KPMG

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 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

Poland

Introduction

With the introduction of the Cinematography Act and the creation of the Polish Film Institute (PFI) in 2005, the world of Polish cinema has changed significantly over the past few years. The State supports the film industry in Poland by providing public grants for film production, selected festivals and events, developing archives, education and professional training, as well as for promotion of the Polish film industry abroad.

The principal role of the PFI consists of the provision of subsidies and loans within the frames of four operational programmes:

1) Film production;

2) Film education and dissemination of film culture;

3) Development of cinema infrastructure;

4) Promotion of Polish film abroad.

In a nutshell, the PFI supports film production at every stage of the making of a film; it awards screenwriting scholarships and funding for the development and production of features, documentaries, and animated films. The PFI allocates money for activities, such as preparing the financial plan and set documentation, searching for investors and co-producers, writing the script, script doctoring, visual designs, screen tests, producing trailers, etc.

The PFI also supports the development and production of film projects with the participation of foreign producers.

It's worth noting that the PFI has recently announced that for the accomplishment of the above tasks, around PLN 140 million will be allocated for 2018 operational programs.

Key Tax Facts

Highest corporate profits tax rate	19%
Highest personal income tax rate	32%
VAT rate	Generally 23%
Annual VAT registration limit	PLN 200,000
Normal non-treaty withholding tax rates:	
Dividends	19%

Interest	20%
Royalties	20%
Tax year-end: Companies	December 31 (unless otherwise stated)
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

The financing structures used in Poland vary in accordance with the operational structures and the requirements of the specific project being undertaken. Typically, film financing structures will take the form of one of the following:

Co-Production

Co-production is a useful way to carry out film production in Poland, particularly for a foreign producer (on the condition that the foreign producer does not lay claim to exclusive distribution rights). The co-production agreement should detail (at least) the budget, financing, management, and ownership rights of the production, as well as deal with matters related to negatives and credits, etc. Each party use of the co-production (whether they be individuals or corporate investors) are then subject to tax on their share of the profits as stated in the co-production agreement in Poland.

Civil Partnership

A civil partnership is set up according to the general principles of Civil Law for the purpose of conducting business activity. The civil partnership itself does not have legal personality and, therefore, each partner is obliged to register as an entrepreneur and will be taxed on their share of profits from the civil partnership accordingly.

Partnership

There are four types of partnerships available under Polish regulations:

- general partnership,
- professional partnership,
- Limited partnership and
- Limited joint-stock partnership.

All of the above partnerships have their own legal form; however, they are not entitled the legal personality. The first three types of partnerships will not be taxed, but the partners will be taxed on their share of profits from the partnership. As regard limited joint-stock partnerships, they are subject to corporate tax.

Limited Liability Company

The most common form of operating in the film industry is via a limited liability company. This is a legal entity with a minimum share capital of PLN 5,000 and nominal share value of PLN 50.00 or more. It may be incorporated by one or more individuals or legal persons for the purpose of carrying on a business or for any other purpose allowed by law. Every company must submit an annual balance sheet and make various other filings with the

National Court Registry (e.g. notification of any change of address of the company, etc.) and other authorities.

Joint-Stock Company

A joint-stock company is a legal entity with a minimum share capital of PLN 100,000 which may be obtained through the issue of shares. A joint-stock company would usually be established for operating a business on a large scale and is a rather complex form of conducting activity.

Foundation

Under the Polish Act on Foundations, a foundation may be established for public benefit or social purposes, in particular for educational and cultural purposes. A foundation has legal personality and may be established by individuals or by legal persons irrespective of their residency. There are no legal requirements on the minimum initial capital. The founder states the purposes of the foundation and the assets allocated to the foundation in order to fulfill the purpose. Foundations are also registered in the National Court Registry.

Foundations are eligible for a Corporate Income Tax (CIT) exemption on their income to the extent that it is allocated for the foundation's statutory activities.

Corporate Taxation

The Polish tax system is a classical tax system where corporate income is fully taxable at entity level, with any distributed profits being taxed again by way of withholding tax. There are no special rules for film producers or distributors; whether domestic or foreign invested, they are treated as ordinary taxpayers.

