



Film Financing and Television Programming

A Taxation Guide



For more than a decade, the KPMG Film Financing and Television Programming Taxation Guide has been recognized as a valued reference tool for industry professionals, filled with information drawn from the knowledge of the KPMG International global network of member firm media and entertainment Tax professionals. The 2022 edition is a fundamental resource for film and television producers, studio and streaming production executives, tax executives, finance executives, and attorneys involved with the commercial side of production.

Doing business across borders can pose major challenges and may lead to potentially significant tax implications, and a detailed understanding of the full range of potential tax implications can be as essential as the actual financing of a project. The Guide helps industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in production financing, the Guide includes a robust discussion of relevant tax incentive programs in each country.

Each chapter focuses on a single country and provides a description of commonly used financing structures, as well as their potential commercial and tax implications for the parties involved. Key sections in each chapter include:

Introduction

A thumbnail description of the country's industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts

At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures

Descriptions of commonly used financing structures in production and distribution, and the potential commercial tax implications for the parties involved. This section of each chapter covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-efficient 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.

Poland

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.

Streaming Tax Considerations

Provides a look at the unique tax issues that need to be addressed in this evolving segment of the industry. With considerations such as identifying tax collection and reporting obligations in a variety of jurisdictions, understanding international tax implications is essential for streaming providers.

KPMG and Member Firm Contacts

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

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 publication 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.

Production opportunities are not limited to the 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.

We look forward to helping you with your film and television production ambitions.

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Poland

The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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Poland

Introduction

With the introduction of the Cinematography Act and the creation of the Polish Film Institute (PFI) in 2005, the world of Polish cinema has changed significantly over the past few years. The State supports the film industry in Poland by providing public grants for film production, selected festivals and events, developing archives, education and professional training, as well as for promotion of the Polish film industry abroad.

The principal role of the PFI consists of the provision of subsidies and loans within the frames of operational programmes such as:

- 1) Film production;
- 2) Film education and dissemination of film culture;
- 3) Development of cinema infrastructure;
- 4) Promotion of Polish film abroad.

In a nutshell, the PFI supports film production at every stage of the making of a film. It awards screenwriting scholarships and funding for the development and production of features, documentaries, and animated films. The PFI allocates money for activities, such as preparing the financial plan and set documentation, searching for investors and co-producers, writing the script, script doctoring, visual designs, screen tests and producing trailers.

The PFI also supports the development and production of film projects with the participation of foreign producers.

Key Tax Facts

Highest corporate profits tax rate	Generally, 19% (certain supplementary taxes may increase overall tax burden)
Highest personal income tax rate	32% (effectively up to 44,99% due to 9% health insurance and 4% solidarity levy, both being imposed on qualifying personal income, the latter above PLN 1 million)
VAT rate	Generally, 23%
Annual VAT registration limit	PLN 200,000
Normal non-treaty withholding tax rates:	
Dividends	19%
Interest	20%
Royalties	20%
Tax year-end: Companies	December 31 (unless otherwise stated)
Tax year-end: Individuals	December 31

Poland

Film Financing

Financing Structures

The financing structures used in Poland vary in accordance with the operational structures and the requirements of the specific project being undertaken. Typically, film financing structures will take the form of one of the following:

Co-Production

Co-production is a useful way to carry out film production in Poland, particularly for a foreign producer (on the condition that the foreign producer does not lay claim to exclusive distribution rights).

Poland has ratified the Council of Europe Convention on Cinematographic Co-production and the PFI remains responsible for granting co-production status. Poland is also a party to several bilateral treaties regarding co-production.

In general, the co-production agreement should detail (at least) the budget, financing, management, and ownership rights of the production. Each party's use of the co-production (whether they be individuals or corporate investors) are then subject to tax on their share of the profits as stated in the co-production agreement in Poland (unless there is applicable tax treaty which limits Poland's taxing right).

Contract Known as a Civil Partnership

A civil partnership is set up according to the general principles of Civil Law for the purpose of conducting business activity or undertaking a one-off project. It is very flexible form of cooperation between two or more business partners.

The civil partnership itself remains only a contract and does not have legal personality and, therefore, each partner is obliged to register as an entrepreneur and will be taxed on its own share of profits from the civil partnership accordingly.

