

Funding for films, television and other audio-visual works in Western Europe

United Kingdom, France, Italy, Germany,
Spain and Belgium

Contents



- 3 Introduction
- 4 United Kingdom
- 6 France
- 8 Italy
- 10 Germany
- 14 Spain
- 18 Belgium
- 20 Your contacts

Introduction

When selecting a destination for your film or television production, there are a number of key issues to consider: (i) the track record and availability of leading industry professionals and crew; (ii) the required locations and landscapes for the relevant project; (iii) the availability of studio space and equipment; and (iv) the availability of an attractive production incentive regime.

Production incentives and tax credits have provided a key source of funding for the budgets of film and TV projects for many years. Due to the success of long-established incentives such as the UK tax credit, more and more jurisdictions have launched their own propositions in order to attract production activity to their country. By carefully structuring your international co-production, it is possible to access more than one of these incentives on the same project.

CMS is a full service law firm with sizeable offices in all of the countries covered by this guide. In addition to advising producers looking to access film and TV incentives as part of their finance plan and helping them structure their co-productions accordingly, we also advise financiers seeking to lend against such incentives as part of their collateral. Our unique blend of international media and financing expertise enables us to act as a one-stop-shop for any organisation exploring the opportunities presented by these incentives around the world.

Whilst we have expertise in this area across the globe, this publication focusses on the United Kingdom, France, Germany, Italy, Spain and Belgium. An equivalent publication for the Central and Eastern Europe region is also available on request, which covers Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Ukraine, where we also have offices.

We hope you find this guide useful. Contact details for our experts in each of the jurisdictions covered by this guide are available at the end of this publication.

Please do not hesitate to contact us if you require any further information or assistance.



Rebekah Hayes

Head of UK Production Finance
T +44 20 7067 3277
E rebekah.hayes@cms-cmno.com

United Kingdom

Since its introduction in 2007, film tax relief has helped fuel unprecedented levels of production in the United Kingdom. Owing to its success, Her/His Majesty's Revenue and Customs ("HMRC") subsequently introduced a number of other creative industry tax reliefs, including for certain TV programmes (high-end TV (which includes drama, comedy and documentaries), animation and children's programmes) and more recently, for "independent UK" films with a budget of up to GBP 23.5m.

UK Film & TV Tax Relief

Eligible film and TV production companies can claim up to 25% of UK qualifying expenditure on a project, which can be paid as a cash rebate directly to the applicant. UK qualifying expenditure is capped at 80% of total core expenditure, meaning that the maximum relief available is 20% of core expenditure. However, there is no cap on the amount that can be claimed. UK qualifying expenditure is expenditure on services performed, or goods "used or consumed", in the UK. The used and consumed test does not focus on the supplier of the goods and/or services, but instead concentrates on the recipient or customer. The nationality or residence of the actors, directors or crew is irrelevant for the purposes of determining whether expenditure is UK qualifying expenditure. Core expenditure is essentially the final production budget (i.e. expenditure on pre-production, principal photography and post-production activities) but excludes development, distribution and financing costs.

In order to qualify for the tax relief: (i) the applicant must be a production company within the UK corporation tax net; (ii) the project must pass the applicable points based cultural test or be an official co-production (either pursuant to one of the UK's bilateral treaties or the European Convention on Cinematographic Co-Production (the "**European Convention**")); (iii) in the case of a film, the project must be intended to be theatrically released, or in the case of a TV programme, it must be intended to be broadcast and must not be an "excluded programme"; (iv) the project must meet the applicable minimum spend requirements (for all projects, at least 10% of total core expenditure must be UK expenditure and, in the case of high-end TV, the average core expenditure per hour of slot length must be at least GBP 1m); and (v) no more than 10% of the finished project is permitted to be archive footage (there is a discretionary exemption for documentaries). There are also certain other specific requirements for the different categories of TV programmes, for example: (a) for high-end TV, the minimum slot length is 30 minutes; and (b) for children's programmes, the primary target audience must be under the age of 15.

The production company claiming the relief must be the company responsible for the pre-production, principal photography, post-production and delivery of the relevant project. However, there is no requirement for the production company to own the rights. The position is slightly different for official co-productions, as the UK co-producer is only required to make an effective creative, technical and artistic contribution to the project in question. The British Film Institute ("BFI") is responsible for assessing whether a project fulfils the relevant cultural test or is a qualifying co-production. All applications should be sent directly to the BFI Certification Unit. If the project qualifies, the Department for Culture, Media and Sport ("DCMS") will issue a certificate to the applicant production company. A production company can, if it wishes, claim the tax relief in instalments at the end of each of its accounting periods during production rather than just on completion, which can be useful for cash flow purposes on long productions. Any such claim must be accompanied by an interim certificate issued by the DCMS.

Following the introduction of AVEC (see below), the UK is currently in a transitional period and production companies can choose to claim either film/TV tax relief or AVEC for any qualifying expenditure incurred from 1 January 2024. Any new productions commencing principal photography from 1 April 2025, must claim under AVEC and from 1 April 2027 onwards, all expenditure must be claimed under AVEC (even if the production commenced before 1 April 2025).

Audio-Visual Expenditure Credit

During the course of 2024, a new Audio-Visual Expenditure Credit ("AVEC") was launched in the UK for film, high-end TV, children's TV, animation, and films with a budget of up to GBP 23.5m. This new regime will entirely replace the previous UK Film & TV Tax Relief from 1 April 2027 as detailed above.

Under the new AVEC regime, eligible film and TV production companies can claim a payable tax credit on qualifying expenditure on a project. The gross rates that apply depend on the type of production. The rates are as follows, which are then taxed at current Corporation Tax ("CT") rates:

- Film and high-end TV programmes: 34% headline rate (after CT deduction, 25.5%);
- Children's TV and animation projects: 39% headline rate (after CT deduction, 29.25%); and
- Independent films with a budget of up to GBP 23.5m ("Enhanced AVEC"): 53% headline rate (after CT deduction, 39.75%).

Additionally, all UK based VFX spend is eligible for an expenditure credit of 39% gross (or 29.25% after CT) – VFX spend is also outside of the 80% cap detailed below.

Under the AVEC regime, UK qualifying expenditure will generally remain capped at 80% of total core expenditure (save for VFX spend). As with the old regime, all tax credits are not subject to a cap on the amount to be claimed, except for the Enhanced AVEC. The maximum amount of Enhanced AVEC which can be paid out on a film is GBP 6.36m.

The definition of UK qualifying expenditure remains the same under AVEC. The key change is that AVEC has introduced a new provision to exclude expenditure to the extent it represents “connected party profit”. This is essentially any excess payment made to a party connected with the claimant production company over and above the arm’s length costs incurred for supplying those goods/services.

