



Film Financing and Television programming

A Taxation Guide



Now in its eighth 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 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 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.

Tony Castellanos

+1 212 954 6840

acastellanos@kpmg.com

Benson Berro

+1 818 227 6954

bberro@kpmg.com

The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

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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Introduction¹

Since the end of the 1990s, favorable legal measures and various mechanisms have been implemented in Luxembourg to support and encourage audiovisual production in Luxembourg, opening up co-production opportunities with other countries. Consequently, productions have multiplied in Luxembourg due to incentives, excellent technical infrastructure, and growing competence in the local production industry.

The National Fund for Audiovisual Production (the Fund) administers the different incentives available for the development of the audiovisual production sector in Luxembourg and provides selective financial aid (advance payments on receipts income) for the development, production, and international distribution of films.

Key Tax Facts

Corporate income tax rate	24.94% ¹
Highest personal income tax rate	45.78% ²
VAT rates	3%, 8%, 14%, and 17%
Annual VAT registration threshold	EUR10,000
Normal nontreaty withholding tax rates: Dividends	15%/0%
Interest	0%
Royalties	0%
Tax year-end: Companies	Financial year-end
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

Co-production

A Luxembourg resident investor may enter into a co-production joint venture (JV) with another nonresident investor to finance and produce a film in Luxembourg. The rights of exploitation may be divided among the JV partners.

¹ This rate is applicable to companies carrying their activities in Luxembourg City. It may slightly differ for companies carrying all or part of their activities outside Luxembourg City due to different municipal tax rates.

² Including a surcharge for unemployment contributions

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The tax position of each investor has to be determined separately. In the absence of specific tax regulations applicable to the co-production of films, this determination is based on general tax law principles.

An entity's tax status in Luxembourg depends on whether or not it has been legally incorporated. Corporations ("sociétés de capitaux") such as stock corporations ("société anonyme" – S.A), limited liability companies ("société à responsabilité limitée" – S.à.r.l), and partnerships limited by shares ("société en commandite par actions" – SCA) are treated as taxable entities and are subject to corporate income tax ("impôt sur le revenu des collectivités"), municipal business tax ("impôt commercial communal"), and net wealth tax ("impôt sur la fortune"). Other partnerships or tax-transparent entities are not taxable entities for corporate income tax and municipal business tax purposes. Each partner is subject to income tax on his or her respective profit share that he or she declares in his or her personal or corporate tax return. For municipal business tax purposes, however, different criteria are applied. Companies as well as partnerships, transparent entities, and associations are subject to tax directly if they exercise a business within the territory of Luxembourg.

A company is considered to be resident in Luxembourg if it maintains either its registered seat (as determined by its statutes) or its place of central management in Luxembourg. Conversely, a company is considered to be nonresident if it maintains neither its seat nor its place of central management in Luxembourg. Residence is significant for deciding whether worldwide income or only Luxembourg source income is taxed.

Companies resident in Luxembourg are subject to taxation on their worldwide income (unlimited tax liability), unless exempt under the terms of a double taxation treaty or domestic tax law.

Companies not resident in Luxembourg are subject to tax on income from sources in Luxembourg (limited tax liability), which includes:

- Business income derived from a permanent establishment or permanent representative
- Profit from the exercise of an independent activity in Luxembourg
- Rental income from real estate or from rights located in Luxembourg or gains from the sale of real estate
- Gains from the sale of a substantial shareholding (10 percent) disposed of within a six-month period, in limited circumstances
- Certain categories of income where tax is withheld at the source.

If the JV's film production activities are performed as a company, the dividend distributions (return on equity investment) are, in the absence of tax treaties, subject to 15 percent withholding tax. The double tax treaties may in principle eliminate or reduce the taxation. Exemption of withholding tax is also available under the Luxembourg participation exemption.

Partnership

Financial investors from several territories and the film producers may form a partnership located in Luxembourg. There are two types of tax-transparent partnerships in Luxembourg.

The limited partnership ("société en commandite simple" – SECS) is an entity in which some partners, or "commandités," have unlimited liability, while others, or

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“commanditaires,” are liable only to the extent of the assets contributed by them in cash or in kind. The active partners are those who have unlimited liability and are entrusted with all powers relating to management.

