



cutting through complexity

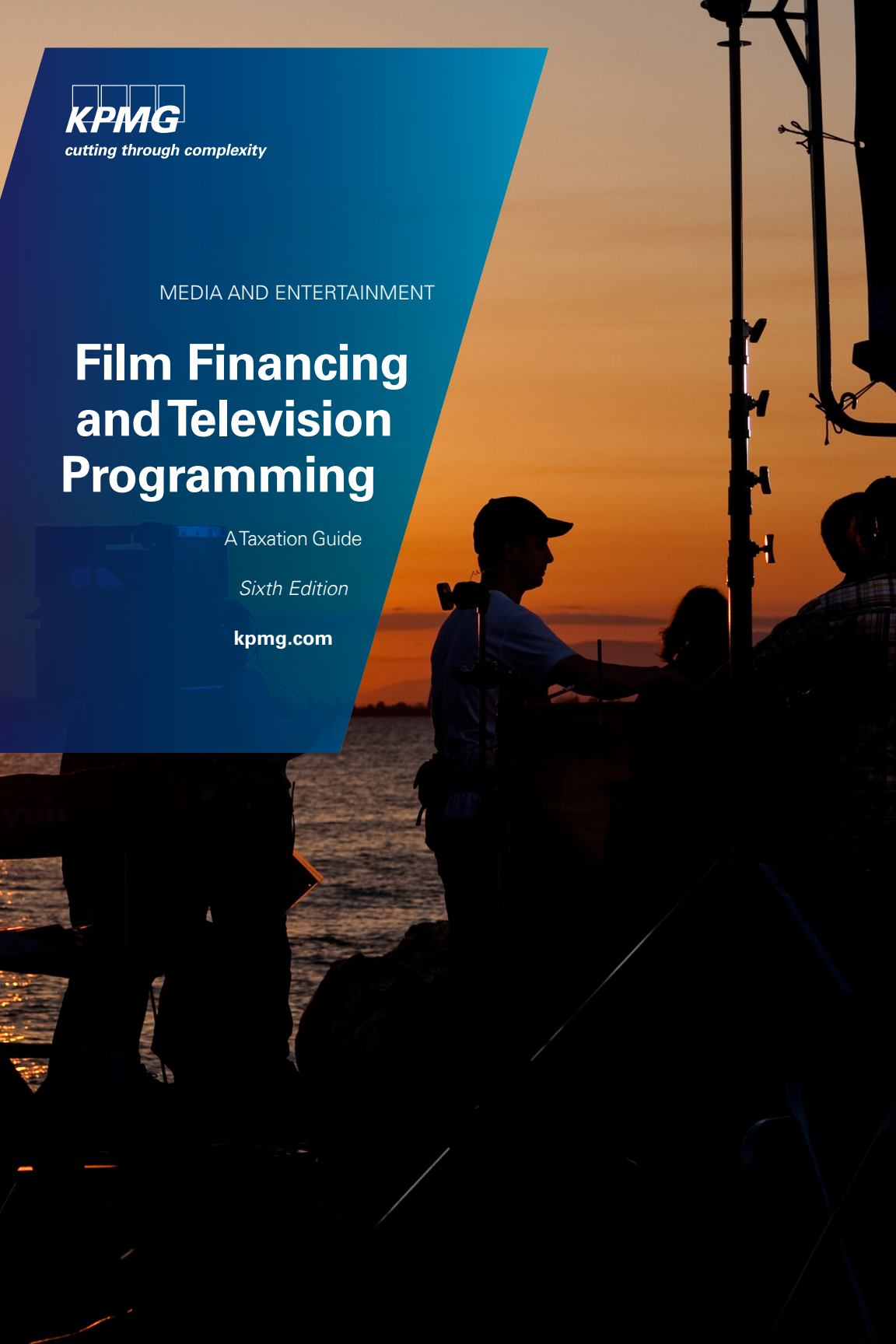
MEDIA AND ENTERTAINMENT

Film Financing and Television Programming

A Taxation Guide

Sixth Edition

kpmg.com



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Preface

KPMG LLP's (KPMG) *Film Financing and Television Programming: A Taxation Guide*, now in its sixth edition, is a fundamental resource for film and television producers, attorneys, tax, 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. Its primary focus 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 media and entertainment Tax professionals.

