



# 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.

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

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# Iceland

## Introduction

Iceland offers film producers a cost-effective film production environment with an international competitive tax environment, including low taxes on business and investment income as well as specific tax incentives, along with the possibility to apply for financial support for film production.

The country offers an amazing spectrum of scenery including blue glaciers, glacial lakes, roaring waterfalls and rivers, high mountains and volcanoes, deep emerald-green and black stone valleys, miles-wide pitch-dark deserts and white smoking geothermal areas, dramatic black coast lines and old villages, and there is still much to add.

Many films and television programs filmed entirely or partly in Iceland have been released internationally, such as *Game of Thrones*, *Fast & Furious 8*, *Interstellar*, *Rogue One: A Star Wars Story*, *Star Wars: The Force Awakens*, *LazyTown*, *Journey to the Center of the Earth*, *Batman Begins*, *Hostel*, *Letters from Iwo Jima*, *Die Another Day*, *Falcons*, *It's Worth Living*, *Lara Croft: Tomb Raider*, *No Such Thing*, *Vikings*, *Flags of our Fathers*, *Prometheus*, *Oblivion*, *Thor – the Dark World*, *Sense8*, *The Fifth Estate*, *The Secret Life of Walter Mitty*, and *Noah*.

## Key Tax Facts

Corporate income tax rate	20%
Highest personal income tax rate	46.32%
Value Added Tax (VAT)	24%
Annual VAT registration turnover threshold	ISK 2,000,000 (approx. \$20,300)
<i>Normal non-treaty withholding tax rates:</i>	
Dividends	20%
Interest	12%
Royalties	22%
Tax year-end: Companies	Calendar year
Tax year-end: Individuals	Calendar year

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## Film Financing

### Financing Structures

#### *Co-Production*

An Icelandic resident may enter into a joint venture with one or more foreign investors to finance and produce a film in Iceland. This arrangement does not trigger tax liability in Iceland for foreign investors.

A foreign investor is subject to corporate income tax in Iceland only in the case that the investor is considered to have permanent establishment (fixed place of business) in Iceland from which he or she derives income.

A definition of the term “permanent establishment” has been implemented into the Icelandic Income Tax Act no. 90/2003. The provision is based on the definition of the term in the OECD Model Convention 2018 Update. Furthermore, according to Regulation No. 1165/2016 on Fixed Place of Business, the definition of the term is to be interpreted in accordance with the OECD Model Convention and its Commentaries as “a fixed place of business through which the business of an enterprise is wholly or partly carried on.” In general, a permanent establishment is deemed not to exist if a fixed place of business is maintained for less than six months in total, i.e., from the first to the last day business was carried on through the fixed place of business disregarding any temporary interruptions. Tax liability in Iceland could result in double taxation, unless tax treaty relief or tax credit in the investor’s home country is available.

If the investor carries out his activity through a subsidiary in Iceland, any distributions to the shareholders, whether through dividend or dissolution, are treated as dividends. The withholding tax rate under domestic law is 20% (if the recipient is company) or 22% (individual recipient), but may be reduced by a relevant tax treaty. Also, according to domestic law, foreign companies resident in the EEA may get the withholding tax reimbursed in connection with the ordinary assessment in November the year following the distributing year by filing an Icelandic tax return. Therefore, often no tax is levied on dividends distributed to EEA companies. The same applies to capital gains of EEA companies from the disposal of shares in an Icelandic company.

#### *Partnership*

Partnerships in Iceland can be either be a dependent tax entity or an independent tax entity.

The income and assets of a dependent partnership are divided between the partners and taxed with other income and assets of the partners at their respective tax rates. In other words, a dependent tax entity functions as a pass-through entity for tax purposes.

A partnership that is an independent tax entity is subject to 37.6% tax on its income; however, the partners are liable *in solidum* for the partnership’s taxes. Distributions to partners can be made without any further taxation in Iceland.