The partnership (“société en nom collectif” – SENC) is a form of business organization under which the partners are jointly and severally liable for all commitments entered into in the name of the company. Shares are not normally transferable unless otherwise determined in the articles of incorporation. A SENC is a tax-transparent entity.

Each of the partners of a tax-transparent partnership is taxable in the relevant country of residence on its share of the results and according to the system applicable to the specific partner (i.e., personal or corporate income tax³).

Additionally, the partnership limited by shares (“société en commandite par actions”) is an organization whereby one or more persons with unlimited liability form a partnership with shareholders who are liable only for their contributions. The structure is similar to a limited partnership, except that the interest of the limited partners is represented by freely transferable shares. Unlike other partnership structures, a partnership limited by shares is not a transparent entity for tax purposes.

Tax and Financial Incentives

Investors

In order to develop the audiovisual sector, the government has established selective financial aids to attract investors.

Luxembourg has created selective financial aid in order to promote cinematographic and audiovisual creation in Luxembourg and in order to encourage the development of the production, co-production, and distribution of works in this field. The following works are excluded from the benefit of selective financial aid:

- Works that are pornographic, incite violence or racial hatred, condone crimes against humanity, and infringe public order and morality
- Works intended or used for advertising purposes
- News programs, current affairs programs, or sport broadcasts.

Financial aid may be granted by the National Fund for Audiovisual Production to corporations or individuals and may take the form of aid to the production or co-production of films.

Such aid is considered as advance payment on receipt income and shall in principle be totally reimbursed. A Grand-Ducal Decree of March 16, 1999 establishes the conditions under which the financial aid may be obtained, the reimbursement conditions, and exceptions to this reimbursement requirement.

³ Please note that this is the general principle. However, in case the taxpayer is resident in a country where Luxembourg has not concluded any double tax treaty, based on the article 156 of the LITL, this income may be taxable in Luxembourg.

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Other Financing Considerations

Net Wealth Tax (NWT)

Taxable base

The adjusted net asset value (the “unitary value”) of the company is determined with respect of the net wealth of the enterprise. This is based on the fair market value of both the assets and the liabilities of the firm, which are adjusted with certain exemptions (e.g., shareholdings qualifying for the participation exemption regime) and some specific valuations fixed by law (e.g., for buildings).

Tax rate applicable

The NWT is based on the company’s total net assets:

- 1) On the total net assets of up to EUR 500 million, the rate is 0.5 percent.
- 2) On the total net assets of up to EUR 500 million, the rate is 0.05 percent.

Tax reduction

The Luxembourg Law allows an NWT reduction under conditions (creation of a special reserve booked in the commercial accounts that equals five times the amount of the NWT due for a given fiscal year for which the reduction is requested and keeps the said special reserve during the following five years). The tax reduction amounts to 20 percent of the reserve and is limited to the amount of the CIT liability before imputation of tax credits.

Exchange Controls and Regulatory Rules

There are no specific exchange controls or other regulatory rules for commercial companies in Luxembourg.

Corporate Taxation

Recognition of Income

Taxable income is computed by comparing the net difference between assets and liabilities at the beginning and at the end of the financial year, adjusted for movements on capital accounts and certain nondeductible expenses or tax-free items.

Basically, all income received by a Luxembourg company is fully taxable, unless there is a specific provision to the contrary (e.g., dividends and capital gains benefiting from the participation exemption).

Expenses incurred in the normal course of business are deductible, unless there is a specific provision to the contrary (e.g., certain charitable contributions, bribery expenses, nondeductible taxes such as income tax and net wealth tax, and director fees [tantièmes]). Other nondeductible expenses include expenses relating to tax-exempt income.

Amortization of Expenditure

Production Expenditure

Depreciation is, in general, allowed in the case of tangible or intangible fixed assets with useful lives of more than one year. Depreciation is based on the acquisition or production costs. Accepted methods are the straight-line method and the declining balance method (except for buildings and intangibles).

A taxpayer may change from the declining balance method to the straight-line method, but not vice versa. Rates under the declining balance method may not exceed three times the applicable straight-line rate, or 30 percent.

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Other Expenditure

The rules for deduction or depreciation are the usual rules applicable to other companies.

Losses

For both corporate income tax and municipal business tax on profits purposes, net losses may be carried forward indefinitely and offset in future years against taxable income. No carryback is allowed.