KPMG published the first guide more than 15 years ago as a resource for global coverage of incentives and tax updates as they apply to the film and television industry. Subsequent editions expanded into coverage of financing techniques, credits/incentives, and a thorough appendix of withholding tax rates—a valuable reference tool for all finance and tax professionals.

Each chapter of the sixth edition 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. Additionally, the United States chapter focuses on both federal and state incentives, highlighting the states that offer the more popular and generous tax and financial incentives. 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 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-effective 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.

Appendices

Additionally, withholding tax tables setting forth the non-treaty and treaty-based dividend, interest, and film royalty withholding tax rates for the countries surveyed are included as an appendix and can be used as a preliminary source for locating the applicable withholding rates between countries.

KPMG and Member Firm Contacts

References to KPMG and KPMG International member firm contacts at the end of each chapter are provided as a resource for additional detailed information.

The sixth edition of KPMG's Film and Television Tax Guide is available in an online PDF format at www.kpmg.com/filmtax and on CD. The guide is searchable by country.

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 book 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.

Finally, we would sincerely like to thank all of the KPMG International member firm Tax professionals from around the world who contributed their time and effort in compiling the information contained in this book and assisting with its publication. Production opportunities are not limited to the 35 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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January 2012

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Romania

Introduction

Romania's business infrastructure has improved significantly, with new private enterprises and new equipment to serve the needs of both Romanian and international filmmakers. In the past few years the film industry in Romania has been developing rapidly with an increase in both the number of movies made and in the quality of film productions, as a number of Romanian films have won prestigious awards in international film festivals. Foreign film producers have also been showing an increasing interest in our country thanks to the recent development of the sector.

Romania – A Member of the European Union

Romania became a member state of the European Union (EU) on January 1, 2007 and succeeded in largely adopting the EU acquis in respect of audiovisual policies.

The ratification of the European Convention on Transfrontier Television and the adoption of a considerable amount of secondary legislation on the basis of the Audiovisual Law (in force since July 2002) represent major developments in the audiovisual sector.

Film Industry in Romania

According to a survey of the National Cinema Centre done at the end of 2010, there are 54 film production companies and 12 major film distribution companies registered in Romania. Local film production companies offer support in projects related to film (including music videos, short and long documentaries, and feature films), TV and commercial productions, including casting, production and post-production equipment, film crews, costumes, props, construction of sites, makeup, and special effects. Any individual or company that performs activities in the field of cinematography needs to register with the Cinema Registry. The Cinema Registry is administered by the National Cinema Centre.

Film Production/ Sources of Finance	2004	2005	2006	2007	2008	2009	2010
1. Feature films	21	20	18	12	9	18	19
Entire domestic-financed films	9	9	14	9	7	11	9
Co-productions	12	11	4	3	2	7	10
Major co-productions	2	2	1	-	2	3	8
Minor co-productions	10	9	2	3	-	4	2

Film Production/ Sources of Finance	2004	2005	2006	2007	2008	2009	2010
50/50 co-productions	-	-	1	-	-	-	-
2. Short films, documentaries and animation films	17	37	8	18	22	32	21

Source: Yearbook film production distribution and exhibition, Romania 2010.

South Eastern Europe Cinema Network (SEE Cinema Network)

Romania is a signatory country of the SEE Cinema Network (the Network).

The objectives of this organization are to develop and promote national cinematography of each signatory member of the Network in the other signatory country member and other nonmember countries; to realize bilateral and multilateral cooperation in the field of production, promotion and preservation of traditional cinematography of each member; to create a joint fund of co-productions and to encourage cooperation/co-productions with other European or other continent Networks. One of the ways provided in the Statutory Deeds of the Network is to lobby interests of the Network with domestic authorities.

Key Tax Facts

Corporate income tax rate	16%
Personal income tax rate	16%
VAT rates	24%, 9% and 5%
VAT registration threshold	a turnover over EUR35,000
Normal non-treaty withholding tax rates:	
Dividends	
• to companies ¹	16%
• to individuals	16%
Interest ²	16%
Royalties ²	16%
Supply of Services:	16%
Tax year-end: Companies	Financial year-end – December 31

¹By virtue of the EU Parent/Subsidiary Directive, as from 1 January 2009, profit distributions made by a subsidiary in Romania to its parent company (i.e. which has a holding of at least 10% for an uninterrupted period of at least 2 years) located in another Member State, are exempt from withholding tax.