With regards to eligibility, the AVEC regime has introduced the following key changes:

- For high-end TV, the minimum slot length has reduced from 30 minutes to 20 minutes on a per-episode basis;
- For a film claiming the Enhanced AVEC, the production must have a budget of up to GBP 23.5m, excluding marketing and distribution costs, and meet certain criteria (including, that the lead director or the scriptwriter of the film is a British citizen or ordinarily resident in the United Kingdom or the film is a qualifying co-production);
- A new definition of documentary has been introduced which requires the production to “depict real events, places or circumstances” and is “primarily intended to record or inform”;
- Rules have been formally introduced requiring all connected party (intra-group) transactions to be at arm’s length in order to be counted as qualifying expenditure; and
- AVEC will not be payable to companies in administration or liquidation at the time of payment (as such, financiers in the UK are now regularly requiring a charge over shares in connection with the claimant production company to seek to mitigate this risk).

From an administrative perspective, beyond the way in which AVEC is calculated, not much has changed regarding the qualification requirements from the previous film/TV tax relief scheme.

Under AVEC, companies must submit all of the information required via a [new online form](#).

Discounting or cash flowing the tax relief

As the tax relief/AVEC cannot be claimed until the costs of production have been incurred, producers typically rely on a third party to cash flow the anticipated cash rebate. Lenders will discount the anticipated tax relief proceeds, based upon the risk of such proceeds not being received. As HMRC is entitled to withhold payment of the rebate to offset any other tax liabilities of the applicant production company, it is standard practice for lenders to insist a single purpose production vehicle is established for each individual project. A lender will also require assurance, in the form of an opinion from the production company’s auditors, that the rebate payable to the production company upon completion of the project will be equal to or more than the amount of the loan being advanced by the lender.

Additional subsidies available

In addition to the tax reliefs and expenditure credits detailed above, there are various other soft monies available in the UK which tend to be provided on a regional basis (such as Screen Scotland, Northern Ireland Screen, film Cymru (Film Wales) and Screen Yorkshire). Further details of such schemes can be provided on request.



France

At a national level, direct subsidies are available from the French Film Council ("CNC") for qualifying French productions and official co-productions. In addition, the French tax authorities offer cash rebates for qualifying French productions and official co-productions as well as for certain international productions under the "TRIP" (the tax incentive for international productions).

Additionally, more than 30 French local councils currently grant subsidies for the production of films or other audiovisual works in their territory. These regional subsidies are usually granted in the form of either co-production contributions or advances to be refunded by the producer and can be claimed in addition to the national subsidies detailed below. Such subsidies are usually only available for producers established in France or in the European Economic Area ("EEA") and are granted based on several criteria which vary depending on the local councils. These criteria typically include: (i) a link between the work and the relevant territory; (ii) a minimum commitment of eligible expenses and days of work in the relevant territory; and (iii) the share of such eligible expenses in the production budget.

Further details of such regional schemes can be provided on request.

Support from the CNC for French productions and official co-productions

French producers of fiction, documentary and animation films may benefit from automatic subsidies granted by the CNC for the production of their next qualifying film. The amount of the automatic subsidy granted will be based on: (i) the success of the film in the commercial cinema, on television and by way of DVD sales; and (ii) a cultural test assessing the link between the film and France. The higher the score awarded under the cultural test, the greater the amount of the subsidy awarded.

To qualify, the producer must notably: (i) be the lead producer in charge of the completion of the film; (ii) have a permanent establishment or a branch in France; (iii) have French executives; (iv) comply with certain French social legislation; and (v) not be controlled by entities and/or individuals of countries which are (1) located outside the EEA and (2) not parties to the European Convention on Cinematographic Co-Production or the European Convention on Transfrontier Television.

The film must be pre-approved (before the start of production) and then finally approved (at the end of the production) by the CNC to benefit from these automatic subsidies.

French lead producers of other types of audiovisual works (fiction, documentary, animation television programming, and the recording of live shows) may also be granted automatic subsidies by the CNC for their next qualifying project under a system similar to that for films, although the method to assess the amount of these subsidies is different (notably, the amount of the available subsidy will be based on the programme duration and the French hourly expenses incurred). The CNC's automatic subsidies for films and other audiovisual works are financed by taxes levied by the CNC, notably on admission tickets in cinemas and on the revenue of TV broadcasters, TV distributors, VOD platforms and DVD publishers.

Cash rebates

Films and other audiovisual works which meet the relevant cultural test may be eligible for a cash rebate from the French tax authorities. Two types of cash rebate are available in France depending on the nationality of the production.

Cash rebate for French productions and official co-productions

In addition to the CNC's automatic subsidies, French producers of fiction, documentary and animation films or other audiovisual works may also apply for a tax rebate if they meet applicable conditions.

For films, the cash rebate amounts to 30% of eligible expenses (excluding tax) (or only 20% in the case of documentary or fiction films that are in a foreign language based on artistic reasons related to the script), however, such eligible expenses are capped at a maximum of 80% of the production budget (or 80% of the French part of the production budget in the case of official co-productions). In addition, the amount of the rebate that can be claimed is capped at EUR 30m per project.

For other audiovisual works, the cash rebate amounts to 25% of eligible expenses (excluding tax) for documentary, fiction and animation works. The rebate is capped per minute at EUR 1,450 for a documentary, between EUR 1,250 and EUR 10,000 (depending on the production costs) for a fiction work and EUR 3,000 for an animation work.

As with the CNC's automatic subsidies, the producer must: (i) be the lead producer in charge of the completion of the work; (ii) be subject to corporation tax in France; (iii) comply with certain French social legislation; and (iv) not be controlled by entities and/or individuals of countries which are (1) located outside the EEA and (2) not parties to the European Convention on Cinematographic Co-Production or the European Convention on Transfrontier Television.

In addition, eligible works for the tax rebate must also: (i) be entirely or mainly in French or in a regional French language (subject to some exceptions, e.g. if the use of a foreign language in a documentary or fiction film is justified for artistic reasons related to the script); (ii) be eligible for financial support from the CNC; (iii) be made mainly in French territory by French nationals or residents or European nationals (which is confirmed through a cultural test); and (iv) meet certain specified minimum duration and minimum spend requirements.

The cash rebate is granted to the French lead producer by the French tax authorities, subject to prior approval from the CNC.

Cash rebates for international productions ("TRIP")

In addition to the incentives available for national productions, the French tax authorities also offer a cash rebate aimed at foreign productions of fiction and animation films or other audiovisual works. The rebate amounts to 30% of eligible expenses (excluding tax) incurred in France (and increases to 40% for fiction films or works where at least 15% of shots contain visual effects and the corresponding eligible expenses for these visual effects exceed EUR 2m), however, such eligible expenses are capped at a maximum of 80% of the production budget. Additionally, the amount of the rebate is capped at EUR 30m per project, and eligible expenses incurred in France must amount to at least EUR 250,000 per project (or 50% of the overall production budget if it is less than EUR 500,000).