Foreign Tax Relief

Internal Rules

Relief is given against Luxembourg income tax on income (e.g., investment income, capital gains on the sale abroad of goods or shares in a company, and income arising from a salaried occupation, pension, interest, and annuities) that has been subjected to an equivalent tax abroad and which is not covered by a double taxation agreement. The foreign tax to be set off should first be added back to the taxable profit of which it forms a part; this tax should then become a tax credit up to a maximum amount, which is equivalent to the Luxembourg corporate income tax, which would be due on the foreign income in question.

Separate calculations are made for each country in which income arises (the per country method), and the maximum credit may not exceed the Luxembourg corporate income tax on the same portion of income.

It is possible, however, for an annual election to be made that substitutes an overall limitation for foreign interest and dividend income for the per country limitation. When such an election is made, credit relief for foreign taxes is additionally restricted to the lesser of:

- Twenty-five percent of the gross foreign income (on an item-by-item basis)
- Twenty percent of the Luxembourg corporate income tax on the total net taxable income.

The portion of foreign taxes not allowable as a credit (set-off) is deductible from Luxembourg income in computing Luxembourg tax.

The internal relief granted refers only to corporate income tax. Entities that also pay municipal business tax are at a disadvantage due to the fact that the foreign charge to tax will affect the basis of assessment, which is also the basis for assessment of the trade tax, thereby increasing the trade tax.

Double Tax Treaties

For a company resident in Luxembourg, relief may also be provided under the double taxation treaties concluded by Luxembourg with other countries. Typically, these treaties grant the right to tax the income either to the country of source or the country of residence, while they exempt the income from tax in the other state; or they provide relief from double tax burden by allowing a foreign tax credit.

In most treaties, the treatment of certain categories of income follows the OECD Model Convention, as outlined below:

- Business profits derived through a permanent establishment in the treaty country are, in general, exempt from tax in Luxembourg.
- Dividends paid to a Luxembourg company may be taxed in the other country at a reduced withholding rate of not more than 15 percent and are taxable in Luxembourg.

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The withholding tax can be credited against the Luxembourg tax liability. An exemption for dividends paid to a Luxembourg company owning a substantial participation may be granted either under a relevant treaty provision or by the domestic participation exemption.

- Interest and royalties, unless they are attributable to a permanent establishment, are usually exempt from tax in the country of source and are taxable in Luxembourg, except that the source country may in certain cases impose a reduced withholding tax.
- Capital gains are, in most cases, taxed only in Luxembourg, unless the property sold is attributable to a permanent establishment in the other contracting state.

Indirect Taxation

Value Added Tax (VAT)

General

Since Luxembourg is an EU Member State, the VAT system follows the principles laid out in the relevant EU Directives and, in particular, those of the Council Directive of November 28, 2006 (2006/112/CE).

Supply of a Completed Film

The VAT treatment applicable to the supply of a completed film depends on the qualification of the transaction for VAT purposes either as a supply of goods or as a supply of services. The qualification of the supply for VAT purposes depends on the terms of the agreement.

Supply of Services/Goods

If, based on the terms of the agreement concluded between the parties, the supply should be regarded as a supply of services, the VAT treatment is the following (assuming that the supplier is established in Luxembourg):

- If the film is supplied to a Luxembourg recipient, the supply should be subject to Luxembourg VAT. The standard VAT rate of 17 percent should apply. The VAT on the supply is in principle due when the supply is made. There are, however, two exceptions:
 - When the supplier issues an invoice in respect of the supply, the VAT is due on the date of the invoice but at the latest on the 15th of the month following the supply.
 - When the supply gives rise to an advance payment before the supply is made, the VAT is due on the date of the receipt of the payment in proportion of that payment.
- If the service is rendered to another taxable person (B2B) established and registered for VAT purposes in another EU Member State, the supply should be out of scope of Luxembourg VAT provided that the recipient provides its EU VAT identification number to the Luxembourg supplier. The supply is deemed to be located in the country where the recipient is established and should be subject to the VAT rules applicable in this country (reverse charge mechanism).
- If the service is rendered to a nontaxable person established within the EU, the supply is deemed to be located in the country where the recipient is established and should be subject to the VAT rules applicable in this country. Moreover, the declaration and the collection of the VAT due in different EU countries by the supplier is made through a special platform known as the “Mini One Stop Shop – MOSS.”