²Starting 1 January 2011, interest and royalty payments made to an associated company (one of the companies has a direct minimum holding of 25% in the other for a non-interrupted period of at least 2 years) from another Member State or from a state of European Free Trade Association (Island, Lichtenstein, Norway) are exempt from WHT.

Tax year-end: Individuals

December 31

Film Financing

Registration Procedures

According to Romanian Law, business entities, individuals or family associations, whether Romanian residents or not, that produce, multiply, distribute or make use of cinematographic works, use image or correlate sound with image regardless of the support used, or perform other cinema-related activities and services are required to register with, and obtain authorization and approval from, the Romanian Cinema Registry before starting any activity, and are requested to notify the Cinema Registry of any subsequent changes in the circumstances described at the time of registration.

A company intending to perform cinema-related activities in Romania has to follow certain steps for its legal establishment, including:

- Approval from the National Cinema Centre for performance of cinema-related activities
- Registration with the Romanian Trade Registry
- Authorization for functioning from the National Cinema Centre
- Registration with the Cinema Registry
- Also, in order to be released for exhibition in Romania, each film must be:
 - Registered with the Cinema Registry (i.e., identified by title, producer, casting, distributors, conventions applicable)
 - Licensed with (obtain exploitation visa from) the Classification and Vision Commission (i.e., a license for general audience, movies for which parental guidance is suggested for children under 12, prohibited for people under 15 or prohibited for people under 18)

Generally, there is no censorship of audiovisual communication. However, special decisions for the protection of minors and for private image preservation prevent the transmission of certain types of materials.

Authorizations and Fees

The National Cinema Centre authorizes all cinema-related activities within Romania, performed by individuals or companies, whether Romanian residents or not. The Cinema Registry (which is administrated by the National Cinema Centre) is responsible for registration, evidence and authorizations for cinema qualifying activities, as well as the classification of cinema works.

Romanian residents and non-residents have to pay fees for classification, registration or authorization for producing a film in Romania. The film producers have to register with, and receive authorization from, the National Cinema Centre; if not, the producers may face penalties between RON5,000 – 25,000 (EUR 1,200 – 6,000) and also the termination of their production activity.

Financing Structures

Co-production

It is possible for a Romanian investor to enter into a joint venture with a non-resident investor to finance and produce a film in Romania (even if the film is produced in Romania but the worldwide exploitation rights may be divided among the investors). The investors can then exploit their respective interests according to the co-production agreement.

The practical approach of the Cinema Registry's representatives is that a non-resident envisaging producing a movie in Romania in co-production with a Romanian registered entity would not be required to register with the Cinema Registry. However, this should be confirmed on a case-by-case basis, upon beginning of cinema activities in Romania.

The law does not impose specific requirements as to the legal form under which cinema-related activities must be carried out; thus the co-production may be carried out in any of the legal forms under which economic activities may generally be carried out (e.g., companies, branches, joint ventures, sole traders). If no legal relationship exists for Romanian civil law purposes, the co-production may be subject to tax in Romania provided it has a permanent establishment in Romania. See discussion of permanent establishment below under "Corporate Taxation."

Please note that for a movie to qualify as a co-production under Romanian cinema legislation, the Romanian party must bring a contribution which represents at least 10 percent of the production budget for multilateral productions and 20 percent for bilateral productions. Also, a co-producer is defined as any individual or authorized entity that contributes with a technical and/or financial means to the production of a film.

European Co-production

Romania is a party to the European Convention (the Convention) related to film co-productions. According to the Convention, co-producers (i.e., production companies or individual producers established in Romania or another EU Member State) are eligible to benefit from the incentives

provided under the law in their states of residence (i.e., incentives under Romanian legislation). In order to benefit from the provisions of the Convention, the co-production work must:

- Have at least three co-producers from three distinct Member States of the Convention
- Have at least three co-producers from Member States and one or more co-producers from states other than a Member State of the Convention that must bear no more than 30 percent of the overall production costs

The concept of European (cinematographic) works refers to:

