Film Financing and Television Programming: A Taxation Guide

Now in its seventh edition, KPMG LLP's ("KPMG") Film Financing and Television Programming: A Taxation Guide (the "Guide") is a fundamental resource for film and television producers, attorneys, tax executives, and finance executives involved with the commercial side of film and television production. The guide is recognized as a valued reference tool for motion picture and television industry professionals.

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 producers and other industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including film and television development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in the financing of film and television productions, the Guide includes a robust discussion of relevant tax incentive programs in each country.

The primary focus of the Guide is on the tax and business needs of the film and television industry with information drawn from the knowledge of KPMG International's global network of member firm media and entertainment Tax professionals.

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

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

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

Financing Structures

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

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.

Digital Media

For the first time, we have included a discussion of digital media tax considerations recognizing its growing role in the distribution of film and television content.

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.

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

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Belgium

Introduction

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

Key Tax Facts

Highest corporate income tax rate	33.99%*
Highest personal income tax rate	50%
VAT rates	21%, 12%, 6%, 0%
VAT registration threshold	N/A
Normal nontreaty withholding tax rates: Dividends	25%/15%
Interest	25%
Royalties	25%/15%
Tax year-end: Companies	Financial year-end
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

Co-production

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

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

Partnership

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

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

Debt-equity Financing

Capitalization

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

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

Notional Interest Deduction

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

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

The rate of the NID is linked to the rate of 10-year government bonds and amounts to 2.630% for assessment year 2015 (3.130% for SMEs).

Excess NID could be carried forward for up to seven taxable periods. However, as from assessment year 2013, the possibility of transferring the excess NID that was not utilized due to a lack of (sufficient) income has been abolished. A transitional provision provides that the NID stock available on December 31, 2011 (or at the end of a taxable period associated with 2012, i.e., by December, 31, 2012) will remain transferrable and deductible from the profits of the subsequent seven taxable periods.

Debt/Equity Restrictions

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

Only very specific antiabuse measures should be taken into account when funding via loans:

- Interest expenses are not deductible if the latter exceed the market interest rate, taking into account the terms and conditions at which the loan has been granted, the risk, the credit worthiness of the debtor, and the term of the loan.
- A 1:1 equity/debt ratio in respect of interest paid by a company to advances made by foreign companies (or by individuals) who exercise a function of director, manager, liquidator, or similar mandate in the interest-paying company. If and to the extent that either the interest rate exceeds the market interest rate or the advances exceed the sum of the taxed reserves at the beginning of the taxable period, and the amount of the paid-up capital at the end of the taxable period, these interest payments will be requalified into nondeductible dividends.
- Up to June 30, 2012, a 7:1 debt-equity ratio applied in respect of interest paid directly or indirectly to a beneficiary who is not subject to corporate income tax, or is subject to a corporate income tax regime, which is considerably more advantageous than the Belgian tax regime. As of July 1, 2012 a new debt-equity ratio has been set at 5:1 and is now also applicable on interest on loans granted by group companies. As a result, interest on intragroup loans exceeding five times the equity of the debtor company are no longer tax deductible. Various exceptions to this new debt-equity ratio are available, e.g., public bonds and certain types of leasing companies.

Other Tax-Effective Structures

See Tax and Financial Incentives below.

Tax and Financial Incentives

Investors – Tax Shelter Regime for Audiovisual Works

General

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

Please note that the law of May 12, 2014 has changed the tax shelter regime significantly. The new regime applies to investment agreements concluded as of January 1, 2015. Hereafter, we describe the old regime (applicable to investment agreements concluded before January 1, 2015) and highlight the differences with the new regime.

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

Qualifying Investor Profile

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

- Being a Belgian corporation, i.e., subject to the Belgian corporate income tax regime, or being a Belgian establishment of a foreign corporation, i.e., subject to the Belgian nonresident corporate income tax regime
- Being an entity that is not itself engaged in the production of audiovisual works and is not a Belgian or foreign TV station
- Realizing taxable retained earnings[2] of at least EUR 1,500,000 per year
- Prepared to make an investment in a movie production for a maximum amount of EUR 500,000, either through a participation in the ownership rights of the film (with a minimum of 60% of the investment) or through a loan (with a maximum of 40% of the investment). Under the new regime, the invested amounts will no longer represent rights in or a loan to the production itself, but will be a mere (nondeductible) cost for the investing company.

Tax Exemption

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

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

Under the new regime, the exemption will amount to 310% of the invested amounts (instead of 150% under the old regime), resulting in a tax cost saving of approximately 105.4%. Just like under the current regime, the invested amount qualifying for the exemption is limited to a maximum of EUR 750,000 or 50% of the increase of the taxable reserves.

The exempt profit has to be accounted for on a separate account on the liability side of the balance sheet, i.e., a reserve not available for profit distribution, and may not serve for any result allocation whatsoever[4]. Under the new regime, this condition also needs to be fulfilled.

[2] Taxable retained earnings are defined as follows: The net increase, during the taxable period, of all taxable reserves (including the hidden reserves, but excluding the exempt reserves such as capital gains, depreciations, or provisions).
[3] The so-called "intangibility" condition
[4] Up to a maximum of three accounting years

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

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

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

Under the new regime, the exemption will only be final upon receipt of the tax shelter certificate to be delivered by the tax authorities as a result of a specific tax audit in the hands of the production company (no longer the local tax inspector).

Nondeductible Amounts

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

Nontransferability of the Participation Rights and Loan

Each Belgian qualifying investor is required to maintain its entire investment in full ownership during the entire production period of the audiovisual work, and in any case, during a period of at least 18 months as from the entry into force of the concept-agreement that is concluded between the Belgian qualifying investor and the production company. This requirement is applicable both on the portion of the investment that is represented by participation rights or by loans. Under the new regime, the investor will not be entitled to hold property rights.

