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BELGIAN TAX SHELTER

2024 AUDIOVISUAL WORKS



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FOREWORD

The purpose of this brochure is to provide general information on the Tax Shelter system for audiovisual works, based on the law of 12.05.2014, the law of 26.05.2016 and the law of 05.07.2022 included in art. 194ter of the Income Tax Code 1992.

Further details on how the system works are explained in the FAQ (Frequently Asked Questions) of 13.09.2017, published on the website www.fin.belgium.be.

For more specific questions regarding the concrete application of the Tax Shelter measures, you are advised to contact the Tax Shelter Office, or to introduce a request for an advance decision at the Office for Advance Decisions on tax matter (OAD).

All useful addresses are listed at the end of the brochure under the heading "CONTACTS".



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ment. This publication cannot be considered as a ministerial notice either, and therefore, cannot be regarded as legally binding.

Design: Strategic Coordination and Communication Department

THE TRAILER

The wellknown Tax Shelter system has been successfully encouraging the production of audiovisual works in Belgium for almost twenty years.

An important reform as regards the TAX SHELTER system has been implemented on January 1st 2015.

This reform had the following objectives :

- To improve the investor's security ;
- To increase the amounts actually devoted to the audiovisual production ;
- To better control the system in order to guarantee its durability.

The law as regards the Tax Shelter system is always stipulated in Article 194ter of the Income Tax Code 1992. In 2017 the system was extended to performing arts works (articles 194ter/1 and 194ter/2 of the Income Tax Code 1992), followed by the extension to video games in 2023 (article 194ter/3).

The Tax Shelter system is a tax incentive allowing the Belgian or foreign companies established in Belgium to invest in audiovisual works, in performing arts works or in video games and to obtain in return a tax deduction reducing the taxable profit.

The system is open to Belgian productions as well as qualifying international co-productions with Belgium.



THE WORKS

WHAT ARE THE ELIGIBLE WORKS ?

1. The European audiovisual works produced with a commercial purpose other than for advertising purposes with the aim of being shown to a wide audience, such as :

- a fiction film
- a documentary
- a short-length film
- an animation film
- a fiction or animation series

They must be approved by the competent services of the French, Flemish or German-speaking Community as European works such as defined in the Directive of March 10th 2010 2010/13/EU called "Audiovisual Media Services Directive".

2. International productions in the following categories : feature film, documentary or animation film intended for a wide audience, provided that :

- either to fall within the scope of the Directive 2010/13/ EU "Audiovisual Media Services Directive"
- or to fall within the scope of a bilateral agreement as regards the co-production concluded by Belgium (or one of the country's Communities) with another State.

THE ACTORS

1. The investor :

The eligible **investor** is the resident company or the Belgian establishment of a non-resident company other than :

- an eligible production company such as mentioned in the second point (or a company which is linked to this company)
- a broadcasting company,
- which signs a framework agreement pursuant to which it commits itself to pay sums in order to receive a tax shelter certificate ;

2. The Production Company :

The eligible **production company** is the resident company or the Belgian establishment of a non-resident company other than :

- a broadcasting company or a company linked to Belgian or foreign broadcasting companies (except cases foreseen in the law)
- whose main objective and core business is the development and the production of audiovisuals works and
- has been approved as such by the Minister of Finance