- Works originating in Romania or in another EU Member State
- Works originating in third-party countries which are parties to the Convention on Transfrontier Television
- Works realized exclusively or in co-production with producers established in one or more European states with which Romania or EU have concluded audiovisual conventions

Joint Venture

Joint ventures are not separately treated under Romanian laws. The term “joint venture” is a common term used to describe any form of economic activity involving foreign investment, including:

- A joint stock or limited liability company whose shares are held by both Romanian and foreign investors
- A partnership of two or more companies or individuals, including foreign investors
- Cooperation agreements

Limited Liability Company

A limited liability company (SRL) is the most popular type of company. It may have up to 50 shareholders. Romanian Companies Law allows for the incorporation of such a company with one shareholder. However, an individual or a legal entity cannot be sole shareholder in more than one SRL. Furthermore, an SRL with one shareholder may not be at its turn the sole shareholder of another SRL.

The share capital of a SRL needs to be at least RON 200 (approximately EUR48) and is divided into shares (“parti sociale”) having a nominal value of at least RON 10 each (EUR2). The shares may not be traded on a regulated stock exchange but they can be traded among shareholders or between shareholders and third parties (Over The Counter). Each share gives its holder the right to one vote.

Joint Stock Company

A joint stock company (SA) can be set up by at least two shareholders. The share capital of an SA should be at least RON 90,000 (approximately 22,000 EUR) divided into shares (“actiuni”), each of them having a value of at least RON 0,1. The initial amount of capital paid by each shareholder should be at least 30 percent of the subscribed capital while the remaining 70 percent should be paid within at most 12 months. Shareholder-contributions in kind need to be made upon the registration of the company.

The shares are marketable titles and they can be nominal or bearer shares. The ownership rights over the nominal shares can be transferred further to a statement made by the transferor or by his or her attorney who is registered in the shareholders’ corporate register, and by registering the transfer in the shares certificate, while the ownership right over the bearer shares can be transferred by simple remittance.

The General Meetings of Shareholders may be ordinary or extraordinary. The company is managed by a director or board of directors, who may be elected for a four-year period. Each director has to pay a guarantee for his or her office. The guarantee should be at least equal to lower of the value of ten shares or twice the director’s monthly remuneration.

Branch or Subsidiary of Foreign Company

Foreign companies can establish branches or subsidiaries in Romania provided that the home country governing law entitles them to do so.

A subsidiary is a Romanian company (its parent company controls the activity of the subsidiary due to its participation in the subsidiary’s share capital), with its own legal personality, governed in all aspects by the Romanian laws (e.g., in terms of incorporation, structure, operation, dissolution/liquidation, etc.), which its own assets and liabilities and acts in its own name and on its own behalf in relation with third parties (e.g., authorities, creditors/debtors, employees, etc.).

A branch is not a Romanian entity but it is an extension of its parent company; therefore it is treated as a foreign entity under the Romanian law, thus having different rights than a Romanian entity (e.g., a branch of a foreign company may not acquire land in Romania). A branch has no legal personality (legally speaking, a branch has no separate existence from its parent-company), has no assets and liabilities on its name/behalf and may conclude contracts (including contracts with customers, employees) only in the name and on behalf of the parent company; such contracts involve the latter’s liability, therefore, the parent company is liable towards the

employees and creditors of the branch for the actions/debts undertaken by the branch. However, the branch is treated as a Romanian resident for tax and currency regime purposes.

Law no. 105/1992 on private international law provides that branches are governed by the national law of their parent companies. By contrast, Romanian subsidiaries controlled by foreign companies, are subject to Romanian law. Of course, this comment refers mainly to corporate matters while the economic activities carried on in Romania are subject to Romanian Law.

In practice, subsidiaries have to fulfill the same registration formalities as companies, i.e., registration of the Constitutive Act with the specialized Office within the Romanian Trade Registry. It is important to notice that a subsidiary must comply with the minimum capital requirements imposed under the Romanian Company Law.

Sole Trader (Sole proprietorship)

A sole trader is merely an individual doing business by acting independently. The individual is entitled to all the profits deriving from his or her business and is personally liable for all related debts and obligations. The individual's liability to the business is therefore not limited to the assets used for carrying out his or her business, but also includes the personal assets of the trader.