The cash rebate is granted by the French tax authorities, subject to prior approval by the CNC. The beneficiary of this rebate is not the foreign lead producer, but the French production services company hired by the foreign producer. This production services company must: (i) be subject to corporation tax in France; and (ii) comply with certain French social legislation.

In addition, eligible projects must pass a cultural test (notably, the project must include elements related to French culture, heritage or territory).

A project cannot claim the TRIP in addition to the automatic subsidies and/or the cash rebate detailed above.

Soficas

Finally, French taxpayers may invest in specific regulated investment companies (called Soficas) in exchange for a tax rebate on their income tax. Such Soficas invest this money as equity in French production companies and in French productions or official co-productions of films or other audiovisual works.

Soficas are only permitted to invest in films or other audiovisual works which are deemed to be from a European Union ("EU") country. These films or other audiovisual works must be mainly in the French language. However, a share of the investment from a Sofica can be used for films or other audiovisual works in a language other than French, to the extent that this language is that of the work's majority producer, who must be established in the EU.

When investing, Soficas provide gap funding and therefore request to stand very high in the recoupment order.

Italy

In general, benefits can be claimed by companies that meet several requirements, including the following:

- (a) having a registered office within the EEA;
- (b) being subject to Italian taxation (through a permanent establishment);
- (c) having a share capital and net equity of at least EUR 40,000; and
- (d) having complied with all the social security, tax and labour law requirements.

Tax credit for production companies

Independent production companies are entitled to a tax credit ranging from 15% to 40% in relation to expenses incurred to produce films and other audio-visual works (e.g. TV or web movies, animated movies, documentaries, etc.) which have "Italian nationality" and meet the applicable cultural eligibility requirements. A distribution agreement with specific requirements is also needed.

For film production, the available tax credit is equal to 40% of the eligible costs (i.e. the overall production cost is adjusted taking into account several factors such as the number of shooting days carried out in Italy and the supplier's country of residence; specific caps also apply depending upon the nature of the expenses). The tax credit is reduced by up to 30% depending upon the size of the company or its ownership structure.

For other audio-visual works, the tax credit can range from 25% to 35% of the eligible costs. The actual percentage awarded depends on various factors such as the way projects are funded, the rights that will be retained by the independent producer in connection with the audio-visual work as well as the existence of an international co-production agreement. The tax credit is reduced by up to 19% depending upon the size of the company or its ownership structure.

The tax credit is capped at EUR 9m per annum (per single entity/group), rising to EUR 18m if at least 30% of the total cost is covered by resources from countries outside Italy. In addition, some limitations apply to the tax credit referring to the remuneration granted to directors, screenwriters, actors and other professional figures, provided that they are above certain thresholds.

Only for film production, in case of non-independent production or non-European companies the tax credit is applicable at a rate of 30% of the eligible costs for Italian film production, up to a maximum annual amount of EUR 5m for each film company or group. The tax credit can also be claimed for associated production, production services and international co-productions. In such a case, eligible costs are apportioned in accordance with the rights held by the Italian producer. Expenses incurred by the Italian producer in the Italian territory are included in the eligible costs for the relevant project.

Furthermore, Italian executive production or post-production companies can claim a tax credit for expenses incurred during the production of films or other audio-visual works ordered by foreign production companies, subject to certain cultural eligibility requirements. The tax credit is equal to 40% of the eligible expenses (capped at EUR 20m) actually incurred in the Italian territory.

Once the tax credit request has been accepted by the Ministry (even in a provisional form), these tax credits can be used to offset tax liabilities or can be transferred to a bank to set off against that bank's own tax liabilities.

Tax credit for short films and music videos

The tax credit is granted to independent producers at 40% of eligible costs (capped at EUR 80,000 for each music video and at EUR 200,000 for each short film). To access the benefit, it is necessary to demonstrate the distribution of the work through agreements with media or participation in significant festivals, in addition to meeting cultural eligibility criteria.

Tax credit for investing companies

Non-production companies which invest in film production through a joint venture agreement ("associazione in partecipazione") can claim a tax credit equal to 20% (40% for films or other audio-visual works which have also benefitted from "selective contribution" (see below)) of their investment. The tax credit is capped at EUR 1m per year (EUR 2m at a group level).

Tax credit for distribution companies

Italian distribution companies can claim a tax credit for expenses incurred for the theatrical distribution in Italy of films which have "Italian nationality" and meet the necessary cultural eligibility requirements. The tax credit may range – due to many factors (for example, the nature and the activities actually performed by the distributor and the distribution period) – from 15% to 40% of the eligible distribution costs and is capped at EUR 2m per annum (per single entity/group).

The tax credit can also be claimed by Italian or international distribution companies for expenses incurred for the distribution of eligible films or audio-visual works outside of Italy. The tax credit is equal to 30% of the distribution costs, capped at EUR 1m per annum (per single entity/group).

State subsidies

A cash contribution may be paid by the Ministry of Culture in relation to audio-visual works deemed to have high artistic and cultural value (i.e. "selective contribution"). Eligibility and the amount of the contribution are assessed by an industry experts' commission. Contributions are directly assigned to the author, independent production company and/or the national or international distributor. By registering with the Ministry of Culture, companies can claim the automatic subsidy which will be determined taking into account the economics, cultural and artistic results achieved by the project and the quality of its distribution in Italy and abroad.



Germany

At a federal level, non-repayable grants for the production of theatrical films are available under the German Federal Film Fund (*Deutscher Filmförderfonds*, "DFFF") and the German Motion Picture Fund ("GMPF"). Also, the German Federal Film Board (*Filmförderungsanstalt*, "FFA") offers: (i) production funding by way of administrative payments (so-called "Project Film Funding"); and (ii) the ability for producers to benefit from the economic success of their previous film by way of applying for reference funds ("Reference Film Funding"). Additionally, almost every German state maintains a regional film subsidy scheme. As a general rule, regional production funding is provided in the form of a limited recourse loan, which must be repaid from certain proceeds of the exploitation of the film. All regional schemes may be combined with each other, as well as with federal and other European film subsidies (generally up to a threshold of 50% of the total budget). Further details of such regional schemes can be provided on request. Funding legislation and guidelines have been amended. Such amendments apply from January 2025.

The DFFF

The DFFF was originally established in 2007 and is currently scheduled to run until the end of 2025. The budget for the DFFF is not yet determined because the federal budget plan has not yet been passed. In the past, the DFFF had an annual budget of EUR 125m (of which EUR 50m were budgeted for producers (so-called DFFF I)). The DFFF operates as a non-repayable grant up to a maximum award of EUR 5m per project which amounts to 30% of the lower of

- the German based production costs ("Qualifying German Spend"); or
- 80% of the total production costs.

I.e., if the Qualifying German Spend makes up more than 80% of the total production costs, the excess amount will not be taken into account when calculating the award.