#### *Yield Adjusted Debt*

A film production company may sometimes issue a debt security to investors where the yield may be linked to revenues from specific films. The principal may be repaid on maturity, and there may be a low rate of interest stated on the debt instrument. However, at each interest payment date, a supplemental payment may be paid if a predetermined target is reached or exceeded. For Icelandic tax purposes, this predetermined amount might be

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classified as debt. The terms and conditions of the debt instrument should fulfil the arm's-length principle. Furthermore, if the investors are considered to be a related party of the film production company, as defined in the Icelandic Income Tax Act, limitation on the deduction of interest expense should not exceed 30% of the film production company's EBITDA on a stand-alone basis. There are, however, certain exceptions to the rule. For example, when the taxpayer's interest expense doesn't exceed ISK 100 million, the rule doesn't apply,

#### *Sale and Lease Back*

In order to avoid cash flow problems and match investment expenses with future income receipts, a film production company may sell the film rights to a company or a partnership, which then licenses the film rights back to the production company. With respect to contracts for cross-border leasing, hiring out, loan arrangements, and purchases on credit, the tax assessment and tax base may vary according to the facts and circumstances of the contract in question. The Icelandic legal and tax system applies substance over form interpretation when deciding upon the legal content of documents and agreements.

## **Tax and Financial Incentives**

### *Investors*

There are no special tax incentives in this field in Iceland.

### *Public Information*

*Film in Iceland* is the Icelandic Film Commission and is run by *Promote Iceland*, a public-private partnership in Iceland Agency, an agency of the Trade Council of Iceland and the Ministry of Industry and Commerce. The main focus is to introduce Iceland to foreign film producers and to provide general information on various issues in relation to movie making.

For further information on *Film in Iceland*, you can visit its Web page, <http://www.filminiceland.com/>, or contact its staff at [info@filminiceland.com](mailto:info@filminiceland.com).

### *Producers*

#### *Reimbursement of Production Cost*

Special legislation has been passed in Iceland which aims "to enhance domestic culture and promote the history and nature of Iceland" by temporarily supporting motion pictures and television programs produced in Iceland. Act. No. 43/1999 on Temporary Reimbursement in Respect to Film Making in Iceland (the Act) provides up to a 25% reimbursement for all film and TV production costs incurred in Iceland. The Act was recently amended and the expiration date of the law was prolonged until end of year 2021 (including all applications approved before that time). Producers can apply to the Ministry of Industry for the reimbursement.

In case more than 80% of the total production cost of a motion picture or television program is incurred in Iceland, the reimbursement is calculated on the basis of the total production cost incurred within the European Economic Area. The reimbursement scheme does not cover the production of commercials, sports events, music videos or production intended for exhibition within its own distribution channels.

Among the conditions which must be fulfilled for the 25% refund are:

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- a) The production shall be suited for promoting Icelandic culture, the history and nature of Iceland, or the production is likely to enhance the experience, knowledge, and artistic ambition of the producer;
- b) The books and accounting of each project shall be clearly segregated from other projects, insofar that it is always possible to identify the costs belonging to each project.
- c) Information on the principal parties involved shall be made available;
- d) Information on domestic parties and their share in the production shall be made available;
- e) An itemized estimate of the production costs and sources of funding shall be made available, together with confirmation by the funding parties and a declaration by the applicant to the effect that the production conforms to the aims of the Act;
- f) Information about the content of the proposed production of a motion picture or a television program shall be made available, such as a script and information about filming locations;
- g) Information is available on the distribution;
- h) The material is not contrary to laws on review of films and prohibition on violence or pornography;
- i) No taxes or other claims are due in Iceland. A tax payment confirmation or an application for a taxation exemption must be submitted.

#### *Public Support*

Icelandic authorities have introduced financial incentives to increase international interest in filming in Iceland. In the beginning of 2003, Act No. 137/2001 on Movies went into effect, allowing the government to offer assistance in the matters of filmmaking in Iceland. The purpose is to support the progress of filmmaking and to encourage further growth in the field in Iceland, both as an art and a business. Support to the Icelandic film industry is provided by two entities, the Icelandic Film Centre (Icelandic: "Kvikmyndamiðstöð Íslands") and the Film Archive (Icelandic: "Kvikmyndasafn Íslands"). The Icelandic Film Centre's role is to promote Icelandic filmmaking by providing financial support. The Film Archive compiles, records, and retains films and printed material regarding the films. An Icelandic film is a film which is produced and sponsored by Icelandic parties or is a co-production by Icelandic and foreign parties. A project supported by the fund must have connections with Icelandic culture, unless special cultural grounds exist for deciding otherwise.