Recognition of Income and Amortization of Expenditure

Polish resident company

A company is resident in Poland for tax purposes if its legal seat or management office is located in Poland. Polish resident companies are taxable on their worldwide income. In the case of a film production company, income may include (but is not limited to):

- receipts from the sale of the film or rights in it;
- royalties or other payments, or use of the film or aspects of it (for example, characters or music);
- Receipts with respect to rights to produce games or other merchandise;
- Receipts by way of a profit share agreement.

Receipts are generally treated as income (and are therefore taxable) once they become due and payable. Foreign exchange gains can be recognized either on a cash or an accruals basis.

In general, expenses incurred for the purpose of generating taxable income, or retaining/securing the sources of income (e.g., salaries, rents, advertising, travel expenses, and legal and professional costs), are deductible for tax purposes, unless explicitly excluded by law (e.g., dividends, fines and fiscal penalties, unpaid interest, or capital expenditure, such as the purchase of land, fixed assets, and intangibles).

Companies will also receive tax depreciation on fixed assets. Rates vary from 1.5% for buildings to 30% for computers, and between 20% and 50% for intangibles. Accelerated depreciation in respect of certain fixed assets is also allowed. Rights to films are depreciated for 2 years.

Losses

Losses incurred by a Polish resident company may be carried forward for up to 5 years; up to 50% of available loss may be set off in each year and loss carryback is not permitted.

Administration

The tax year for corporate taxpayers is defined as a period of 12 consecutive months. Unless a taxpayer decides otherwise and duly notifies the tax authorities, the tax year is deemed to be the calendar year.

The annual tax return must be filed by the end of the third month of the following tax year. Taxpayers are obliged to make monthly advance payments of corporate income tax, and these must be paid to the tax office by the 20th of the following month.

In order to obtain certainty on a specific case, an individual tax ruling may be obtained on request of a taxpayer. Such individual rulings grant the taxpayer certainty on their filing position in relation to the specific point raised unless a given legal action(s) described in tax ruling application aims to avoid taxation.

Limitation of Tax Deductibility of Certain Intangible Service Fees and Royalties

As of January 1, 2018, the Polish CIT Act provides for restricted deductibility of certain intangible service fees (e.g., consultancy and marketing services) as well as royalties, including derived from copyrights. The limitation is based on 5% of the EBITDA (earnings before interest, tax, depreciation, and amortization) and applies for the surplus over PLN 3 million per tax year.

Earnings Stripping Rules Restricting Deductibility of Debt-Related Payments

In the second half of 2017, the Polish legislators have decided to abolish the anti-thin capitalization regime applicable solely to financing received from related entities and replace it by the broader regime covering loans granted by unrelated entities, earnings stripping rules effective as of January 1, 2018 (except for loans granted prior to that date, which may benefit from a grandfathering clause, but only up until December 31, 2018).

Tax deductibility of interest and similar payments derived from debt financing is limited to 30% of the EBITDA in relation to the surplus over PLN 3 million per tax year. As such, consideration should be given to the restriction of the deductibility of debt-related payments prior to the implementation of any film financing structure.

Non-Polish Resident Company

Nonresident companies are subject to tax in Poland on their Polish source income only. Therefore, if a nonresident company were to sell the rights to production in Poland, this income would be subject to tax in Poland (unless a respective double tax treaty provides otherwise).

Where a nonresident company carries out a co-production in Poland, it should not be liable to Polish tax on its profits as such activities should generally not constitute a permanent establishment (PE) in Poland under the definition of a PE as defined in most tax treaties.

However, if the co-production goes on at a particular place in Poland for a considerable period of time, there is a risk that it may be regarded as a fixed place of business and, therefore, constituting a PE. As such, the nonresident company would be liable to Polish tax on profits attributable to the PE.

Additionally, care should be taken regarding any production/administration office set up in Poland by a nonresident company to assist with location shooting and production, as the Polish tax authorities may argue that it is a PE and, therefore, chargeable to tax in Poland.

Withholding Tax

Income of nonresident companies which is derived from entertainment activities is subject to 20% withholding tax in Poland, unless the relevant double treaty states otherwise. This should therefore be considered before entering into any Polish co-production agreements by companies from countries with which Poland has no double tax treaty.

Interest and royalties paid to nonresidents are subject to 20% withholding tax unless the relevant double tax treaty states otherwise. Interest and royalties paid to a direct parent or sister company being resident in the EU are exempt from withholding tax. The shareholding of at least 25% must be held for two years in order to qualify for the above exemption.