The legal provisions set forth the conditions under which individuals—Romanian citizens or citizens of the EU member states and the member states of the European Economic Area—can perform economic activities in Romania, either independently, or as family associations.

In order to carry out economic activities, the individuals who act independently as well as the family associations must obtain an authorization, which is issued, upon request, by the mayor of towns, villages, etc., where the individuals have their residence. Performing the activity without the relevant authorization is deemed as a crime and is sanctioned according to the criminal law.

Once the authorization has been obtained, individuals and family associations must register with the Trade Registry and the relevant tax authorities.

Partnership (“asociere in participatiune”)

A partnership is established when an individual trader or a commercial company grants to one or more individuals or companies a partnership interest in the benefits and losses of one or more transactions, or even over all its commercial activities. It may also be set up for commercial transactions made by non-traders.

A partnership does not represent, for a third party, a legal entity distinct from its partners. The third parties have no rights and are liable only towards the person with whom they concluded an agreement. Partners have no property rights over the properties of the partnership even though they provided these properties. However, to the extent of the relationships between them, the partners may stipulate to have their contribution returned in kind, and have the right to receive the damages suffered if such a return would not be possible.

Except for the general rules mentioned above, the form, size and constraints of a partnership are determined through agreements between the partners.

Partnerships are excepted from the formalities required for companies, but they have to be evidenced by writing.

Incentives for the Film Industry

Financial Grants from the National Cinema Centre

The National Cinema Centre can offer financing for:

- production of cinema films (by selection contest) in the form of:
 - Direct Credit
 - Indirect financial support in the form of tax incentives
- distribution, exhibition and exploitation of films in cinemas, in the form of non-reimbursable grants

The amount given as financing is established by a commission made up of members of the National Cinema Centre. However, only the projects that win the selection contest can receive financing for production of cinema films. The selection contest takes place bi-annually and the applicants (i.e. individuals or legal entities) must be registered with the Cinema Registry.

Certain types of films are restricted from benefiting from grants: films which bring prejudices to dignity, honor, private life of individuals, which instigate to violence, adult-content films, which engage electoral, political, religious propaganda.

After a film (i.e. production of a film or a co-production) is approved as eligible for grant after the selection process, certain requirements need to be complied with (i.e. registration with the Cinema Registry, specific budget requirements, copyrights etc.).

Although the Cinema Law provides the general framework for granting direct and indirect financial facilities, such facilities are granted in practice based on a state aid scheme.

In November 2010, the European Commission has approved a EUR 80.6 million state aid scheme for the Romanian cinema movies production. The scheme consists in offering interest-free loans (direct credit) and non-reimbursable financing facilities for production of Romanian movies. The measure also allows movie producers to spend up to 20 percent of the movie budget in the European Economic Area, not only in Romania. This support scheme will be available until the end of 2014.

According to the abovementioned state aid scheme, the facilities are granted for:

I Production of cinema films

1. Direct Credit:

- Cannot exceed 50 percent of the total amount of production expenditures, unless representing credit for the production of difficult films and films with a reduced budget. For the latter (difficult productions), the maximum credit granted cannot exceed 80 percent of the specification amount;
- Up to 50 percent of the credit can be granted at the beginning of the preparation period and the difference throughout the realization of the film;
- Include in the production budget preset maximum quotas, i.e., 10 percent for the producing companies; 10 percent – unexpected costs; 5 percent – director's fee; 4 percent – executive producer's fee; 4 percent – screenplay; 4 percent – lyrics' composer;
- The beneficiary does not have any liabilities to the State;
- May be granted to international film productions if certain conditions are met, such as: the co-producers are Romanian legal entities or individuals (authorized, registered with the Cinema Registry and have won a selection contest) and they bring a contribution which represents at least 10 percent of the production budget for multilateral productions and 20 percent for bilateral productions. However, direct credit for such productions cannot exceed 50 percent from the contribution brought by the Romanian party (except for difficult productions);
- Reimbursement of direct credits is made over a maximum time span of ten years.

The quantum of the grant for production will be decided and announced by the Council of the National Cinema Centre before each cinema projects selection session based on a scoring system. The criteria involve the quality of the script, the film budget, the production and financing plan, etc. However, the minimum quantum of the credit which may be granted is:

- 15 percent for debut fiction motion pictures
- 5 percent for fiction short films
- w15 percent for documentaries and animation

In order to benefit from a direct credit, a winner of a selection contest must conclude a loan agreement with the National Cinema Registry, which specifies the exact terms of the loan.