3. The Intermediary :

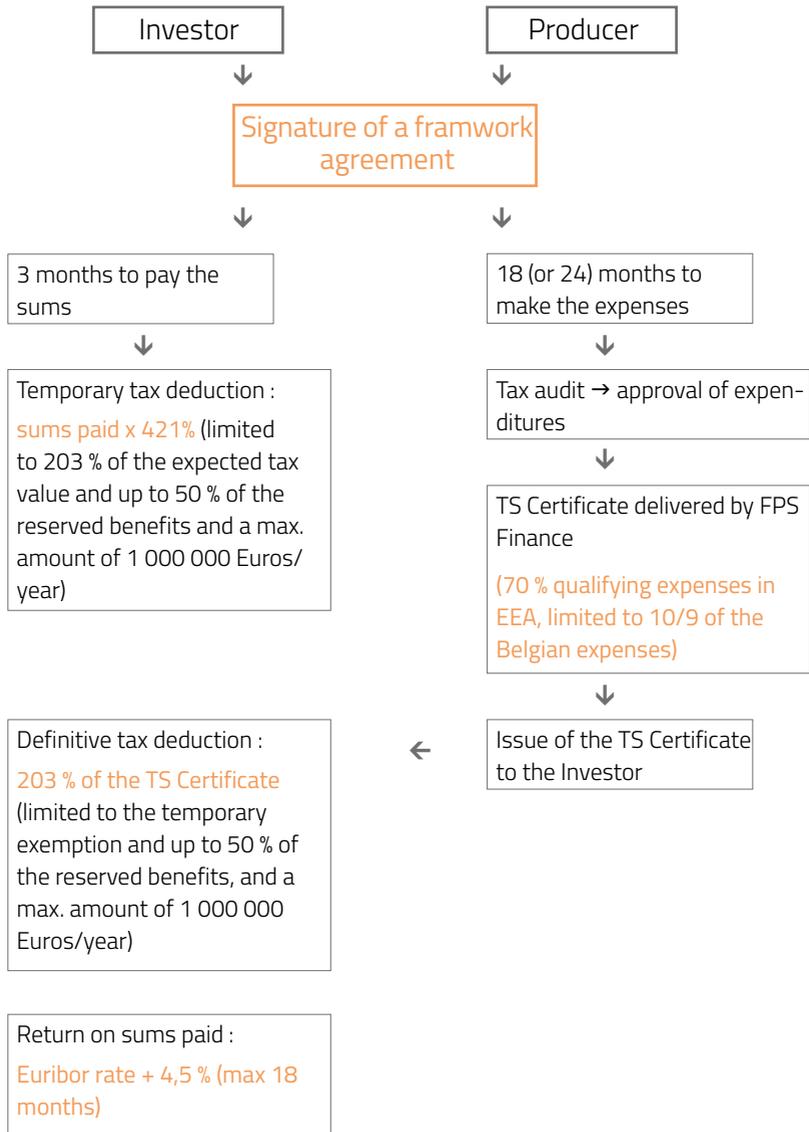
The eligible **intermediary** is a natural or legal person :

- who intervenes within the negotiation and signature of the framework agreement so that a tax shelter certificate can be delivered, in return for a remuneration or advantage,
- that person is not an eligible production company and neither an eligible investor
- and has been approved as intermediary by the Minister of Finance



THE SCREENPLAY

HOW DOES IT WORK ?







I. FOR THE PRODUCTION COMPANY

System based on a framework agreement, production expenses and a Tax Shelter certificate.

1. THE FRAMEWORK AGREEMENT :

This is a legal agreement concluded between an investor and a production company, sometimes with an intermediary's participation. In this agreement the investor commits himself to pay a sum to the production company in order to finance the production expenses of an eligible work. The production company commits itself, to use this sum for its expenses so that it can obtain a Tax Shelter certificate. This certificate allows the investor to receive his tax advantage.

The framework agreement must be notified within the month after its signature and before completion of the audiovisual work to the Federal Public Service Finance by the production company or the intermediary.

It must include mentions such as : name and object of the production company and the investor, identification of the work, the expenses budget, the agreed remuneration method, ...

2. THE PRODUCTION EXPENSES

2.1. Qualifying production and exploitation expenses in the European Economic Area : expenses incurred in the European Economic Area related to the production and exploitation of an eligible work. The law does not impose a time limit for European spending.