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- If the service is rendered to a recipient (B2B or B2C) established outside the EU, the supply should be out of scope of Luxembourg VAT. The supply is deemed to be located in the country where the recipient is established.

If, based on the terms of the agreement concluded between the parties, the supply should be regarded as a supply of goods; assuming that the supplier is established in Luxembourg, the supply should either be a local supply subject to Luxembourg VAT or a VAT-exempt (zero rated) intracommunity supply of goods or export.

Royalties

The VAT treatment applicable to royalties paid by a Luxembourg taxable person is the following:

- If the royalties are charged by another taxable person established in Luxembourg, the royalties should be subject by the supplier to Luxembourg VAT. The VAT rate applicable should be the standard rate of 17 percent. If, however, the supply qualifies as a supply of copyright, the VAT rate applicable should be 3 percent.
- If the royalties are charged by a foreign supplier, they should in principle be charged free of VAT by the supplier (to be confirmed from a local perspective in the supplier's country of establishment). The royalties are deemed to be located in Luxembourg and fall within the scope of the VAT rules applicable in Luxembourg (reverse charge mechanism). The VAT due in Luxembourg on the royalties should be accounted for by the Luxembourg taxable person in its VAT returns. VAT is then deductible according to the recovery right of the Luxembourg recipient. As mentioned above, the VAT rate applicable to royalties should be 17 percent, except if the royalties relate to copyrights. In such a case, the VAT rate should be 3 percent.

Peripheral Goods and Merchandising

In the absence of specific provisions, general rules and rates apply to the sale of peripheral goods and merchandising. The VAT rate applicable depends on the nature of the goods involved, whether or not they are connected with the distribution of the film. For instance, books and magazines are subject to 3 percent, but toys and clothes (except children's clothes) are subject to the standard rate of 17 percent when supplied in Luxembourg.

Promotional Goods or Services

In the absence of specific provisions, the general rules and rates apply to promotional goods or services. The VAT rate applicable to the provision of promotional goods and services should be 17 percent or 14 percent. The free provision of promotional goods and services (i.e., commercial samples or gifts of small value distributed for business use) falls in principle outside the scope of VAT, as there is no consideration paid for the supply. Provided that the expenses incurred in this respect are reasonable, the input VAT incurred on such goods and services should be recoverable.

Film Crews and Artists

The supply of hotel accommodations, food, and nonalcoholic drinks in Luxembourg is taxable at the reduced rate of 3 percent. Supplies of goods or services of a catering company during filming should also be taxable at 3 percent. Provided that the expenses are incurred for business purposes and are not luxury, recreation, or entertainment expenses, the VAT incurred in Luxembourg should be recoverable.

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Imports of Goods and Customs Duties

If a resident company imports goods from a foreign country VAT, eventually Customs duties would be due. The rates for Customs duties depend on the origin and the nature of the goods that are imported. The duty rates are defined in the online Customs tariff database, also called the TARIC. This multilingual database is available online on the website of the European Commission, www.europa.eu.int, under Taxation, Tax, and Customs online databases.

Personal Taxation

Nonresident Artists

A nonresident artist is subject to tax on his or her Luxembourg-sourced income only. The income of artists from independent services performed in Luxembourg, including royalty income on such activities, is subject to a withholding tax of 10 percent.

Resident Artists

The law dated December 19, 2014 (amended by the law dated December 7, 2016) relating to the status of the artist applies to the following population:

- Authors and performers in the areas of graphic and plastic arts, performing arts, literature, and music
- Designers, creators, and technicians of works of art using photographic, film, audiovisual, or other advanced technologies.

An individual could be considered an independent professional artist if, without any link of subordination, he or she provides his or her artistic services and bears the social and economic risks. The exercise of any other nonartistic professional activity in addition to this does not challenge the qualification of the independent artist if the annual income relating to the other activity does not exceed 12 times the minimum social salary for qualified workers.

The individual claiming the status of independent professional artist has to prove that he or she is acting as an artist for a minimum period of three years (reduced to 12 months for individuals having official diplomas in one of the above-mentioned areas) and has to be registered as an independent intellectual worker within a pension insurance scheme. This status is recognized by the authorities during a 24-month period. After this period, it could be renewed by a written request to the minister competent for culture.