Dividends are subject to 19% withholding tax (unless the relevant double tax treaty states otherwise). However, dividends paid to associated companies within the EU are exempt from withholding tax if the fully taxable parent holds continuously at least 10% (25% in the case of Switzerland) of the subsidiary for at least two years.

Foreign Tax Relief

If a Polish resident company receives income from overseas and suffers tax on that income, double taxation relief is granted by way of an ordinary tax credit. The credit is computed on a per-country basis. Where a double tax treaty applies, the treaty relief is mandatory.

With respect to dividends received by Polish parent companies holding at least 75% in subsidiaries from a treaty country, the parent company is not only entitled to tax credit but also to apply underlying tax relief.

Indirect Taxation

Value Added Tax (VAT)

Important features of the Polish tax system have been harmonized with EU tax law, including VAT. Poland levies VAT at each stage of the production and distribution process and input tax suffered on purchases is deductible from any output tax due. Individuals and entities that supply goods or services in Poland or import/export goods to/from Poland are liable to charge VAT if they exceed the PLN 200,000 threshold.

Where services are provided within the territory of Poland by a supplier not registered for VAT in Poland, VAT can be self-charged by the recipient under the reverse charge mechanism. The reverse charge mechanism covers (but is not limited to) the sale of rights and granting of licenses or sublicenses, and is also applicable in the case of intra-EC acquisitions and local acquisitions of goods from foreign entities which are not registered for Polish VAT.

Under the reverse charge mechanism, the recipient charges VAT using the applicable Polish VAT rate (usually 23%). This VAT may be deducted as input VAT in the same VAT return in which the output VAT is declared. Therefore, providing the recipient can fully recover the VAT, the operation is tax and cash-flow neutral.

With regard to VAT rates applicable to the film industry, the standard VAT rate of 23% applies to film production, the reduced VAT rate of 8% applies to distribution of films, while fees of individual artists are generally VAT-exempt.

Capital Duty

Tax on civil law transactions (capital duty) is imposed on an initial capital contribution to a newly registered company and on any additional contribution to the company's capital. The rate is 0.5% of the capital contribution.

Transfer Tax

The sale and exchange of goods, property, and property rights are subject to tax on civil law transactions, unless the transaction is a VATable transaction, with the exception of the sale and exchange of immovable property and the sale of shares, which are subject to transfer tax as a rule.

The rate of tax on civil law transactions on the sale and exchange of immovable property and other goods located in Poland is 2% of the market value of the transaction. In respect of the sale of property rights, the rate is 1%.

Personal Taxation

General Rules

An individual is considered to be a resident of Poland for income tax purposes if his center of personal or economic interest is located in Poland, or if his stay there exceeds 183 days in a tax year. Polish resident individuals are subject to tax on their worldwide income while non-Polish resident individuals are subject to tax on their Polish source income only.

The tax year for individual taxpayers is the calendar year, and an annual tax return must be filed by April 30th of the year following the tax year. Income tax must be paid in advance each month and adjusted accordingly at the year-end. However, taxpayers earning business income may opt for quarterly advance payments in the year in which they commence the business activity or where their annual turnover in the preceding year was lower than EUR 1,200,000 (including VAT).

The Polish PIT Law lists the following categories of income: (1) income from dependent services, including employment and pension income, (2) income from independent services, (3) income from business, (4) income from particular agricultural sectors, (5) income from immovable property (rental income), (6) income from investments and property rights, (7) income from the sale of immovable property, property rights, and movables, (8) income from controlled foreign companies (CFC) and (9) other income. Tax is generally levied on the aggregate net income from all categories after accounting for deductions. The net income from each category is the difference between the sum of receipts (both in cash and in kind) and any related expenses. Poland employs a scale of progressive income tax rates (i.e., 18% basically and 32% to income over approximately EUR 20,000) to tax individuals. However, certain income items are taxed separately at flat rates.

Tax losses may be carried forward for five years and up to 50% of the loss may be offset in each year. Tax losses may not be carried back.

Artists (Self-Employed)

Income Tax Implications

For Polish income tax purposes, an artist's income derived from his or her professional services will be considered "income from professional services" or "income from business," depending on how the services are performed.