2.2. Eligible Belgian expenses :

- expenses from which arises taxable professional income for the beneficiary in personal income tax, corporate income tax or non-resident income tax, pursuant to the standard taxation system
- with the exception of expenses that
 - are not deductible as professional expenses (art. 206/1, paragraph 2, 2° of the Income Tax Code 1992
 - were not incurred for the production and exploitation of the eligible work
- incurred within a maximum time limit of 18 months starting at the earliest 6 months before the date of signature of the framework agreement and running at the latest 18 months after the signature (24 months for animation). The expenses incurred before the signature of the frameworks may not exceed 50 % of the total expenses.
- the Belgian expenses must be at least 90 % of the value of the tax shelter certificate
- At least 70 per cent of these expenses must be expenses directly linked to the production (direct expenses)
- At most 30 per cent of these expenses can be expenses not directly linked to the production fin (indirect expenses)

2.2.1. Expenses directly linked to the production and the exploitation - It concerns expenses which are linked to the creative and technical production of the eligible work, such as :

- the charges for the artistic rights except for charges related to the development of the screenplay which date from the period preceding the framework agreement. If necessary, the period preceding the framework will be adjusted according to the floating term mentioned above ;

- the salaries and other allowances of the staff or the allowances of the independent service providers ;
- charges for the payment of actors, musicians and other artistic posts as far as they contribute to the performance and the direction of the eligible work ;
- the social contributions relating to the salaries and charges mentioned in the second and third points ;
- the costs of sets, props, costumes and attributes, which are visible on the screen, as well as the costs necessary for the recovery of sets, props, costumes and attributes insofar as it is shown that such recovery does not result in the sets, props, costumes and attributes serving again as a basis for qualifying production and operating expenditure ;
- the transport and accommodation costs restricted to an amount corresponding to 25 per cent of the charges mentioned in the second and third points ;
- the charges as regards the equipment and other technical means ;
- the charges as regards the laboratory and the master's creation ;
- the insurance policy charges directly linked to the production ;
- the charges as regards the publishing and the publicity specific to the production: press file's creation, basic website, editing of a trailer and the premiere of the film ;
- the remuneration paid to the production manager, the post production coordinator and the line producer.



2.2.2. Expenses not directly linked to the production and the exploitation : among others the following expenses :

- Expenses as regards the administrative and financial organisation as well as the assistance to the audiovisual production ;
- the charges as regards the financing of the eligible work or the amounts paid on the basis of a framework agreement, including the charges of legal assistance, the lawyers' fees, the guarantee fees and the administrative fees ;
- the invoices from the eligible investor, with the exclusion of the invoices from the audiovisual facility companies, when the goods or services mentioned in the invoice are directly linked to the production and insofar as the amount of these invoices corresponds to the price which would have been paid if the companies taking part in this project were totally independent from each other ;
- the distribution costs which are payable by the production company.

Also considered as expenses not directly linked to the production and the exploitation of the eligible work but within a restriction of 18 % of the Belgian direct expenses :

- a flat fee of maximum 10 % of Belgian direct expenditure, provided that all the activities of producers (not referred to in 2.2.1.), have been effectively performed by the eligible production company ;
- a remuneration conform to market practices paid or granted to producers (not referred to in 2.2.1), linked to actual performance, where the qualifying production company does not perform all the activities of producers (not referred to in 2.2.1) ;
- the financial costs and commissions conform to market practices paid in connection with the recruitment of companies investing in a framework agreement for the production of an eligible work ;
- the general costs of production for the benefit of the producer.



3. THE TAX SHELTER CERTIFICATE :

A **tax shelter certificate** is issued by the FPS Finance at the request of the production company on the basis of a **framework agreement** and **expenses** carried out for the production and exploitation of the work. The production company must apply for the tax shelter certificate within a period of 9 months after the completion of the eligible work.

Tax value of the Tax Shelter certificate :

- 70 per cent of qualifying production and exploitation expenses, carried out in the European Economic Area, insofar it concerns expenses directly linked to the production of the work,
- with a maximum amount equal to 10/9 of the amount of the production and exploitation expenses carried out in Belgium, whose 70 per cent are expenses directly linked to the production and the exploitation.