Interestingly, regardless of no legal personality, the civil partnership creates a distinct ownership for the determined period, separate from the ownership of parties to this contract.

Partnerships

There are three types of partnerships available under Polish regulations for the film and TV industry:

- general partnership,
- limited partnership, and
- limited joint-stock partnership.

All of the above partnerships have their own legal form. They are not entitled the legal personality but have the legal capacity. In practice, the difference towards companies having legal personality consists in an obligation to have at least one partner responsible for partnership's debts, including tax liabilities, if the partnership is unable to settle them.

As a rule, general partnerships are not subject to corporate taxation, but the partners will be taxed on their share of profits from the partnership and partnership itself will likely qualify as a permanent (CIT) and fixed establishment (VAT) for foreign tax residents (partners). There are reporting requirements that must be met to maintain tax transparent status.

As regards limited partnership and joint-stock partnerships, they are subject to corporate tax but offer limited double taxation and no liability for tax liabilities for limited partners / stockholders.

European Economic Interest Groupings

Poland

As a member of the EU Poland has implemented rules governing the legal form of a European Economic Interest Grouping (EEIG) that simplifies cross-border cooperation. It requires at least 2 members from different EU countries and in Poland the rules of general partnership apply to the unregulated extent of the EEIG.

Members of the EEIG are taxed on their share of profits similarly as the partners of a tax transparent general partnership.

Limited Liability Company

The most common form of operating in the film industry is via a limited liability company. This is a legal entity with a minimum share capital of PLN 5,000 and nominal share value of PLN 50.00 or more. It may be incorporated by one or more individuals, legal persons or partnerships for the purpose of carrying on a business or for any other purpose allowed by law. Every company must submit an annual balance sheet as well as the P&L and make various other filings with the National Court Registry (e.g., notification of any change of address of the company, etc.) and other authorities.

Joint-Stock Company

A joint-stock company is a legal entity with a minimum share capital of PLN 100,000 which may be obtained through the issue of shares. A joint-stock company would usually be established for operating a business on a large scale and is a rather complex form of conducting activity.

Simple Joint-Stock Company

An interesting legal form available in Poland is a simple joint-stock company which, similarly to a limited liability company, may be incorporated by one or more individuals or legal persons for the purpose of carrying on a business or for any other purpose allowed by law.

It is relatively straightforward company in terms of establishment and overall management, hence the minimum share capital amounts to PLN 1 and it is possible to also contribute valuable work and/or provision of services as an in-kind contribution.

Foundation

Under the Polish Act on Foundations, a foundation may be established for public benefit or social purposes, in particular for educational and cultural purposes. A foundation has legal personality and may be established by individuals or by legal persons irrespective of their residency. There are no legal requirements on the minimum initial capital. The founder states the purposes of the foundation and the assets allocated to the foundation in order to fulfill the purpose. Foundations are also registered in the National Court Registry.

Foundations are eligible for a Corporate Income Tax (CIT) exemption on their income to the extent that it is allocated for the foundation's statutory activities.

Digital Media

Introduction of a broad digital services tax that could affect film and TV industry among others has been on a political agenda in Poland for few years. However, due to internationally agreed BEPS 2.0 project potentially giving new taxing right for countries like Poland as well as ensuring minimum level of taxation we do not expect that separate regime of digital tax will be introduced.

However, the Cinematography Act already imposes a 1.5% charge (in fact kind of a gross receipt tax) on gross revenues providing audio-visual media services on demand and broadcasting TV programmes which to some extent affects the digital media industry.

There are no other special tax schemes for dealing in digital media and the above charge does not waive other tax liabilities. Such activity is taxed based on general tax rules and principles described below.

Poland

Transformation of a business from traditional media to digital media as such is not taxed. It should be noted that Poland imposes a 20% withholding tax on many types of intangible services which do not require presence in Poland to be provided such as advertising services and the Polish tax resident obliged to settle liability as the tax residence of the service recipient is currently considered as the sufficient tax nexus (details are provided below).