In the first case, the "income from independent services" will be aggregated with their other net income and taxed at the appropriate rate. Net income is defined as being the difference between the sum of receipts (both in cash and in kind) and expenses, in the predefined amount of 50% of the receipts. It should be noted, however, that the amount of deemed expenses is capped at the amount of approximately PLN 85,000 (EUR 20,000).

With regard to the taxation of "income from business," it may be taxed based on general rules or the taxpayer may opt for a 19% flat-rate taxation. However, taxpayers who opt for the flat-rate taxation are not entitled to some personal deductions and credits that would otherwise be available.

As stated above, a Polish self-employed artist is subject to tax in Poland on his or her worldwide income. Where a Polish resident suffers overseas tax on its income, double taxation relief is granted by way of an ordinary tax credit. The credit is computed on a per-country basis. Where a double tax treaty applies, the treaty relief prevails.

Nonresident Artists and Tax Credit

As stated above, nonresident taxpayers are only subject to tax in Poland on their Polish source income. The taxable income of nonresidents is generally calculated under the same rules that apply to residents.

If the taxable income derived by a nonresident cannot be accurately determined from the taxpayers' financial records, it is estimated as a percentage of turnover (20% in the case of film production activities). However, this method to establish taxable income is not applied if a tax treaty provides otherwise.

It should be noted that a 20% withholding tax is levied on income from certain independent services performed by nonresidents, including (but not limited to) income from artistic, literary, scientific, educational, and journalistic activities, unless a double tax treaty states otherwise.

Employees

Income Tax Implications

Income from employment includes all kinds of remuneration and benefits in kind. Employers are obliged to deduct advance payments on salaries and other remuneration paid to employees, and these deductions must be paid to the Polish tax authorities by the 20th of the following month.

Social Security Implications

Employees are liable to make social security contributions based on their gross income. The contributions are payable by employees at the following rates:

- Old age pension 9.76%
- Disability insurance 1.50%

— Sickness and maternity insurance 2.45%

— Health insurance 9.00%

All of the above contributions are withheld by employers and the system applies equally to residents as it does to foreign nationals who have an employment contract with a Polish employer. Individuals working in Poland, who are EU member states' nationals, should be covered by the EU social security regulations. Depending on the individual circumstances of each assignee, they may be subject to social security in their home country, the country of their employment, or the country where the work is actually performed. Each case should be investigated carefully to determine appropriate social security contribution payment requirements and obligations.

Digital Media

There are no special tax schemes for dealing in digital media. Such activity is taxed based on general tax rules and principles described above. Transformation of a business from traditional media to digital media as such is not taxed; also, there is no exit tax as such in Poland. No state concession is needed to run TV on the Internet, unless the programmes are to be distributed terrestrially, through satellite or cable networks.

Grants and Incentives

It should be noted that it is possible to obtain financing of a project related to film production/promotion via a number of tailored incentives, namely:

— Incentives granted by the Polish Film Institute (production of films, modernization of cinemas, promotion of Polish films abroad, etc.),

— Incentives granted by the Polish-German Co-Development Fund (features and animated films, creative documentaries),

— Incentives granted by the Ministry of Culture and National Patrimony (promotion of noncommercial film productions),

— Regional funds, financing film production in particular voivodeships, for example in Masovia, Pomerania, Silesia, etc.

Moreover, as Poland is a member of the European Union, creators have access to grants provided by the European institutions, for example, to the initiative "Creative Europe," including the component "Media"—development of audiovisual projects, TV programming, distribution online (video on demand), etc. The initiative has a budget of EUR 1.46 billion, over half of which is earmarked for the support of cinema and the audiovisual sector.

Finally, it is also possible to benefit from Eurimages, a fund run by the Council of Europe, supporting European cinema.

Media and Entertainment Tax Network Members:

Michał Niżnik
KPMG Tax M. Michna sp. k.
Director, International Tax
Radca prawny / Attorney at law
Inflancka 4A Street
00-189 Warsaw, Poland
Phone: +48 (22) 528 13 77
Fax: +48 (22) 528 11 59
e-mail: mniznik@kpmg.pl

Tomasz Lewicki
KPMG Tax M. Michna sp. k.
Senior Manager, International Tax
Inflancka 4A Street
00-189 Warsaw, Poland
Phone: +48 61 845 4685
Fax: +48 61 845 4602
e-mail: tlewicki@kpmg.pl