Certain costs are not taken into account as Qualifying German Spend (for example, foreign cast and crew operating outside of Germany, development costs, legal fees, financing costs, actors' travelling costs and overheads) and others are only partially taken into account (for example, screenplay costs and actors' fees).

To qualify, the applicant must: (i) be the producer responsible for and actively involved in the production of the film; (ii) be domiciled in, or have a branch in, Germany; (iii) for international co-productions only,

contribute at least 20% of the total production costs (if these costs exceed EUR 25m, a German contribution of at least EUR 5m will suffice regardless of the percentage of production costs); (iv) have produced at least one theatrically released feature-length film or a series, provided that it fulfills special funding requirements set out in the GMPF guidelines, in an EEA state or in Switzerland within the last ten years (exceptions for debuts may be granted if the producer has been granted film funding by the FFA, the German Ministry of Culture or a regional film funding scheme); and (v) demonstrate at least 65% of the financing for the film has already been secured and that the DFFF grant is only required to complete the financing plan (the financing must then be fully closed within three months following the FFA's decision to award the grant and this period can only be extended once by a maximum of one month). To be eligible for DFFF funding, the film must: (i) be feature-length (at least 79 minutes runtime or, in the case of children's films, 59 minutes); (ii) have a minimum production budget of EUR 1m (feature films), EUR 200,000 (documentaries) or EUR 2m (animated films) and at least 25% of the total production cost must be spent on film-related goods or services delivered or provided in Germany by companies domiciled in Germany or individuals subject to German tax liability ("German Spend") (for production budgets exceeding EUR 20m, a minimum German Spend of 20% is sufficient) – it should be noted that German Spend and Qualifying German Spend are not the same thing; (iii) be theatrically released in Germany (TV-only productions cannot be funded under the DFFF. The scheme does, however, acknowledge so-called "amphibian" productions, i.e., theatrical features which also run in extended versions as TV mini series); and (iv) either pass a points based cultural test to ensure that the project complies with the DFFF's objective to support German film culture (the cultural test varies for feature films, documentaries and animated films and points are awarded for content, creative personnel and the use of German production facilities) or qualify under the European Convention. As for creative personnel, citizens from the EU, the EEA, the UK and Switzerland are able to raise the score of the cultural test.

As a general rule, principal photography may only start after the FFA has approved the project (but producers may apply for exemptions) and must commence within six months of the FFA's award decision. Furthermore, the applicant must present the following versions of the final film to the FFA before payment of the last instalment of the approved grant and at the latest after



completion of the master copy and before the start of the theatrical exploitation in Germany – one in the German language (a dubbed or subtitled version will suffice), one with German captions for the hearing-impaired and one with German audio description for the visually-impaired. In addition to the requirement that the film have a German theatrical release, the DFFF requires that a binding distribution agreement with an approved distributor must be in place and submitted to the FFA before the grant will be paid. Furthermore, if the producer licenses German TV rights to a private or public broadcaster, the licence must provide for a re-assignment of the TV exploitation rights after a period of five years (or, in certain cases, seven years).

This obligation does not apply if the German TV rights are licensed to a distribution company against payment of a minimum guarantee. There are also certain holdback periods that need to be observed after the theatrical release of a subsidised film in Germany. Funds granted under the DFFF programme may not be combined with other grants unless the other subsidy refers to different identifiable eligible costs or does not exceed the maximum aid intensity or the highest aid amount applicable to such subsidy (i.e. double-dipping is not permitted). Funds are usually disbursed upon completion

of the production and final audit. Alternatively, and upon application, the funds may also be drawn down in four instalments (the start of principal photography, half of the principal photography, completion of the rough cut and completion of the audit). In case of separated payments, only 75% of the total fund can be demanded till the audit is complete. For grants exceeding EUR 2m, a completion bond or bank guarantee will be required for disbursement in instalments. Once the DFFF has awarded the grant, the corresponding claim can be assigned or pledged to obtain financing, albeit only to banks and financial institutions. Applications have to be filed with the FFA at least 6 weeks prior to commencement of principal photography or animation works, otherwise there are no specific deadlines; the DFFF works on a first come, first served basis. Applications can be submitted digitally. The current guidelines are valid until 31 December 2025.

GMFP

The GMFP is an independent funding programme which was established in 2015 and supports the German film industry. The budget of the GMFP fluctuates from year to year. In 2021, the budget was increased to EUR 50m. In 2022, there was a one-off increase to EUR 90m. The budget for 2025 is expected to be announced after the

federal budget plan has passed. It is expected to be in the range of EUR 30m to 50m. Support is granted for the production of series and feature-length films which are not intended or suitable for initial theatrical release. Funding takes the form of a non-repayable grant and is typically 30% of the Qualifying German Spend (increasing to 25% for series meeting certain conditions). The definition of Qualifying German Spend essentially corresponds to that of the DFFF (see above). The maximum award per film project is EUR 5m and can be up to EUR 20m per series.

The applicant must: (i) have their domicile or registered office or a business establishment in Germany; (ii) have produced at least one theatrically released feature-length film or series in an EEA state or in Switzerland within the last seven years; and (iii) be able to demonstrate that at least 65% of the financing for the film has already been secured prior to the grant being awarded. For a project to be eligible for funding: (i) at least 20% of the financing must be contributed by the German (co-)producer (unless total production costs exceed EUR 35m, in which case the German co-producer only needs to contribute at least EUR 7m); (ii) the total production budget must be at least EUR 25m; (for a fictional series: EUR 30k per minute or EUR 1.2m per episode and at least EUR 7.2m per season; for a documentary series: EUR 9k per minute or EUR 360k per episode and at least EUR 1.65m per season but not less than EUR 7k per minute); (iii) the German production costs must be 40% of all production costs or exceed EUR 13m or EUR 10m in the case of a series or EUR 3m in case of a documentary series); and (iv) it must pass a points-based cultural test (points are awarded for production, creative content and creative talents from Germany, the EU, the EEA, the UK and Switzerland. Additionally, the film must be exploited on German television or on a video-on-demand platform accessible from Germany. The exploitation in Germany must be completed within one year of completion of the project. In exceptional cases, the FFA may extend this deadline once. As with the DFFF funding, at least one final version of the project must be in the German language (a dubbed or subtitled version will suffice) and the applicant must present a final version of the project with German captions for the hearing-impaired and with German audio description for the visually impaired.