The 1.5% charge applies to VOD providers: broadly understood audio-visual media service on request (e.g., services such as webcasting, streaming) and audio-visual commercial communication. This charge is also imposed on the EU-based broadcasters of TV programmes based on either revenues derived from fees charged directly to subscribers for the access to broadcasted programmes or revenues from commercial communication, whichever is higher.

This charge does not apply to: 1) micro enterprises (fewer than 10 employees and an annual turnover (the amount of money taken in a particular period) or balance sheet (a statement of a company's assets and liabilities) below EUR 2 million), 2) audio-visual media service providers having number of subscribers lower than 1% of the total number of users having broadband Internet access in Poland (number of users having broadband Internet access is published annually by the Head of Office of Electronic Communications), 3) broadcasting of TV programmes in terms of TV broadcasters which total audience share for all programs broadcasted in the year preceding the year in which the obligation to pay is determined did not exceed 1%.

The allocation keys for the apportionment of taxable revenue refer to revenues generated in Poland without specifying how it should be measured. The charge must be paid on quarterly basis to the bank account of the Polish Film Institute. The charge is considered as deductible expense under the Polish CIT Act, hence it can be said that to some extent – if there is some other taxable presence in Poland – the double taxation is limited.

The declaration must be submitted 30 days after the end of the tax period. Entities subject to this charge must declare under the penalty of perjury the amount of revenues based on which the charge is settled.

Corporate Taxation

The Polish tax system is a classical tax system where corporate income is as a rule fully taxable at entity level, with any distributed profits being taxed again by way of withholding tax. There are no special rules for film producers or distributors; whether domestic or foreign invested, they are treated as ordinary taxpayers.

However, in addition to quite specific withholding tax, there are special tax regimes which either aim at ensuring that enough tax is paid in Poland or allow taxpayers to benefit from an alternative taxation. Neither of these regimes apply specifically to the film and TV industry.

Recognition of Income and Amortization of Expenditure

Polish resident company

A company is resident in Poland for tax purposes if its legal seat or place of management (not necessarily management office) is in Poland. The place of management is understood very broadly and in particular encompasses carrying out ongoing affairs of taxpayer within the Polish territory in an organized and continuous manner on the basis of - in particular - an agreement, decision, court judgment or any other document such as articles of association.

Even a power of attorney or arrangements between related parties meeting the above conditions of an organization and continuity may result in establishing the place of management in Poland. Moreover, if a civil partnership or a similar contract with an office in Poland, general partnership or an EEIG is chosen for particular project in Poland and such entity is treated differently, as opaque (non-transparent) outside

Poland

Poland, it may be considered as the tax resident to the extent such income is not taxable in or outside Poland (reverse anti-hybrid entity rule).

Polish resident companies are taxable on their worldwide income. There is no separate capital gains tax but there are two separate baskets of income: specifically listed income of a capital nature and all other (mostly business) income. In the case of a film production company, income may include (but is not limited to):

- revenues from the sale of the film or rights in it;
- royalties or other payments for use of the film or aspects of it (for example, characters or music);
- revenues with respect to commercials such as product placement or similar;
- revenues realized by way of a profit share agreement.

Revenues are generally treated as income (and are therefore taxable) once they become due and payable. Foreign exchange gains can be recognized either on a cash or an accruals basis.

In general, expenses incurred for the purpose of generating taxable income, or retaining/securing the sources of income (e.g., salaries, rents, advertising, travel expenses, and legal and professional costs), are deductible for tax purposes and reduce revenues pertaining to a given source of income, unless explicitly excluded by law (e.g., dividends, fines and fiscal penalties, unpaid interest, or capital expenditure, such as the purchase of land, fixed assets, and intangibles).

Companies are generally entitled to reduce income by tax depreciation on fixed assets and intangibles. Rates vary from 1.5% for buildings or parts thereof other than residential buildings to 30% for computers, and between 20% and 50% for intangibles. Accelerated depreciation in respect of certain fixed assets is also allowed. Rights to films are depreciated for 2 years.

Losses

Losses incurred by a Polish resident company may be carried forward for up to 5 years and either up to 50% of available loss may be set off in each year or a taxpayer may decide to make one-off utilization of a tax loss carried-forward (up to PLN 5,000,000).