2. The indirect financial grant, in the form of:

- *Producers, co-producers and other entities involved in the financing of the movie are granted non-reimbursable financing facilities determined based on the amount of corporate tax paid, meaning 150 percent of the corporate income tax paid in relation to the invested sum. However, this amount cannot exceed 10 percent of the direct production costs incurred in Romania and 50 percent of the gross profit.*
- *Romanian companies involved in the production of movies realized “on demand” are granted non-reimbursable financial facilities representing 25 percent of the total taxes paid in respect of the costs incurred in Romania, provided that the following conditions are met:*
 - *The Romanian legal entity is registered with the Cinema Registry*
 - *The costs incurred in Romania represent at least 40 percent of the total budget of the production*
 - *The amounts granted as state aid must cover the direct production costs and must not exceed 10 percent of these costs*

II. Distribution, exhibition and exploitation of films in cinemas Grants are available for legal entities authorized provided that applicants:

- Register with the Cinema Registry;
- Submit an application form together with a file containing the required documentation;
- In the case of legal entities, their share capital must be of minimum RON 10,000 (approximately EUR2,500) or in the case of individuals they must submit a letter of guarantee issued in the name of the National Cinema Centre;

- Have a minimum contribution of 6 percent to the total production budget, Have the written approval from the author(s) of the screenplay regarding the distribution and the exploitation of the movie;
- Include in the production budget preset maximum quotas, i.e. 7.5 percent for the distribution company's fee; 5% for unexpected costs;
- The first installment must not exceed 30 percent of the total financial grant and the last installment must represent at least 15 percent of the total funds available;
- Have no liabilities to the State;

Eurimages

Eurimages is the Fund of the Council of Europe created in order to support co-production, distribution and exploitation of European film industry. Romania joined this program in May 1998. Grants are available for co-productions, for distribution and for cinemas.

Other Financing Considerations

Currency Restrictions

Generally, payments between Romanian residents, including branches and representative offices of foreign companies registered in Romania, must be made in Romanian currency (RON); however, certain categories of residents (i.e. companies that perform import-export operations, individuals and companies that perform international transportation of people/merchandise, international tourism, operations abroad), may make payments in foreign currency. Payments made from a Romanian resident to a non-resident can be made in hard currency. There are no restrictions on such payments. The granting of financial loans (with duration of more than one year) between residents and non-residents requires notification to the National Bank of Romania.

Corporate Taxation

Romanian legal entities are subject to tax on their worldwide income. Foreign legal entities carrying out activities in Romania through a permanent establishment are subject to tax on profits attributable to the permanent establishment. The definition of a permanent establishment provided for by Romanian legislation is generally in line with the standard tax treaty definition, as contained in the OECD model treaty.

If a company is not resident in Romania and does not have a production office in Romania, but undertakes location shooting there, it is unlikely that it would have a Romanian tax liability since it would not be regarded as having a permanent establishment in Romania. However, if a company is not resident

in Romania but has a production office to administer location shooting in Romania, the tax authorities may try to argue that it is subject to tax in Romania by being regarded as having a permanent establishment, unless specific exemptions can be obtained by virtue of a claim under an appropriate double tax treaty. In this case, it may be possible to argue that the location is similar to a construction or installation project that does not exist for more than the defined period, or that it is not a fixed place of business as provided for in the appropriate article. There is little guidance concerning recognition of permanent establishments of film productions of foreign companies and the computation of attributable profits for local tax base determination. Advice on this matter needs to be sought on a case-by-case basis.

Foreign filmmakers subject to Romanian corporate tax may theoretically benefit from the same corporate tax incentives as Romanian filmmakers. However, it is questionable whether such foreign filmmakers would be in a position to meet all of the relevant conditions.

Indirect Taxation

Value Added Tax (VAT)

As a member of the EU Romania harmonized its legislation on indirect taxation with the regulations applicable in the EU so the Romanian Law on VAT is in line with 2006 112/EC Directive.

The general VAT rate in Romania is 24 percent. Cinema entrance tickets are subject to the 9 percent reduced VAT rate. The activity of Romanian filmmakers is generally subject to VAT at 24 percent.