Limits as regards the tax value of the Tax Shelter certificate :

If conditions on European expenditure are not respected, if the total amount of Belgian expenses, or the total amount of direct Belgian expenses are not reached, the tax value is proportionally reduced.

The total amount of the tax values as regards the Tax Shelter certificates issued for a work cannot exceed 15 000 000 Euros.



4. OTHER OBLIGATIONS OF THE PRODUCTION COMPANY OR THE INTERMEDIARY

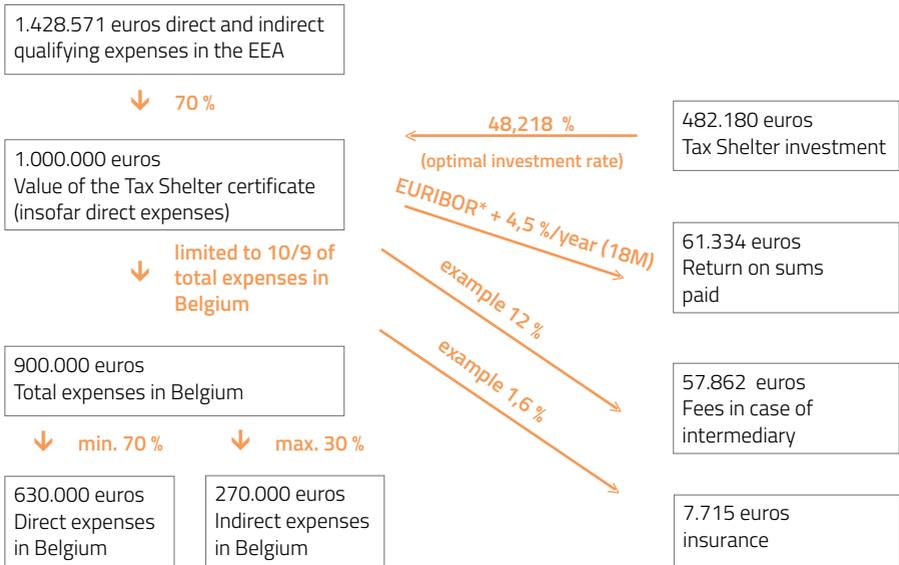
Being approved pursuant to the Royal Decree of December 19th 2014 (Belgian Official Journal of December 31st 2014).

To observe the law of June 16th 2006 concerning the public offers for undertaking negotiations on regulated markets (see the FSMA's prospectus if need be) as regards the search for investors.

To mention in the final credits the support granted thanks to the Belgian Tax Shelter system.

5. WHAT IS THE ADVANTAGE FOR THE PRODUCER ?

Example : Production budget with 1.428.571 euros of qualifying expenses (direct and indirect in the EEA)



Net Tax Shelter advantage for the Producer :
 Investment (482.180 euros) reduced with return on sums paid (61.334 euros),
 commission (57.862 euros) and the insurance premium (7.715 euros)
 = 355.269 euros = 39,5 % of the Belgian expenses

* EURIBOR rate 12M - Ref 2nd semester 2023

II. FOR THE INVESTOR

The investor prefinances the producer's expenses ;

- reduces temporarily his/her taxable income according to the sums paid within the three months after the signature of the agreement ;
- can receive a remuneration for the sums paid calculated on the basis of EURIBOR's rate- 12 months + 450 basis points ;
- receives a Tax Shelter certificate, which allows him/her to change the temporary cut of his/her taxable income into a permanent cut.