In principle, a loss carryback is not permitted. Losses that result from the business activity cannot be used to reduce income of a capital nature and capital losses cannot reduce the business income. There are several restrictions with respect to utilization of losses, most of them concern business restructurings.

Administration

The tax year for corporate taxpayers is defined as a period of 12 consecutive months. Unless a taxpayer decides otherwise and duly notifies the tax authorities, the tax year is deemed to be the calendar year.

The annual tax return must be filed by the end of the third month of the following tax year. Taxpayers are obliged to make monthly advance payments of corporate income tax, and these must be paid to the tax office by the 20th of the following month.

In order to obtain certainty on a specific case, an individual tax ruling may be obtained on request of a taxpayer. Such individual rulings grant the taxpayer certainty on their filing position in relation to the specific point raised unless a given legal action(s) described in tax ruling application aims to avoid taxation.

There are also many other specific procedures and applications that allow taxpayers to reduce or eliminate risks that concern i.a. transfer pricing (advance pricing agreements), claiming justified tax benefits (confirmation of no application the general anti-tax avoidance rule), claiming WHT reliefs on

Poland

qualifying intra-group passive payments (WHT clearance), double income taxation or inappropriate VAT qualification (VAT rate confirmation).

Minimum tax

The Polish CIT Act provides for a minimum tax that must be paid by taxpayers with the share of income in revenue (other than capital gains) amounting to 1% or less or reporting losses in a given tax year.

For the purposes of calculation of the loss and the share of income in revenue, costs associated with the purchase or improvement of tangible assets, charged into tax-deductible costs, including through depreciation write-offs, should not be taken into account. No size threshold is applied, meaning that the minimum tax aims to cover all taxpayers meeting the above criteria. Revenue tax is 10% of the taxable base, that is, the sum of:

- 4% of the value of revenues from sources other than capital gains, plus
- debt financing costs exceeding 30% of specific tax EBITDA (including capital income) incurred for the benefit of related entities, plus
- the value of deferred income tax resulting from the disclosure of non-amortized intangible assets in tax settlements, to the extent it increases gross profit or decreases gross loss, and
- the value of costs of purchase of particular services or intangible rights incurred for the benefit of related entities (or entities from countries or territories pursuing harmful tax competition), in the part specified in detail in the legislation.

Earnings Stripping and Other Rules Restricting Deductibility of Debt-Related Payments

Special consideration should be given to the restrictions of the deductibility of debt-related payments prior to the implementation of any film financing structure. There is a list of expenditure not classified as tax-deductible costs related to debt financing of transactions. For example, the following shall not be treated as tax-deductible costs:

- accrued, but not paid or remitted interest on loans (credits);
- interest, commissions and amounts resulting from foreign exchange differences for loans (credits) which increase investment projects costs during the period of carrying out said investment projects;
- interest on the taxpayer's investment in the source of revenue;
- interest on the profit participating loan;
- debt financing obtained from a related entity to the extent that it was assigned, directly or indirectly, to capital transactions, in particular to: acquire shares, acquire all rights and obligations in a tax transparent partnership, make additional contributions, increase share capital or redeem own shares;
- interest related to debt-push down structuring.

Even if the interest does not fall within any strict limitation, there is a broad regime covering limitation of debt financing costs, including interest on loans granted by unrelated entities, known as earnings stripping rules (Article 15c of the CIT Act). The provisions clearly state that the limit of debt financing costs is the total of PLN 3m or 30% of so-called tax EBITDA computation of which remains very complex.

Non-Polish Resident Company

Nonresident companies are subject to tax in Poland on their Polish source income only. Therefore, if a nonresident company were to sell the rights to production in Poland, this income could be subject to tax in Poland (unless a respective double tax treaty provides otherwise).

Poland

Where a nonresident company carries out a co-production in Poland, it should not be liable to Polish tax on its profits as such activities should generally not constitute a permanent establishment (PE) in Poland under the definition of a PE as defined in most tax treaties. However, if the co-production goes on at a particular place in Poland for a considerable period of time, there is a risk that it may be regarded as a fixed place of business and, therefore, constituting a PE. As such, the nonresident company would be liable to Polish tax on profits attributable to the PE.