Late Payment Interest

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

Recognition

Under the new regime, production companies and third-party commissioners that want to step into tax shelter arrangements need to obtain an upfront recognition of the regional authorities.

Benefits

Under the new regime, the tax law foresees that except for commercial gifts with limited value (under reference of VAT legislation), no other economic or financial benefit can be granted to a tax shelter investor.

Producers

Tax-free Investment Reserve

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

- The tax-exempt capital gains on shares
- 25% of capital gains realized on cars
- Increase of the advances of the company on the shareholders and directors, as well as their spouses and children.

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

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

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

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

Withholding Tax on Interest Payments

Interest payments are, in principle, subject to a Belgian domestic withholding tax of 25%.

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

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

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

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

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

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

Withholding Tax on Royalty Payments

Royalty payments are, in principle, subject to a Belgian domestic withholding tax of 25% (except for copyrights, see hereafter).

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

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

Withholding Tax on Dividends

The domestic withholding tax rate for dividends in principle amounts to 25%. If certain conditions are met (nominative shares paidup in cash and issued after July 1, 2013), the rate could be reduced to 15%.

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

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

Withholding Tax on Copyrights

Any debtor of income relating to copyrights—such as income resulting from the transfer, concession, licensing of copyrights, as well as any connecting income derived there from—will be required to withhold a tax of 15% on the net qualifying copyright income which will constitute the final tax burden for the individual recipient. The latter means that the recipient should no longer report this income from copyrights in his individual income tax return.

This final withholding tax of 15% will only apply on an amount not exceeding EUR 37,500.00 (EUR 57,080.00 after indexation for assessment year 2015).

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

- 50% on the first bracket of EUR 10,000.00 (EUR 15,220.00 after indexation for assessment year 2015)
- 25% on the bracket as from EUR 10,000.00 to EUR 20,000.00 (EUR 15,220.00 to EUR 30,440.00 after indexation for assessment year 2015).

The maximum amount of lump-sum costs deduction is EUR 11,415.00.

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

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

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

Movie Vouchers

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

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

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

Corporate Taxation

Recognition of Income

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

With respect to foreign source royalty income (including film rental income) on which a foreign withholding tax has been levied, a foreign tax credit is granted, amounting to almost

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

Royalties under Double Taxation Treaties

United States

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

United Kingdom

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

Australia

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

Canada

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

Other Double Taxation Treaty Rates (nonexhaustive list)

Denmark	0%
France	0%
Germany	0%
Hungary	0%
Israel	10%
Italy	5%
Luxembourg	0%
The Netherlands	0%
New Zealand	10%

Norway	0%
South Africa	0%
Spain	5%
Sweden	0%
Switzerland	0%

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

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

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

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

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

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

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

Amortization of Expenditure

Production Expenditure

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

Depreciation

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

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

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

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

The following maximum depreciation rates are set by administrative instructions:

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

Companies may deviate from these percentages in particular circumstances.

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

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

Other Expenditures

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

Capital Losses/Capital Gains

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

Capital gains are, in principle, taxable upon their realization and at normal tax rate. As an exception to this rule, capital gains on shares are tax-free under some conditions or taxed at 0.412% or 25.75%. Moreover, a spread taxation regime is provided for capital gains realized on qualifying assets, under some conditions, e.g., the sales price should be reinvested, in Belgium, in qualifying assets, and within a certain period of time.

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

Losses

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

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

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

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

Foreign Tax Credit for Withholding Tax on Interests and Royalties

Producers and Distributors

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

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

Indirect Taxation

Value Added Tax

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

Supply of a Completed Film via Material Means

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

In general, VAT is due at the time of the supply of goods or on completion of the services. However, if the payment is received in advance of the delivery of a completed film, VAT becomes due at the date of the prepayment. A VAT-registered person must submit its VAT return and account for any VAT payable to the tax authorities by the 20th of the month, following the month in which the VAT became due. Businesses whose yearly turnover is less than EUR 1 million may opt to submit quarterly returns.

Where a company established in Belgium delivers a completed film to a company established in another EU member state, the intracommunity supply would be VAT-exempt, provided that the customer is registered for VAT in another member state and that the film would be dispatched outside Belgium. The Belgian supplier must, however, be able to provide evidence that the goods have been physically shipped outside Belgium.

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

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

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

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

Supply of a Completed Film via Electronic Means

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

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

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

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

Presale of Distribution of Rights

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

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

Royalties

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

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

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

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

Peripheral Goods and Merchandising

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

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

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

Promotional Goods or Services

The VAT treatment of business promotions is a complex area upon which it is recommended that advice is provided on a case-by-case basis. However, as a general rule, the VAT incurred on the purchase of promotional goods given away free of charge may only be reclaimed if the value of those goods does not exceed EUR 50 (excluding VAT).

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

Catering Services to Film Crew and Artists

The supply of catering services in Belgium is, in principle, subject to VAT at 12%.

Services Rendered by Actors and Interpreters

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

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

Recording of Music Master Tapes

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

Import of Goods

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

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

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

Customs Duties

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

Personal Taxation

Nonresident Artists

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

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

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

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

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

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

Digital Media

Digital media has seen rapid growth in the Belgian market. Currently, not only individuals but also business entities use social media platforms on a regular basis. There are no restrictions for foreign investments in this industry.

Electronic services are taxable in Belgium based on the general rules. The main tax types to be fulfilled in Belgium for business entities are 21% VAT based on the turnover (in some cases, a 6% rate applies), 33.99% CIT based on the net profit generated.

The beneficial tax regime applicable to individuals related to income from licenses on copyrights and similar rights (only 15% tax to a certain amount of income) is most likely a positive driver in the growth of the business.

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