If supplied between two taxable persons established in different Member States the services mentioned above of filmmakers would be, as a general rule VAT taxable where the customer is established (i.e., in Romania if rendered to a customer established in Romania). Services rendered in Romania by Romanian filmmakers (i.e. taxable persons registered for VAT purposes in Romania) are generally subject to output VAT (i.e. no specific exemption is applicable) and such filmmakers are entitled to deduct input VAT on the costs they incur. Note that Romanian entities (i.e. taxable persons established in Romania) carrying out economic activities under the small undertakings threshold of EUR 35,000 (approximately RON 119,000) are not required to register and account for Romanian VAT. However, the taxable person may opt for the application of the normal tax regime. In case the taxpayer has a turnover of less than EUR 35,000 and does not opt for VAT registration, input VAT incurred in this situation cannot be deducted.

As mentioned above,

Generally, foreign filmmakers that do not carry out any other taxable operations in Romania do not have to register for VAT purposes in Romania, as the beneficiary is liable to pay for VAT via the reverse charge mechanism. The refund VAT procedure applicable to taxable persons established in a Member State other than Romania, regulated by the Directive 2008/9/EC, has been implemented by the Methodological Norms for the application of the Fiscal Code and Order no.4/2010 and has come into force as of January 1, 2010. Filmmaking companies established outside the EU are not able to obtain a VAT refund as provided by the Directive 86/560/EC (with the exception of Switzerland and Turkey, under certain circumstances).

Foreign filmmakers that do carry out taxable activities, other than those for which VAT is payable by the Romanian beneficiary according to Romanian VAT law, or perform intra-Community acquisitions/supplies of goods, must register for VAT purposes in Romania before performing such operations. To deal with its VAT affairs a foreign entity may either appoint a VAT representative with joint and several liability to the tax authorities (compulsory for non-EU entities), or register directly with the Romanian authorities (option available only for entities from other EU countries). Note that voluntary VAT registration is not available.

Alternatively, a foreign filmmaking company may set up a Romanian company or a branch and so be subject to the same treatment as Romanian filmmakers.

With respect to input VAT, the purchase of goods and services provided in Romania for the purpose of filmmaking is generally subject to 24 percent VAT. Imports of goods are also generally subject to 24 percent VAT. Relief from import VAT may be available under the special rules relating to temporary regimes of import as described below. Romanian VAT law also provides for a derogation regarding the payment of VAT in customs, in case of imports performed during a financial year for companies that exceed a threshold of RON 100,000,000 (approximately EUR 25,000,000).

Customs Duties

As far as customs duties are concerned, the treatment of residents and non EU residents are similar. There are currently no restrictions on the importation of English-language films. Under the copyright law, the importation of a film needs an authorization from the author. Also, each copy of a film must have applied a hologram issued by the national copyright authorities for prevention of distribution of illegal copies.

Romania is a member of the EU since January 1, 2007 so customs duties arise only on importation of goods from countries outside the EU and not on importation from member states of the EU. Even in the case of importation from countries outside the EU, relief from customs duties may be available under the special rules relating to temporary regimes of import (where the goods are subsequently re-exported to a country outside the EU and certain other conditions are fulfilled). There is also a customs warehousing system allowing duties to be suspended under certain conditions.

For goods imported from outside the EU, the Common Customs tariff is applicable.

Special Taxes for Film Exhibition Activities

National Cinema Fund

Taxes paid to the National Cinema Centre include:

- A tax of 3 percent of the gross selling price of videocassettes, DVDs or any other recordable support is due by companies authorized to sell such goods to the public
- A tax of 4 percent of the income from advertising on the national and private TV networks
- A tax of 3 percent applicable to the advertising income received from cable TV networks for selling advertising space
- A tax of 4 percent applies to income from exhibition of films in cinema theatres or any other similar locations
- A tax of 1 percent of income is due in respect of subscriptions with cable companies, satellite and digital broadcasting
- A tax of 3 percent of the income derived from downloading movies through intermediaries of data transmission, including internet and telephony.

The above mentioned taxes must be declared and paid no later than the 25th of the month following the month for which they are due.

Show Tax

A tax of 2 percent, applied to the price of cinema tickets, is payable to the local budgets. However, this tax may be increased by up to 20 percent per year.