Additionally, care should be taken regarding any production/administration office set up in Poland by a nonresident company to assist with location shooting and production, as the Polish tax authorities may argue that it is a PE and, therefore, chargeable to tax in Poland.

Withholding Tax

Withholding tax is imposed in Poland based on various rates (10% - 20%) on the following categories of taxable revenues derived within the Polish territory:

- 1) passive income derived from dividends, equivalents of dividends, interest and royalties. Royalties are understood very broadly and include: the sale or the use of copyrights or related rights, rights to invention designs, trademarks, and design patterns, including from the sale of such rights, making available the secret of a formula or a production process, know how understood as information related to the experience gained in the industrial, commercial, or scientific field, the use or the right to use an industrial facility, including a means of transport, a commercial or scientific facility.
- 2) active income derived from i.a.:
 - services rendered in respect of artistic, entertainment or sports events performed by legal persons with their seat abroad, organized through persons conducting activity in the field of artistic, entertainment or sports events in Poland,
 - providing following intangible services: consulting, accounting, market research, legal, advertising, management and control, data processing, employee recruitment and acquisition services, guarantees and sureties and services of similar nature.
- 3) income distributed by persons being residents of countries and territories considered by the Polish Minister of Finance as applying harmful tax competition derived from certain income of a capital nature.

Poland has two mutually exclusive withholding tax (WHT) mechanisms and granting of WHT relief (domestic / treaty-based) depends on 3 circumstances which must be analyzed in the following order:

- 1) a type of income subject to WHT,
- 2) status of an income recipient, and
- 3) an amount of annually distributed income.

Preliminary condition for any WHT relief requires identification of a taxpayer which from a Polish tax perspective is understood as a non-transparent entity or other person that is not an intermediary, representative, trustee or other person or entity obliged at the time of receiving the income to transfer all or part of the income received to another entity or person.

As the income of nonresident companies derived from entertainment activities is subject to 20% withholding tax in Poland, it should therefore be considered before entering into any Polish co-production agreements by companies from countries with which Poland has no double tax treaty.

Poland

Interest and royalties paid to nonresidents are subject to 20% withholding tax unless the relevant double tax treaty states otherwise. Interest and royalties paid to a direct parent or sister company being resident in the EU are exempt from withholding tax. The shareholding of at least 25% must be held for two years in order to qualify for the above exemption.

Dividends are subject to 19% withholding tax (unless the relevant double tax treaty states otherwise). However, dividends paid to associated companies within the EU are exempt from withholding tax if the fully taxable parent holds continuously at least 10% (25% in the case of Switzerland) of the subsidiary for at least two years.

Depending on whether a related party receives income, and the PLN 2 million annual threshold is exceeded towards given passive income, it may either:

- 1) benefit from the relief at source mechanism if a given domestic or treaty-based withholding tax relief applies and tax remitter is provided with necessary documents, or
- 2) be subject to pay & refund mechanism under which as a rule any potentially applicable withholding tax relief must be disregarded by the tax remitter at the moment of payment.

Therefore, the intra-group passive income exceeding the above threshold must as a rule be collected by the tax remitter based on the statutory rate (19% - 20%), and then it may be refunded after the taxpayer proves its right to the withholding tax relief. There are two exceptions:

- 1) withholding tax statement submitted to the respective tax office (by the Polish entity – withholding tax remitter);
- 2) withholding tax clearance that may be applied for by as a rule foreign taxpayer in order to confirm applicability of the WHT relief to a given taxpayer circumstances and avoid the pay & refund mechanism.

Foreign Tax Relief

If a Polish resident company receives income from overseas and suffers tax on that income, double taxation relief is granted by way of an ordinary tax credit. The credit is computed on a per-country basis. Where a double tax treaty applies, the treaty relief is mandatory.

With respect to dividends received by Polish parent companies holding at least 75% in subsidiaries from a treaty country, the parent company is not only entitled to tax credit but also to apply underlying tax relief.

Indirect Taxation

Value Added Tax (VAT)

Important features of the Polish tax system have been harmonized with EU tax law, including VAT. Poland levies VAT at each stage of the production and distribution process and input tax suffered on purchases is deductible from any output tax due. Individuals and entities that supply goods or services in Poland or import/export goods to/from Poland are liable to charge VAT if they exceed the PLN 200,000 threshold.