The individual performing his or her activity on behalf of an entertainment company or within the context of a film, theatre, or musical play and receiving fees as remuneration for his or her activity is considered as an "intermittent du spectacle" (artist with a nonregular activity).

Artists are entitled to deduct up to 25 percent of their professional income with a maximum of EUR12,500 per annum as professional expenses. Artistic and academic awards are tax-exempted as long as they are not the remuneration of the artist's economic activity. The net profit exceeding the average profit of the three previous years is to be considered as an extraordinary income and taxed at a reduced rate.

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In addition, social aids aimed at supporting artists' activities are granted under certain conditions. These social aids are tax-exempted up to a maximum rate of 27.47 percent, including contributions to the unemployment fund (i.e., 60 percent of the Luxembourg marginal tax rate at 42 percent on which should be added a maximum of 9 percent for the unemployment fund).

Employees

Income Tax Implications

Resident and nonresident individuals employed in Luxembourg are normally subject to withholding tax on wages. This withholding tax is withheld at source by the employer and remitted to the Luxembourg tax authorities.

If the employee (single or married with only one spouse working) was subject to withholding tax on wage and his or her taxable income (after deductions) does not exceed EUR 100,000, he or she is not required to file a personal income tax return. In this case, the withholding tax on wage may be considered as his or her final personal income tax.

The tax year corresponds to the calendar year, and personal tax returns need to be filed by March 31 of the following year. On request to the competent tax office, an extension of time to file can be obtained.

Tax Rates

Income taxes are levied on taxable income (after deductions) at progressive rates up to 42 percent:

A surcharge amounting to the following is levied as a contribution to the unemployment fund:

- Seven percent (of the computed income tax liability) for taxable income not exceeding EUR150,000 in tax classes 1 and 1a or EUR300,000 in tax class 2
- Nine percent (of the computed income tax liability) for taxable income exceeding EUR150,000 in tax classes 1 and 1a or EUR 300,000 in tax class 2.

The tax rates applicable from 2014 are as follows:

Taxable Income (EUR)	%
0–11,265	0
11,265–13,137	8*
13,137–15,009	9*
15,009–16,881	10*
16,881–18,753	11*
18,753–20,625	12*
20,625–22,569	14*
22,569–24,513	16*
24,513–26,457	18*
26,457–28,401	20*

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Taxable Income (EUR)	%
28,401–30,345	22*
30,345–32,289	24*
32,289–34,233	26*
34,233–36,177	28*
36,177–38,121	30*
38,121–40,065	32*
40,065–42,009	34*
42,009–43,953	36*
43,953–45,897	38*
45,897–100,002	39*
100,002–150,000	40*
150,000–200,004	41*
Over 200,004	42*

* +7%–9% for unemployment fund

Taxpayers are divided into three classes:

- Class 2 – Married couples who are jointly taxed; persons who are widowed, divorced, or separated (judicial separation) during the three preceding tax years (as long as they did not apply for this provision within the last five years); taxpayers living in a registered partnership; and taxpayers of the same sex married according to foreign law, on request via the filing of an annual personal tax return (under conditions). Nonresident married taxpayers must apply for joint taxation (under conditions) to benefit from this category. Taxpayers in this category apply the tax rates to one half their income and then multiply the liability by two (i.e., splitting system).
- Class 1a – Taxpayers who are not in Class 2 and who are widowed, persons aged at least 65 at the beginning of the tax year, single parents; and persons who are separated (judicial separation) or divorced for more than three years with children in their household
- Class 1 – Taxpayers who belong to neither Class 1a nor Class 2 (i.e., singles or persons who are separated [judicial separation] or divorced for more than three years with no children in their household) and nonresident married taxpayers are by default in this category.

As from tax year 2018, married couples and registered partners can opt to be taxed individually.

Employees who are not required to file a tax return but have expenses to deduct or paid excess withholding tax may obtain a refund by filing a tax reclaim (“décompte annuel”) with the tax authorities. The final deadline to submit the tax reclaim is ultimately fixed as at December 31 of the year following the tax year concerned. However, early filing is recommended.

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KPMG's Media and Entertainment Tax Network Members:

Philippe Neefs

Tax Partner

KPMG Luxembourg S.à r.l.

9, allée Scheffer

L – 2520 Luxembourg

Phone +352 22 51 51 5531

Fax: +352 46 51 71

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