According to the law, only production companies registered in Iceland can officially apply for financial support from the Icelandic Film Centre.

For further information on the activities of the Icelandic Film Centre, visit its Web page, <http://www.icelandicfilmcentre.is>, or contact its staff at [info@icelandicfilmcentre.is](mailto:info@icelandicfilmcentre.is).

#### *Eurimages*

As Iceland is a member of the European Economic Area, films and television programs made in Iceland can receive grants for film production offered by the European Union and its member countries. Eurimages is the Council of Europe fund for the co-production, distribution, and exhibition of European cinematographic works. Eurimages was set up in

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1988 as a Partial Agreement. Currently it has 38 member states. Eurimages has the aim to promote the European film industry by encouraging the production and distribution of films and fostering co-operation between professionals.

For further information about Eurimages, visit its Web page, [http://www.coe.int/t/dg4/eurimages/default\\_en.asp](http://www.coe.int/t/dg4/eurimages/default_en.asp).

### Distributors

No special tax incentives exist regarding distributors. Royalties paid from Iceland are subject to 22% withholding tax, but the rate is reduced to 10%, 5%, or 0% in most of the relevant tax treaties.

### Actors and Artists

Non-resident actors and artists, whether they perform independently or as employees, are subject to tax on income derived from service or activities rendered in Iceland. The tax rate is 20% and is levied on salaries, wages, and/or other remuneration paid to the artist or on his behalf plus a municipal tax depending on which municipality the person derived most of his income from (the average being 14.44%).

In some instances where the artist is an employee of a company and the company receives the reimbursement, the Icelandic tax authorities have accepted that such services are taxed at 20%, i.e., the Icelandic corporate tax rate.

Artists performing independently, without determined salaries, wages, or remuneration, but who enjoy the yield of the activity from Iceland, are subject to a 15% tax on the gross amount, without any deduction. No municipal tax is imposed.

## Other Financing Considerations

### Tax Costs of Share and Bond Issues

There is no Stamp Duty on shares and bonds in Iceland.

### Foreign Exchange Control and Regulatory Rules

The Icelandic Government lifted the capital controls in Iceland as of 14 March 2017. However, some minor restrictions according to Act no. 87/1992, on Foreign Exchange, remain in place, such as regarding derivatives trading, foreign exchange transactions carried out between residents and non-residents without the intermediation of a financial undertaking, and foreign-denominated lending by residents to non-residents, in certain instances. In addition, the requirement obliging financial undertakings and other parties engaging in capital transactions to notify the Icelandic Central Bank remains unchanged. The current, still existing, capital controls should not affect investment into Iceland.

## Corporate Taxation

### Recognition of Income

#### *Film Production Company – Production Fee Income*

The profit on a production derived by a company that is resident in Iceland, and non-resident companies carrying on business through a permanent establishment in Iceland has to fulfil the arm's length principle. If the profit does not fulfil the arm's-length principle, the Icelandic Tax authorities can dispute it. Any profits would be subject to the general 20% Corporate Income Tax (CIT), whether it is an Icelandic company or a permanent establishment of a

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non-resident company. In determining the profits of the latter, the tax authorities will likely follow the OECD Guidelines on profits to permanent establishments, since there are no statutory rules on this issue.

#### *Film Production Company – Sale of Distribution Rights*

If an Icelandic resident company sells distribution rights of a film or television program to another company, the payments it receives would possibly be treated as royalties which are subject to the general CIT of 20%

#### *Amortization of Expenditure*

##### *Deduction of Expenses*

No special tax rules regarding the deduction of expenses apply to a film distribution company, a film production company, or a television broadcaster. Consequently, these companies are subject to the normal rules to which other companies are subject. For example, in calculating taxable trading profits, they may deduct for tax purposes most normal day-to-day business expenditures such as salaries, rental payments, advertising, travel expenses, and professional costs normally related to the business.

