

Tax shelter extended to performing arts

A number of years ago the tax shelter for the audio-visual sector was introduced in Belgium. The intention was to have companies make investments in films and TV series in order to promote the production of the audio visual works. In 2015 the system was dramatically reformed. Since 1 February 2017 a new change is to be noted: the system is extended to performing arts.

What does the tax shelter actually mean?

Closing a framework agreement

Companies can close a 'framework agreement' for an audio visual production. If they do so, they can under certain conditions exempt taxable profit. The exemption equals 150% of the fiscal value of the so-called 'tax shelter certificate'.

The framework agreement is a contract between the investing company and a production company. The investor engages itself to transfer a sum with which an audio visual production can be made. The production company takes the engagement to make this production. Within the month following the closing the agreement should be reported to the Ministry of Finance.

Note: the investor obtains a tax advantage, but he cannot have any (in)direct right in the audio visual production.

For audio visual productions

The tax shelter was initially introduced for 'audio visual productions'. This implies: films (fiction, documentary or animation), short films (no publicity films), television films (whether or not divided in episodes), animation series, children- or youth series, and documentaries for television. The production should be recognized by the Flemish, Walloon or German community in Belgium as a European production (in the sense of a European Directive).

Tax shelter certificate

The investor obtains tax shelter certificate, giving a tax advantage. In the end the tax advantage amounts to 150% of the fiscal value of the tax shelter certificate. This fiscal value equals 70% of the production costs directly relating to the audio visual production, with a maximum of ten ninth of the expenditure made in Belgium within an 18 month period after signing the framework agreement.

If the total amount of the directly related expenditure in Belgium is lower than 70% of the total Belgian production expenditure, the value of the certificate is reduced pro rata.

Example

A company invests 20.000€ in an audio visual production, for which 16.000€ relates directly with the production. All expenditure is made in Belgium. The fiscal value of the tax shelter certificate then amounts to 70% of 16.000€ = 11.200€.

From provisional to final exemption

At the moment the investor and the production company sign the framework agreement, the value of the tax shelter certificate is not known. That's why the investor first obtains a provisional exemption: 310% of the amount the company has promised to transfer within three months after signing the framework agreement. This amount cannot be higher than 150% of the ultimately expected value of the tax shelter certificate.

The exemption is anyway limited to (i) 50% of the taxable reserved profit of the taxable period prior to the composition of the exempt reserve (ii) with an absolute maximum of 750.000€. In case for a certain taxable period there is insufficient profit, the unused exemption can be transferred to the next years.

This provisional exemption will after all still be taxed (i) when the conditions are not met or (ii) when the investor on 31 December of the fourth year following the year of closing of the framework agreement did not receive the tax shelter certificate.

When the tax shelter certificate is provided, the exemption becomes final. At that time the investing company can transfer the exempt reserves to the disposable reserves.

Extension to performing arts

For framework agreements closed as from 1 February 2017 companies can also benefit from the tax shelter when they invest in the production and development of recognized performing arts: theatre, circus, street theatre, opera, classical music, dance, music theatre, musical and ballet. As it is the case for audio visual productions the production should be recognized by the competent community as European performing arts.