Where services are provided within the territory of Poland by a supplier not registered for VAT in Poland, VAT can be self-charged by the recipient under the reverse charge mechanism. The reverse charge mechanism covers (but is not limited to) the sale of rights and granting of licenses or sublicenses, and is also applicable in the case of intra-EC acquisitions and local acquisitions of goods from foreign entities which are not registered for Polish VAT.

Poland

Under the reverse charge mechanism, the recipient charges VAT using the applicable Polish VAT rate (usually 23%). This VAT may be deducted as input VAT in the same VAT return in which the output VAT is declared. Therefore, providing the recipient can fully recover the VAT, the operation is tax and cash-flow neutral.

With regard to VAT rates applicable to the film industry, the standard VAT rate of 23% applies to film production, the reduced VAT rate of 8% applies to services of creators and performers within the meaning of the Polish Copyright and Related Rights Act remunerated in the form of royalties for the transfer or licensing of copyrights, while fees of individual artists are generally VAT-exempt.

Capital Duty

Tax on civil law transactions (capital duty) is imposed on an initial capital contribution to a newly registered company and on any additional contribution to the company's capital. The rate is 0.5% of the capital contribution.

Transfer Tax

The sale and exchange of goods, property, and property rights are subject to tax on civil law transactions, unless the transaction is a VAT-able transaction, with the exception of the sale and exchange of immovable property and the sale of shares, which are subject to transfer tax as a rule.

The rate of tax on civil law transactions on the sale and exchange of immovable property and other goods located in Poland is 2% of the market value of the transaction. In respect of the sale of property rights, the rate is 1%.

Personal Taxation

General Rules

An individual is considered to be a resident of Poland for income tax purposes if his center of personal or economic interest is located in Poland, or if his stay there exceeds 183 days in a tax year. Polish resident individuals are subject to tax on their worldwide income while non-Polish resident individuals are subject to tax on their Polish source income only.

The tax year for individual taxpayers is the calendar year, and an annual tax return must be filed by April 30th of the year following the tax year. Income tax must be paid in advance each month and adjusted accordingly at the year-end. However, taxpayers earning business income may opt for quarterly advance payments in the year in which they commence the business activity or where their annual turnover in the preceding year was lower than EUR 2,000,000 (including VAT).

The Polish PIT Law lists the following categories of income: (1) income from dependent services, including employment and pension income, (2) income from independent services, (3) income from business, (4) income from particular agricultural sectors, (5) income from immovable property (rental income), (6) income from investments and property rights, (7) income from the sale of immovable property, property rights, and movables, (8) income from controlled foreign companies (CFC), (9) income from unrealized gains (exit tax) and (10) other income. Tax is generally levied on the aggregate net income from all categories after accounting for deductions. The net income from each category is the difference between the sum of receipts (both in cash and in kind) and any related expenses. Specific rules and exceptions concern CFC and exit tax regimes.

Poland has a scale of progressive income tax rates (i.e., 17% basically and 32% to income over PLN 120,000 (approximately EUR 25,000) plus 4% on qualifying annual income exceeding PLN 1 million due to solidarity levy) to tax individuals. However, certain income items are taxed separately at flat rates or can be taxed based on selection made by the taxpayer. Personal income tax relief is PLN 30,000 (approximately EUR 6500) annually for taxpayers subject to the tax scale.

Poland

Tax losses may be carried forward for up to 5 years and either up to 50% of available loss may be set off in each year or a taxpayer may decide to make one-off utilization of a tax loss carried-forward (up to PLN 5,000,000). Tax losses may not be carried back and can be utilized within a given source of income. There are some specific restrictions that must be analyzed before claiming tax loss in the tax return.

Artists (Self-Employed)

Income Tax Implications

For Polish income tax purposes, an artist's income derived from his or her professional services will be considered "income from professional services" or "income from business," depending on how the services are performed.

