"), or
  - Be of importance to the promotion, development, and enhancement of the national culture including the Irish language, where applicable (referred to as the "Culture test"), or
  - Will satisfy both of the above.

Where the film is seeking to satisfy the culture test, the decision on whether to authorize a film project will require a film to meet three of the following criteria, and the producer should indicate their compliance with these criteria in the application.[23]

- The film is an effective stimulus to filmmaking in Ireland and is of importance to the promotion, development, and enhancement of creativity and the national culture.
- The screenplay (or, in the case of a documentary film, the textual basis) from which the film is derived is mainly set in Ireland or elsewhere in the EEA.
- At least one of the principal characters (or documentary subjects) is connected with Irish or European culture.
- The storyline or underlying material of the film is a part of, or derived from, Irish or European culture and/or heritage; or, in the case of an animation film, the storyline clearly connects with the sensibilities of children in Ireland or elsewhere in the EEA.
- The screenplay (or textual basis) from which the film is derived is an adaptation of an original literary work.
- The storyline or underlying material of the film concerns art and/or an artist/artists.
- The storyline or underlying material of the film concerns historical figures or events.
- The storyline or underlying material of the film addresses actual, cultural, social, or political issues relevant to the people of Ireland or elsewhere in the EEA; or, in the case of an animation film, addresses educational or social issues relevant to children in Ireland or elsewhere in the EEA.

Appendix C

The credit may be paid to the producer company in two installments as follows:

- During the course of the production for 90% of the budgeted credit due subject to certain conditions,
- The balance can then be claimed within six months of completion. In order to obtain the 90% advance instalment, some documentation must be provided to the tax authorities, as outlined in Appendix C.

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[23] The Application Form for Certificate under Section 481 Taxes Consolidation 1997 as Amended is available here: https://www.gov.ie/en/service/444ca-how-to-qualify-for-the-film-corporation-tax-grant/.

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In order to claim the first installment of 90% the producer company is conditional upon evidence being available:

a) By way of a certificate, to demonstrate that funding agreements have been executed and the attaching conditions have been satisfied

b) That shows an amount of not less than 68% of the amount on which the film corporation tax credit is based has been lodged with a financial institution by a qualifying company;

c) Of a broken-down budget showing eligible expenditure and where the eligible expenditure is greater than 50% of the total cost of production, the total cost of production; and

d) Of signed production, financing, distribution, or sale of the film agreements.

Appendix D

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 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 intracommunity 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,

(xi) The tax payable in respect of the supply except where the Margin Scheme, Auctioneers Scheme, or the Scheme for Means of Transport applies

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(xii) 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 representative

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