Again, double-dipping is not permitted. Applications must be filed with the FFA at least 6 weeks prior to commencement of principal photography or animation works, otherwise there are no specific deadlines; the GMFP works on a first-come, first-served basis. Applications can be submitted digitally,

Project Film Funding and Reference Film Funding

The FFA also administers the Project Film Funding and Reference Film Funding schemes. Producers can apply for both types of funding for the same film. Financial support is granted for films with a runtime of at least 79 minutes (or 59 minutes for children's films). To qualify for these subsidies: (i) one of the producers responsible for the production of the project must have its place of business or, if it is established in another EEA state, a branch in Germany; and (ii) a final version of the film must be produced or dubbed in German. In addition, there are certain holdback periods that need to be observed after the theatrical release of a subsidised film in Germany in order for a project to qualify. In the case of international co-productions, funds may be granted if the above criteria are fulfilled and: (i) the film meets the requirements of the European Convention and the applicant contributes at least 20% of the overall production costs; or (ii) the film falls within the ambit of a bilateral or multilateral co-production treaty concluded by Germany and the applicant contributes at least 30% of the overall production costs. Outside the scope of the European Convention or a co-production treaty, international co-productions may qualify for these subsidies if: (i) compared to the other contributions, the financial contribution of the applicant is considerable (generally around 30%); and (ii) at least 30% of the cast and crew are citizens of an EEA member state. Upon application, the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*, "BAFA") issues a certificate confirming that the respective conditions are met.

Project Film Funding

In order to qualify for Project Film Funding: (i) the producer must provide at least 5% of the total budget itself (for international co-productions, the necessary percentage is determined in relation to the German part of the budget rather than the total budget); and (ii) based on the script, talent and crew, the film must be expected to "enhance the quality and profitability of German film", as determined by the FFA board. Additionally, the producer is required to follow certain principles of economic production, and the FFA will examine the budget/cost plans and may disregard certain production costs for its purposes.

Project Film Funding is granted as administrative payments up to EUR 1m. Funding can be paid in up to four instalments (the start of principal photography, half of the principal photography, completion of the rough cut and completion of the audit). Payments at the start and middle of shooting can make up to 75% of total

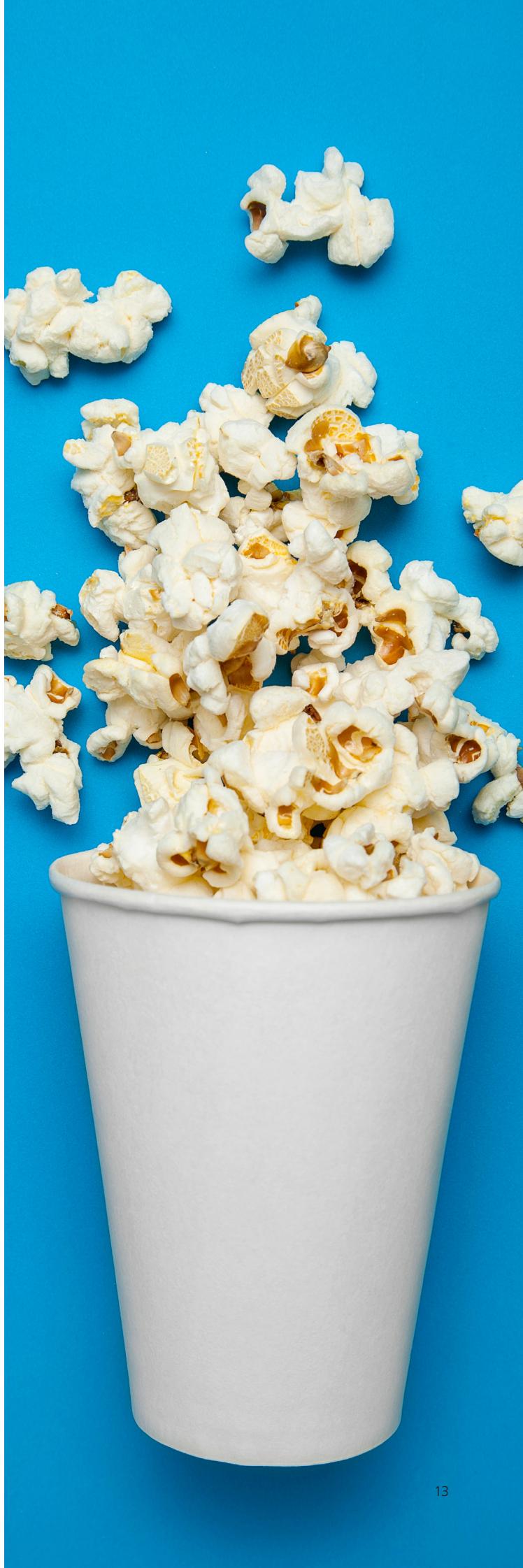
awarded funding. Applications must be submitted prior to the commencement of principal photography and by the application deadlines published annually. The deadlines are published on the FFA's website. In 2023, there will be five opportunities to apply. The application can be submitted digitally.

Reference Film Funding

A producer can apply for funding of a new film if it has already produced a previous film which obtained a certain number of reference points (see below). In addition to the general requirements listed above, the most important requirements for Reference Film Funding are as follows: (i) after the approval of the application, but before payout of the Reference Film Funding, the financing of the funded film must be secured and combined subsidies may not exceed 50% of the budget (or, in the case of international co-productions, 50% of the German part of the budget); (ii) any copies of the funded film for theatrical release in Germany must be produced in Germany or another EU or EEA state; and (iii) based on the script and cast and crew, the funded film must be expected to "enhance the quality and profitability of German film". Again, the producer is required to follow certain principles of economic production (see above). In practice, the FFA requires that the reference film also complies with the requirements for the funded film and that it has received a BAFA certificate.

To qualify as an eligible reference film a score of at least 25,000 reference points is required. Reference points are, for example, awarded based on the number of cinema visitors in the first year after theatrical release. The FFA may grant up to EUR 2m per project as Reference Film Funding. The overall amount available for Reference Film Funding each year will be distributed between all qualifying reference films. If the reference film is an international co-production with less than 50% share of the German applicant, Reference Film Funding will only be awarded, if the German applicant has 50% or more shares or the most shares of all shareholders. Reference Film Funding is generally non-repayable and must be used for the production of the new film within three years of the award. Applications for Reference Film Funding must be submitted no later than 15 months after theatrical release of the reference film and before 31 January of the relevant year in which funds are required. Principal photography for the funded film must not start before Reference Film Funding has been applied for.

Applications can now be submitted in digital format.



Spain

Spain offers a number of incentives which promote the development of digital content in Spain. These incentives have the objective of increasing production activity in the country and making it accessible to film producers and financiers. Furthermore, unlike some jurisdictions, Spanish law does not prohibit "double dipping".