##### *Depreciation*

In calculating depreciation for income tax purposes, the straight-line depreciation method is employed with regard to immovable property, unsustainable natural resources, acquired intellectual property rights, and acquired goodwill, whereas gradual depreciation is employed with regard to movable property. Residual value of 10% of the original value of the asset in question remains on account until the asset is scrapped or sold. Accelerated and/or extraordinary depreciation or write-offs are deductible from income in certain limited and specific cases.

Assets subject to ordinary depreciation are classified in various categories, with different annual depreciation rates. Different categories have different depreciation rates varying from 1% to 35%; rates within a category are optional. Machinery and equipment used in industry should be depreciated at a rate between 10% and 30%, which would apply to film production equipment. Depreciation can start in the beginning of the year when the assets are first used to derive income in Iceland. Depreciation is not authorized in the last year of utilization because of sale of the asset or other reasons.

When the purchase price of a single asset or a combination of assets, e.g., movie camera and lens, does not exceed ISK 250,000, the assets may be expensed in full in the year of acquisition.

##### *Amortization*

Intangible assets are amortized on straight-line basis. Patents, copyrights, and other similar rights may be written off over their estimated economic lives if the economic life is shorter than five years. Purchased intellectual property can be amortized at 15% to 20% and goodwill at 10% to 20%. Research and development expenses may be capitalized and subsequently amortized.

##### *Losses*

Net operating losses may be carried forward and offset against taxable profits during the following 10 years. No carry-back of losses is allowed.

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### *Foreign Tax Relief*

Where foreign income is allocated to a permanent establishment abroad and taxed as such, a relief is usually available in Iceland in the form of exemption of the income in Iceland or tax credit against Icelandic tax, either under the relevant treaty or under domestic law in the absence of one

An Icelandic film production or distribution company which receives worldwide income can in many cases avoid the deduction of foreign withholding taxes or obtain a refund of such taxes under relevant tax treaties.

## **Indirect Taxation**

### *Value Added Tax (VAT)*

Where a film producer makes an agreement, for example, with a broadcasting company to make a film in Iceland, he or she will probably be charged VAT on the production. The producer is obliged to register him or herself in the VAT register and file the appropriate VAT returns. VAT generally must be charged on the sale of all goods.

The standard VAT rate is 24%. A reduced rate of 11% applies, among other things, to the supply of the following goods and services:

- Hotel rooms, rooms in guest houses, and other accommodations, as well as campground facilities;
- Newspapers, magazines, and periodicals (local or nationals);
- Books;
- The sale of alcohol and alcoholic beverages;
- Catering and sale of food, and sale of other products for human consumption as defined in an addendum to the VAT Act;
- License fees to use radio and television broadcasting services;
- Warm water, electricity, and fuel oil used for the heating of houses and swimming pools;
- The services of travel agents, tour operators and touring associations;
- Transportation of passengers, whether by land, air or sea;
- Music CDs, records, and tapes.

VAT on the following costs does not qualify for input tax:

- The cafeteria of the taxable party and all food purchases;
- The acquisition or operation of living quarters for the owner or staff;
- Perquisites for the owner and staff;
- The acquisition and operation of vacation homes, summer cottages, children's nurseries, and similar objects for the owner and staff;

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- The acquisition, operation, and rental or lease (long-term or short-term) of passenger cars and coaches and delivery and transport vehicles not fulfilling certain requirements. If these requirements are met, the VAT can be reclaimed fully.

Although the film production is liable to VAT, a few aspects relating to the production are outside the scope of VAT. Payments to some individuals providing certain services (actors and writers) relating to the project who are considered self-employed are outside the scope of VAT.

#### *Imports of Goods and Customs Duties*

When goods are imported to Iceland, customs duties and VAT are payable in respect of the goods. The VAT is refundable as input tax, but customs duties are not.

A resident company of Iceland should pay customs duties in respect of all imported products, both new and used.

Goods that are temporarily imported (for example, goods imported by a foreign film producer and artists) may potentially not be subject to any tax or customs duties if the goods are subsequently exported without alteration, provided that the goods and the volume thereof are customary and meet the purpose of the current project.