Cinema Stamp

A “cinema stamp” of 2 percent of the price of a ticket is payable by the final consumers to the companies authorized by the National Cinema Centre to organize cinema or video shows in Romania. The cinema stamp is added to the price of the ticket and the tickets need to have printed on them:

“The price of the ticket includes the cinema stamp.” The collecting units further pay the entitled organizations of authors (i.e., producers or other persons designated by the producers). For foreign films, the destination of collected stamp is established by the distributor.

Personal Taxation

Resident Artists

According to domestic Romanian rules, an individual is deemed to be a Romanian resident (for income tax purposes) if at least one of the following conditions is met:

- The person has his or her domicile in Romania
- The center of vital interest of the person is located in Romania
- The person is present in Romania for a period or periods that exceed in total 183 days during any period of 12 consecutive months ending in the calendar year in question
- The person is a Romanian citizen who is serving abroad as an official or employee of Romania in a foreign state

The Romanian tax legislation does not contain a definition of an “artist.” A definition of “artist” is provided in the Copyright Law. According to this definition, artists include actors, singers, musicians, dancers and other individuals who present, sing, recite, play, interpret, direct or execute a literary or artistic work, or a show of any kind.

Incomes earned by residents who are cast in realizations of films, shows, or TV shows are subject to an income tax rate of 16 percent.

Income from copyrights is taxable similarly to freelancers. Thus, net income (taxable income) from copyrights is determined by subtracting out of the gross income a 20 percent allowed deduction plus social charges due and paid. Tax is levied at a tax rate of 16 percent.

Non-Resident Artists

Individuals who do not fulfill any of the residency criteria as above mentioned are not subject to income tax in Romania except on their Romanian source income.

More favorable residency criteria may exist under the Double Tax Treaties. Romania has a good tax treaty network, having concluded tax treaties for the avoidance of double taxation with almost 90 countries worldwide. Most of these treaties are generally in line with the OECD Model Tax Convention on Income and Capital.

Fiscal Residency Certificate

Benefits of the Double Tax Treaties may be applied only if a fiscal residency certificate of the foreign individual is provided. The fiscal residency certificate is a document which needs to be issued by the local tax authorities of the lender, stating that it is a resident of that state in accordance with the definitions given in the treaty in force between Romania and that country, and that the treaty stipulations are therefore applicable to it.

Work Authorization

Under current Romanian immigration law, non-EU/EEA individuals who work in Romania either as assignees of a non-Romanian employer or as local employees of a Romanian employer have the obligation to obtain a work authorization. The authorization as assignee is issued for a one-year period, and if the individual wishes to continue to work in Romania after the initial one-year period of assignment, the person has to obtain a new work authorization (for local employees) and to conclude a local employment contract with a Romanian employer.

As from January 1, 2007 EU and EEA citizens are no longer required to obtain work permits in order to carry out activities in Romania. They just have to register with the Romanian Immigration office and obtain a registration certificate.

Other Issues

Author Rights

Under Romanian copyright law, the author of a cinematographic work is the director, the producer, the author of the adaptation, the author of the screenplay, the author of the dialogues, the author of the music specially created for that work, or the creator of the animated graphic images for animation films or film scenes including animation where such scenes cover an important part of the film. The contract signed between the director and the producer may stipulate other parties (which have substantially contributed to the creation of the film) to be included as authors.

Contracts concluded between the producer and the authors allow the producer to have the exclusive rights on the use of the film and the right to authorize subtitles and voice doubling, if not otherwise expressly provided. On the other hand, if not otherwise expressly stipulated, the contract also allows authors to keep ownership of copyrights over their contribution to the film and to use it for other purposes (i.e., for advertising purposes, other than for the promotion of the film).

If the producer does not finalize the film within a period of five years from the date of signing the contract with the co-authors or if he or she does not release the film within one year from the same date, then co-authors may ask for the termination of the contract.

Broadcasters

As from January 1, 2007, broadcasters incorporated in Romania have to comply with the following requirements:

- To reserve to the European works a minimum 50 percent of the transmission time, excluding time dedicated to news, sports, games, advertising, teletext and teleshopping
- To reserve to the European works created by independent producers at least 10 percent of the transmission time or of the program's budget

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