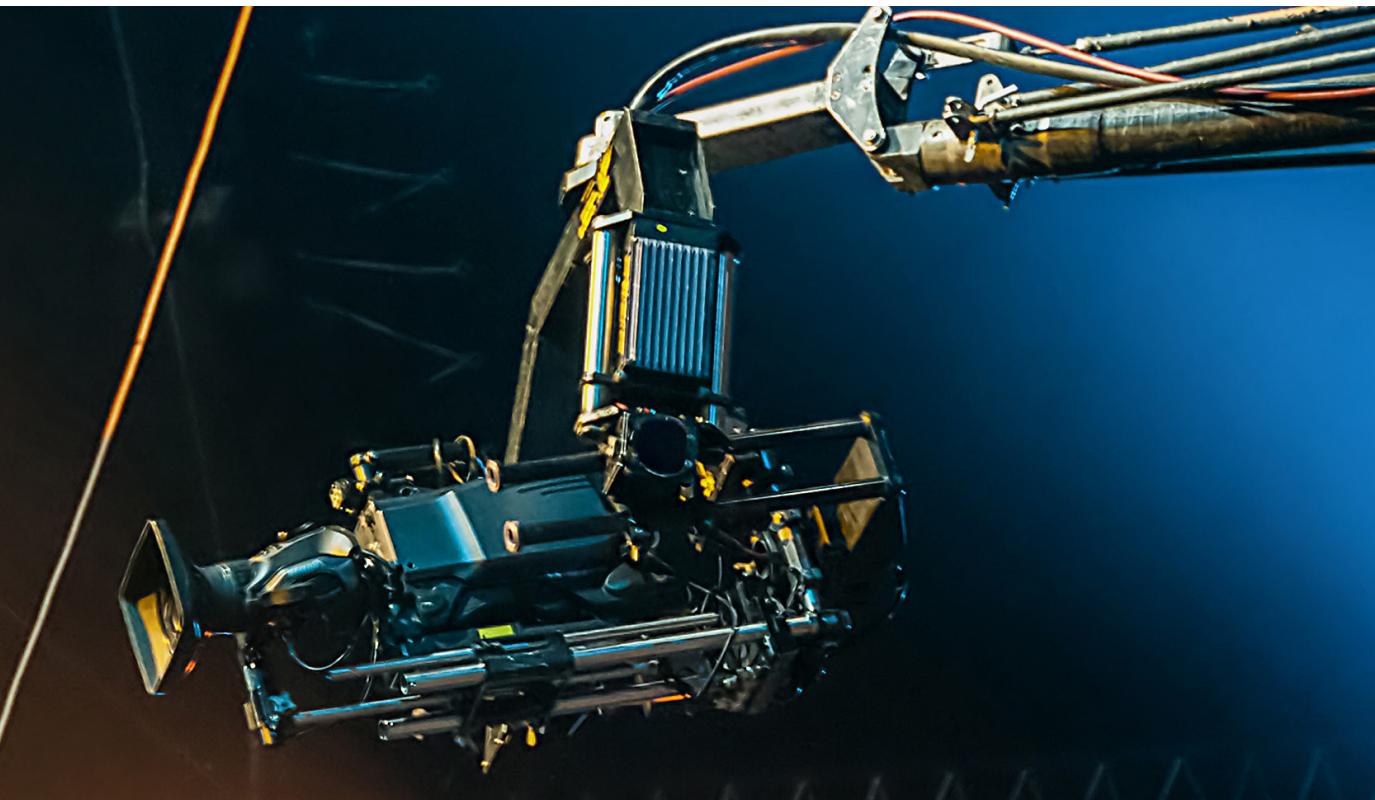
Direct state subsidy

There are several different direct state subsidies available for film and television production in Spain, including for both feature-length and short films. The key subsidies available include: (i) general and selective subsidies for the production of feature length films and television series; (ii) subsidies for the distribution of feature length films and Spanish, EU and Latin American short films, intended for distribution in commercial cinemas; (iii) subsidies for the production of various types of short films; and (iv) subsidies for the modernisation and innovation of the cultural and creative industries through digital and technological projects, the aim of which is to increase the legal supply of cultural digital content.

These subsidies can amount to up to 50% of the budget for the relevant project, except for cross-border productions financed by more than one Member State of the EU and involving producers from more than one Member State, where the total amount of aid may reach 60% of the production budget. Likewise, projects meeting certain requirements (i.e. works directed by female, debutant or disabled directors, works in regional languages, etc.) can benefit from a higher threshold of up to 85% of the production budget.

Furthermore, specific incentives or subsidies of up to 50% of the budget are provided for in connection with the distribution, exhibition and promotion of films and for R&D projects in the film industry (including production, distribution and exhibition).

A company wishing to benefit from the subsidy system must have any sort of establishment in Spain (a branch being sufficient for these purposes) and apply for registration on the regulator's National Register of the ICAA (Institute for Cinema and Audiovisual Arts), this being a mandatory requirement to qualify for the subsidies.



Tax incentives

Under Spanish law, the following tax credits are available in relation to audio -visual production activities. It should be noted that

- For Spanish productions, the relief available is only a simple tax credit which is offset against other tax liabilities and is not payable as a cash rebate.
- For international productions, the relief can be paid as a cash rebate directly to the applicant, but only where the applicant has insufficient tax liabilities.
- As of 2021, financiers can also benefit from the tax credit generated by the producer, but up to a limit of 30% of the production costs and applying a rate of 1.20 over the financed amounts. Any excess above those limits may still be claimed by the producer.
- Assignment or pledging of the tax credit is possible, subject to certain formal requirements (e.g. notarisation) and could be subject to further restrictions on a case-by-case basis.

Spanish Productions (mainland Spain):

Producers of Spanish films and television series can benefit from a tax credit equal to 30% of the first EUR 1m of eligible production costs incurred. A credit of 25% applies in respect of any eligible costs exceeding this amount (if any). The amount of the tax credit is capped at the lower of: (i) EUR 20m (or EUR 10m per episode, in the case of series); and (ii) when combined with any other state aid received by the applicant, 50% of the project's budget (this can be increased to up to 85% under certain circumstances, similar to the ones mentioned on the subsidies section [i.e., works directed by female, debutant or handicapped directors, works in regional languages]).

The following main requirements must be met in order for this tax credit to apply: (a) at least 50% of the tax credit costs base must relate to expenses incurred in Spain; (b) a nationality certificate must be issued by the ICAA (or the corresponding body of the relevant autonomous community in Spain); (c) a certificate proving the cultural character of the production must also be issued which requires the project to pass a cultural test which considers its content, its link with Spanish cultural reality and/or its contribution to the enrichment of the cultural diversity of the cinematographic works shown in Spain; and (d) a new and unblemished copy of the production must be deposited in the Spanish Film Library (or the film library officially recognised by the relevant corresponding

autonomous community in Spain).

A production will be considered to be of Spanish nationality if it is produced by a Spanish production company or a European company based in Spain, subject to the following requirements: (a) at least 75% of the technical and artistic personnel are Spanish citizens or citizens of another EU/ EEA Member State; (b) the project is produced, preferably in Spanish or another official Spanish language; and (c) production (unless the script requires otherwise), post- production and laboratory work must be completed in one of the EU Member States.

Films or television series produced pursuant to one of Spain's bilateral treaties or the European Convention on cinematographic coproductions 2017, and which are approved as official co-productions by the competent authorities of each co-producing country, are also regarded as Spanish productions.