## **Personal Taxation**

### *Non-resident Artists*

An individual is considered a non-resident if the individual a) is domiciled abroad (if domiciled in Iceland for the last three years, then she needs to demonstrate that she is liable to tax abroad) and b) does not dwell physically in Iceland, or work on a Icelandic registered aircraft or boat, for more than 6 months over a twelve-month period, taking into account normal absences such as vacation. Non-resident actors and artists are subject to special income tax of 20% on salaries, wages, or remuneration, whether they perform independently, in a group, or as employees, as mentioned earlier. Non-resident actors and artists are also required to pay the municipal income tax, which is on average 14.44%.

Artists performing independently, without fixed salaries, wages, or remuneration but enjoying the return of the activity from Icelandic person, are subject to a 15% tax on the gross amount, without any deduction.

### *Resident Artists*

If an individual having her domicile in Iceland or an individual who spends a period exceeding 183 days over a 12-month period in Iceland, the individual is considered a resident of Iceland.

Resident actors and artists are subject to national and municipal income tax. Residents are entitled to personal tax credit, which amounts to ISK 646,740 (ISK 53,985 per month) for the income year 2018. General rules of Icelandic tax law concerning individuals apply on resident actors and artists.

### *Residence and Work Permits*

If a person is not a citizen of one of the Nordic countries or a country that is a member of the European Economic Area, the person must have a work and residence permit. Information about work and residence permits is available on [www.utl.is/index.php/en/home-english/133-english](http://www.utl.is/index.php/en/home-english/133-english) or [www.vinnumalastofnun.is](http://www.vinnumalastofnun.is).

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## Employees

### *Income Tax Implications*

For the 2018 income tax year, the national income tax is 22.5% on income up to ISK 8,400,000, and 31.8% on income in excess of ISK 8,400,000. The average municipal tax on the same income is 14.44% (and the highest is 14.52%).

All resident individual taxpayers are entitled to a personal tax credit against the computed national and municipal income taxes. The credit amounts to ISK 646,740 (ISK 53,985 per month) for the income year 2018. If the credit exceeds the calculated tax, the excess will be applied by the State Treasury to settle the municipal tax payable. Any part of a single person's credit remaining thereafter will be cancelled.

### *Social Security Implications*

Every employer is obligated to pay, in relation to his or her employees' total revenues, Social Security contribution, contribution to the Bankruptcy Fund, and the market charge, altogether totalling 6.85%. This also applies to presumptive employment income of self-employed individuals. The contributions are deductible for tax purposes.

For foreign employees having an A1 certificate issued from another country, no Social Security contribution shall be made in Iceland, but only contribution to the Bankruptcy Fund and the market charge which amounts to 0.05%.

### *Pension Fund Premiums*

An employee is required to pay a premium into a pension fund. The premium ratio depends on the relevant collective agreement, employment agreement or special legislation. However, the minimum payment is 12% of gross salary, with 8% paid by the employer and 4% paid by the employee (deducted from his or her salary). In general, an employer currently pays 10% of its employees' gross salary.<sup>1</sup> Furthermore, the employee may choose to make an additional payment of 4% into his or her pension fund. Should the employee choose to make the additional payment, the employer is obliged to pay an additional 2% into a pension fund for the benefit of that employee.

## Digital Media

The Icelandic Income Tax law has not been modified to reflect the taxation of electronic services. Such services are therefore subject to the general rules.

In relation to VAT, electronic services sold by residents to non-residents are not considered taxable turnover as the service is deemed to be used where the buyer is resident. In the case of a non-resident party selling electronic services to a resident non-VAT liable party, the seller must collect and submit VAT of such services in Iceland. Such services are always considered used where the buyer is resident. The seller of such services shall on his own initiative inform the Icelandic Directorate of Internal Revenue of his services, unless the turnover is less than ISK 2,000,000 for every 12-month period.

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<sup>1</sup> As of 1 July 2018, an employer will generally be subject to 11.5% pension fund premium payment of her employees' gross salary.

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