1. TAX EXEMPTION

1.1. Temporary exemption on the basis of the sums paid :

- taxable benefit temporarily exempted for the taxable period, during which the framework agreement is signed,
- up to 421 % of the sums that he/she commits to pay within the three months after the signature of the framework agreement,
- restricted to 203 % of the estimated tax value of the Tax Shelter certificate (excedent taxable if need be, with implementation of interest for late payment),
- and limited to 50 % of the reserved benefits during the taxable period, with a limit of 1 000 000 euros per taxable period



Requirements as regards the granting and maintenance of the exemption :

- The exempted benefits must be entered in a separate account in the liability and cannot be considered as a basis for the calculation of remuneration or any other allocation until the date on which the Tax Shelter certificate is issued by the production company or the intermediary to the investor ;
- The total amount of the sums really paid pursuant to framework agreements by all the investors for the same work cannot exceed 50 per cent of the total amount of the budget of expenses as regards this work and must be used for the implementation of the budget ;

1.2. Final exemption on the basis of the Tax Shelter certificate :

- The exemption only becomes permanent if the Tax Shelter certificate is issued at the latest on December 31st of the fourth year following the year during which the framework agreement has been signed. Otherwise the temporarily exempted benefit becomes taxable for the last taxable period during which the Tax Shelter certificate could be validly issued.
- If a Tax Shelter certificate is issued for a lower amount than the amount initially planned, the exemption is proportionally reduced + possibly interest for late payment.
- For the taxable period during which he/she claims the final exemption, the investor must enclose in his/her tax return a copy of the Tax Shelter certificate received from the Tax Shelter Office.

1.3. Putting off the exemption :

If there are no benefits or if they are insufficient during a taxable period, there is a possibility to put off the exemption until the assessment year linked to the fourth taxable period following the year during which the framework agreement has been concluded.

2. YIELD ON SUMS PAID

The production company can grant the investor :

- a sum calculated on the basis of the instalments really carried out by the investor within the framework of the framework agreement
- for a period from the day of the first instalment until the day on which the tax shelter certificate is delivered, but with a maximum of 18 months
- on the basis of a rate not exceeding the average of the **EURIBOR rate- 12 months** of the last day of each month of the six-month period preceding the **instalment and increased by 450 basis points**.



A close-up photograph of a wooden surface, likely a table, with several black film reels scattered around. The text 'THE END' is written in large, white, block letters across the center of the wood. The lighting is warm, highlighting the natural grain of the wood.

THE END

3. IMPORTANT REMARKS

No economic or financial advantage can be granted to the investor (except commercial gifts with a low value). The guarantee that the work will be completed and the delivery of the Tax Shelter certificate are not considered as a economic or financial advantage.

The investor cannot have held or cannot hold directly or not rights as regards the work in which he/she invests.

The charges and losses, capital losses, provisions and provisions for depreciation as regards the delivery of the Tax Shelter certificate are not deductible or exempted.

A MAGICAL STORY :

A WIN-WIN-WIN SITUATION

For the Production Company :

- The financing of an important part of its eligible production expenses

For the Investor :

- A return on tax saving of 5,25 p.c./year
- A return on sum paid at Euribor 12 Months + 4,5 p.c./ year (max 18 months)
- A secure risk

For the Belgian economy :

- An expenditure to be made by the producer in Belgium
- An increase of economic activity, with the creation of direct and indirect jobs in the audiovisual sector ...

CONTACTS

1. For more information

Brochure : Belgian Tax Shelter - 2020

Federal Public Service Finance
International Investments Department
North Galaxy
Boulevard du Roi Albert II 33 - Box 22
B-1030 Brussels
E-mail : taxinvest@minfin.fed.be
Web : www.fin.belgium.be

2. For a request of approval, sending of framework agreement, Tax Shelter certificate, etc.

Federal Public Service Finance
Tax Shelter Office
Boulevard du Jardin Botanique 50 PO Box 3353
B-1000 Brussels
E-mail : taxshelter@minfin.fed.be
Web : www.fin.belgium.be

3. For a request for ruling

Federal Public Service Finance
Office for Advance Decisions
Rue de la Loi 24 (Parliament Corner)
B - 1000 Brussels
E-mail : dvbsda@minfin.fed.be
Web : www.ruling.be



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