The application for the tax credit must be made by the Spanish producer or co -producer of the relevant project. For the purposes of the tax credit regime, the producer is considered to be the entity that holds the intellectual property rights in the relevant film or series. Additionally, the applicant must have its place of business or establishment (a branch being sufficient for these purposes) in Spain, remain duly registered with the ICAA and must be tax resident in either Spain, the EU or the EEA. If a Spanish taxpayer finances the production, they may also be eligible for the tax credit when such financing covers all or part of the production costs but without acquiring intellectual property rights or other resulting rights (which must in all cases be owned by the producer).

The assets linked to the tax credits must be maintained for at least 3 years (this means that the producer must maintain the same ownership in the production for at least 3 years, without prejudice to the possibility to commercialise the exploitation rights).

International Productions (mainland Spain):

In order to encourage international productions to use Spanish production services, a separate tax credit equal to 30% of the first EUR 1m of eligible expenses incurred in Spain in connection with foreign productions, and 25% of any eligible expenses exceeding this amount, is also available. Eligible expenses include salaries paid to creative staff (provided they are Spanish or EU/EEA tax residents, subject to a cap of EUR 100,000 per person)

and expenses related to the use of technical industries and other suppliers in Spain). In order to qualify for this tax credit: (i) eligible expenses must amount to at least EUR 1m and must not exceed 80% of the total production cost; (ii) the project must have an overall budget of at least EUR 2m; and (iii) the applicant producer must be registered on the Administrative Register of Cinematographic Companies of the Institute of Cinematography and Audiovisual Arts. Again, the amount of the available tax credit is capped at the lower of: (i) EUR 20m (or EUR 10m per episode, in the case of series); and (ii) when combined with any other state aid received by the applicant, 50% of the project's budget (this latter requirement may be relaxed in certain circumstances).

Regional Tax Incentives

Expenditure incurred in other regions, rather than in mainland Spain, attract different rates of available tax credit. By way of summary, the list below displays a summarised description of such rates (and additional requirements):

- Mainland Spain: 30% for the first EUR 1m (25% for the excess), with a capped amount of EUR 20m (or EUR 10m per episode for series).
- Canary Islands: Up to 54% for the first EUR 1m (45% for the excess), with a capped amount of EUR 36m (or EUR 18m per episode for series). To be noted, a period of shooting in the Canaries is requested.
- Navarre: 35% of the expenditure, with a capped amount of EUR 5m. Note: at least one week of filming in Navarre is required.
- Araba (Basque Country): Up to 60% of the costs incurred in Araba (plus an additional 10% for works in basque language with a capped amount of EUR 10m (or EUR 3m per episode for series).
- Bizkaia (Basque Country): Up to 60 % of the cost (plus an additional 10% for works in basque language), but not capped.
- Gipuzkoa (Basque Country): Up to 60% of the expenses incurred in Gipuzkoa by the domestic producer, with a capped amount of EUR 10m (or EUR 3m per episode for series).

Common limitations to both Spanish and International Productions (mainland Spain)

In general terms (certain nuances exist if additional tax credits apply), the amount of both the Spanish and the International Productions tax credits may not exceed 25% of the total corporate income tax due, less deductions, to avoid international double taxation and tax reliefs. The 25% limit is increased to 50% if the amount of credits, corresponding to expenses and investments incurred during the tax period, exceeds 10% of the applicant's gross tax liability, less the abovementioned deductions. In the Canary Islands the 25% – 50% rates are increased to 60% (and may rise to 90% under certain circumstances) In the regions of *La Palma, La Gomera, and El Hierro*, the 60% threshold is further increased to 70%.

Proposed Reforms

On 27 December 2022, a Draft Proposal for a new Cinema and Audiovisual Culture Law was submitted to the Spanish Parliament. The Draft Proposal provides, amongst other things, for certain novelties as compared to the currently applicable regime, such as:

- widening the scope of the law (including for subsidies and tax relief) not only to cinematographic productions, but also to audiovisual works;
- expanding the subsidies regime to cover not only production, but also exhibition, internationalisation, project development, R&D, and digitalisation initiatives;
- introducing accessibility measures for disabled persons to qualify as a requirement for certain subsidies;
- flexibilisation of criteria and mechanisms for granting subsidies; and
- in relation to subsidies for production, the possibility of establishing time limits on the transfer under exclusivity of the exploitation rights of certain subsidised works.

However, due to the current lack of parliamentary consensus, it is highly uncertain whether the new Draft Proposal will be passed as a new applicable Law during 2025.



Belgium

Belgian income tax law provides for a tax shelter regime to encourage companies established in Belgium to invest in film and other audio-visual productions.

Tax Shelter

Under the tax shelter regime, eligible investors are allowed a tax exemption of up to 421% of the sums effectively invested in the relevant production.

Eligible investors are Belgian companies subject to corporate income tax or foreign companies with a Belgian establishment (e.g. a branch) subject to non-resident corporate income tax, with the exception of:

1. film and audio-visual production companies; and
2. broadcasting companies and/or their related entities.

Eligible investors are required to sign a framework agreement with an eligible production company, pursuant to which the investors commit themselves to invest certain sums in order to benefit from the tax shelter regime. The investor is not required to hold any IP rights in relation to the production in which it is investing.

In order to qualify for the tax shelter, the investment must be made to an eligible production company – i.e. it must: (i) be either a Belgian company subject to corporate income tax or a foreign company with a Belgian establishment (e.g. a branch) subject to non-resident corporate income tax; (ii) have as its main objective the development and production of film or other audio-visual works; and (iii) have been recognised as such by the federal tax authorities. Broadcasting companies and/or their related entities are not eligible production companies.

The following types of production are eligible under the tax shelter regime:

- fiction, documentary or animation feature films intended for cinema;
- short films, except for advertising films;
- TV fiction feature films or animated films, broadcast at once or in series;
- TV series intended for minors, i.e. fiction feature series with educational, cultural and informational content for children from 0 to 16 years; and
- documentary TV films.

International productions (feature films, documentaries or animated films) intended for cinema may also be eligible.

The qualification of a production must be approved by the relevant competent public authority.

In order to qualify for the tax shelter, the expenses incurred by the production company must meet the following conditions:

- the expenses must be incurred within 18 months of the date of the framework agreement entered into between the investor and the production company (extended to 24 months for animated films);
- at least 70% of the expenses must be directly linked to the production of the relevant project (the remainder can be spent on certain indirect expenses (such as administrative, legal and financing costs and guarantee fees)). If this condition is not complied with, the amount of the tax exemption is reduced on a proportional basis.

