

Legislation Sweetens Tax Incentives for Domestic Film Productions

by Ruth De Baere and Marc Quaghebeur

The Law of 17 May 2004, modifying article 194 *ter* of the Belgian Income Tax Code, was published in the official gazette on 4 June. The legislation is designed to encourage investment in the production of films and documentaries in Belgium by companies that are not directly related to the film sector by making the tax shelter for audiovisual works more attractive. (For prior coverage, see *Tax Notes Int'l*, 12 Apr. 2004, p. 145.)

If a corporate taxpayer signs a framework agreement with a Belgian production house, it can invest as much as one-third of its taxable profits, before tax, in the production of Belgian films, documentaries, or animated films for the cinema, or in an animation series or documentary for television. Feature films for television also qualify, but only in 2006.

A production house can contact corporate investors to help finance the production, but still must come up with at least half of the budget for film. Investors are permitted a tax exemption of 150 percent of the funds invested, limited to €500,000 per year and 50 percent of the investor's taxable profit.

The investment can be structured in such a way that the investor takes hardly any risk. First, he can

advance up to 40 percent of his investment by way of a loan to be repaid over time. Second, the tax exemption gives him a return of 51 percent on his investment (this is the corporate income tax at 33.99 percent on the exempted profit). Depending on the interest level, the investor may recover his entire investment. Moreover, production houses are working out structures to ensure that the investor can sell his participation in the production.

In one of the changes introduced in the Law of 17 May, the investor will be able to distribute the tax-exempt profit by way of a dividend after about four years. During that period, the investor must record the tax-exempt profit in a separate account on the liabilities side of his balance sheet. The tax exemption does not become final, and the tax-exempt profit does not become available for distribution, until the production house can provide a certificate from its tax office confirming that all conditions have been met, as well as a certificate from the relevant film commission. That is why the existing tax shelter received temporary approval until the end of 2004. ♦

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