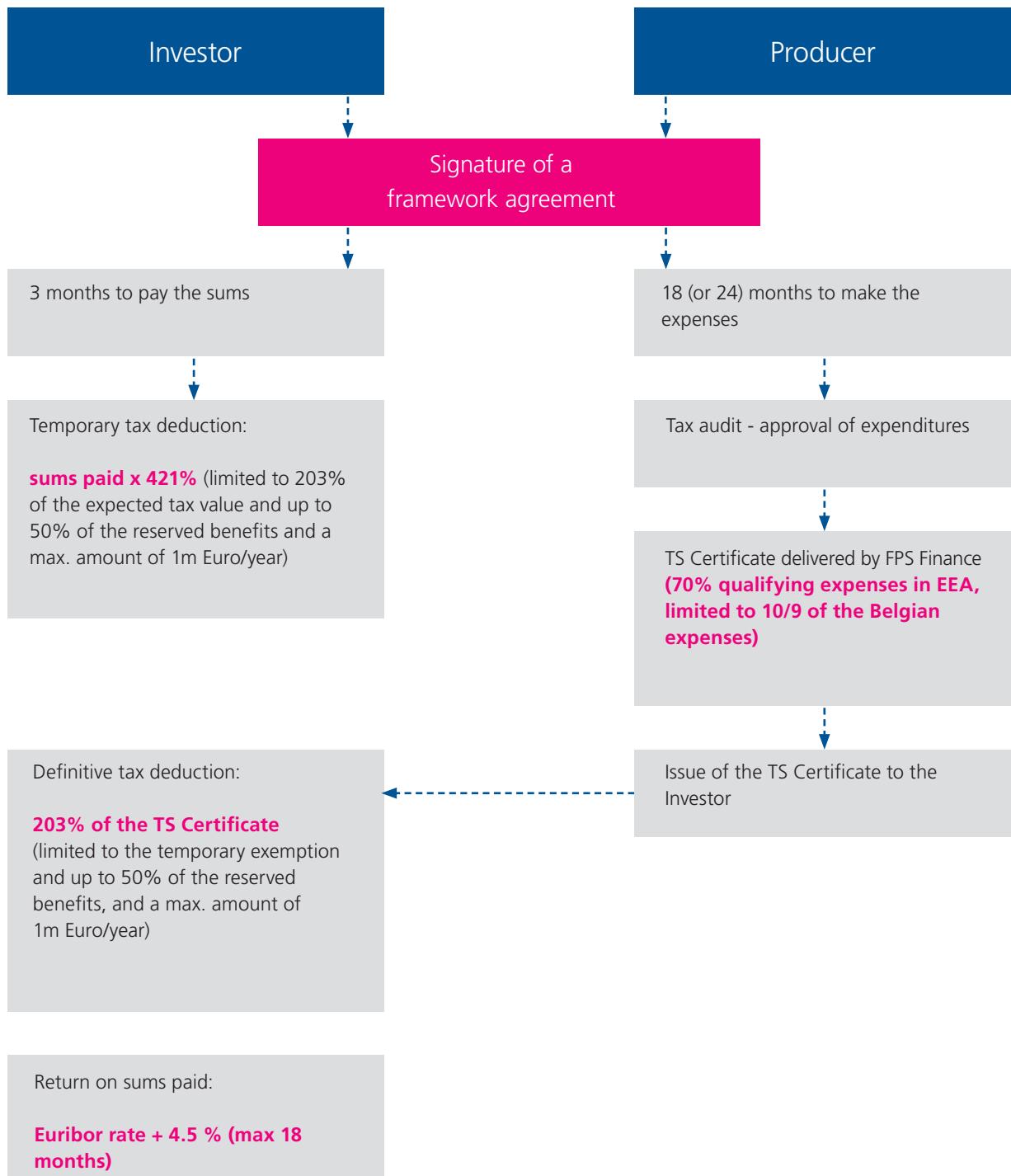
Production expenses incurred in Belgium must also constitute taxable professional income, as either individual income tax, corporate income tax or non-resident income tax.

The tax exemption is subject to the following limitations per investor:

- it is limited to 50% of the taxable reserved benefits during the taxable period; and
- the maximum exemption in each taxable period is 1m Euro

Excess tax shelter exemptions can be carried forward to the next four taxable periods following the taxable period in which the framework agreement was signed.

How it works



Your key contacts in Western Europe

United Kingdom



Rebekah Hayes
Partner
T +44 20 7067 3277
E rebekah.hayes@cms-cmno.com



Laurel O'Dell
Senior Associate
T +44 20 7524 6192
E laurel.odell@cms-cmno.com



Jessica Wilkinson
Associate
T +44 20 7367 3306
E jessica.wilkinson@cms-cmno.com



Coralie Barker
Associate
T +44 20 7367 3444
E coralie.barker@cms-cmno.com

France



Florentin Sanson
Counsel
T +33 1 47 38 55 00
E florentin.sanson@cms-fl.com

Germany



Dr. Martin Gerecke, M.Jur.
Partner
T +49 40 37630 373
E martin.gerecke@cms HS.com



Markus Pfaff
Partner
T +49 69 71701 342
E markus.pfaff@cms HS.com



Ole Jani
Partner
T +49 30 20360 1414
E ole.jani@cms HS.com

Spain



Jorge Sánchez

Partner

T +34 93 494 10 24

E jorge.sanchez@cms-asl.com



Diego de Miguel Hernando

Partner

T +34 91 451 92 81

E diego.demiguel@cms-asl.com

Italy



Stefano Giuliano

Partner

T +39 06 47815 305/306

E stefano.giuliano@cms-aacs.com



Paolo Bonolis

Partner

T +39 06 47 81 51

E paolo.bonolis@cms-aacs.com



Domenico Gaudiello

Partner

T +39 02 89 28 38 00

E domenico.gaudiello@cms-aacs.com

Belgium



Olivier Querinjean

Partner

T +32 2 743 69 61

E olivier.querinjean@cms-db.com



Benoît Vandervelde

Partner

T +32 2 743 69 20

E benoit.vandervelde@cms-db.com

CMS Law-Now™

Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.
cms-lawnow.com

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS LTF Limited (CMS LTF) is a company limited by guarantee incorporated in England & Wales (no. 15367752) whose registered office is at Cannon Place, 78 Cannon Street, London EC4N 6AF United Kingdom. CMS LTF coordinates the CMS organisation of independent law firms. CMS LTF provides no client services. Such services are solely provided by CMS LTF's member firms in their respective jurisdictions. CMS LTF and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS LTF and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices; details can be found under "legal information" in the footer of cms.law.

CMS locations:

Aberdeen, Abu Dhabi, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Brisbane, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Dublin, Duesseldorf, Ebene, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Gothenburg, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Maputo, Mexico City, Milan, Mombasa, Monaco, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, São Paulo, Sarajevo, Shanghai, Sheffield, Silicon Valley, Singapore, Skopje, Sofia, Stavanger, Stockholm, Strasbourg, Stuttgart, Sydney, Tel Aviv, Tirana, Vienna, Warsaw, Zagreb and Zurich.

Further information can be found at cms.law