In the first case, the "income from independent services" will be aggregated with their other net income and taxed at the appropriate rate. Net income is defined as being the difference between the sum of receipts (both in cash and in kind) and expenses, in the predefined amount of 50% of the receipts. It should be noted, however, that the amount of deemed expenses is capped at the amount of PLN 120,000 (approx. EUR 25,000). 50% of the tax-deductible expenses may be applied to the activities:

- of artistic nature - in the field of acting and stage art, theater and stage directing, costume and stage design, aural creativity;
- in the field of audiovisual production (directors, screenwriters, image and sound operators, editors and stuntmen);
- of creative nature - in the field of audiovisual creativity, choreography.

With regard to the taxation of "income from business," it may be taxed based on general rules or the taxpayer may opt for a 19% flat-rate taxation. However, taxpayers who opt for the flat-rate taxation are not entitled to some personal deductions and tax reliefs that would otherwise be available. There is also an option to choose a lump-sum tax under which neither deduction of costs is possible. Choice of the method of taxation of the business income matters from the perspective of the health insurance which is generally imposed at the rate of 9%.

As stated above, a Polish self-employed artist is subject to tax in Poland on his or her worldwide income. Where a Polish resident suffers overseas tax on its income, double taxation relief is granted by way of an ordinary tax credit. The credit is computed on a per-country basis. Where a double tax treaty applies, the treaty relief prevails.

Nonresident Artists and Tax Credit

As stated above, nonresident taxpayers are only subject to tax in Poland on their Polish source income. The taxable income of nonresidents is generally calculated under the same rules that apply to residents.

If the taxable income derived by a nonresident cannot be accurately determined from the taxpayers' financial records, it is estimated as a percentage of turnover (20% in the case of film production activities). However, this method to establish taxable income is not applied if a tax treaty provides otherwise.

It should be noted that a 20% withholding tax is levied on income from certain independent services performed by nonresidents, including (but not limited to) income from artistic, literary, scientific, educational, and journalistic activities, unless a double tax treaty states otherwise.

Poland

Employees

Income Tax Implications

Income from employment includes all kinds of remuneration and benefits in kind. Employers are obliged to deduct advance payments on salaries and other remuneration paid to employees, and these deductions must be paid to the Polish tax authorities by the 20th of the following month.

Social Security Implications

Employees are liable to make social security contributions based on their gross income. The contributions are payable by employees at the following rates:

- Old age pension: 9.76%
- Disability insurance: 1.50%
- Sickness and maternity insurance: 2.45%
- Health insurance: 9.00%

All of the above contributions are withheld by employers and the system applies equally to residents as it does to foreign nationals who have an employment contract with a Polish employer. Individuals working in Poland, who are EU member states' nationals, should be covered by the EU social security regulations. Depending on the individual circumstances of each assignee, they may be subject to social security in their home country, the country of their employment, or the country where the work is actually performed. Each case should be investigated carefully to determine appropriate social security contribution payment requirements and obligations.

Health Insurance Implications

Employees and entrepreneurs are also liable to make health insurance contributions based on their income. The rate is 9% and contributions cannot be claimed as any deductions to reduce income tax. Contributions are withheld by employers and paid by entrepreneurs each month.

Grants and Incentives

It should be noted that it is possible to obtain financing of a project related to film production/promotion via a number of tailored incentives, namely:

- Incentives granted by the Polish Film Institute (production of films, modernization of cinemas, promotion of Polish films abroad, etc.),

Production of films

- "Cash Rebate" is an incentive for filmmakers aimed to support film production. In general, this program offers reimbursement of production costs incurred in Poland up to 30% of Polish eligible expenses. The rules are complex and included in the specific Act on Financial Support for Audiovisual Production.

This solution's primary task is to support audiovisual production in Poland. This Polish system of incentives is open to domestic and international productions, for feature films and series, animations, and documentaries. The reimbursement is available for Polish and international co-productions and services provided for foreign productions.

In order for the project to be supported, its producers must spend the amount of money specified in the detailed regulations in Poland, cooperate with Polish filmmakers and film crews, and shoot in Polish locations or film studios. After meeting the required criteria, support is granted quite automatically, there is no expert body allocating funds. The mechanism is based on economic and legal, not artistic criteria. Applications are generally accepted continuously throughout the year.

Poland

Promotion of Polish films abroad

The main purpose of the program is to promote films and the achievements of Polish filmmakers outside Polish borders as part of international film festivals and events. Grants ensure funding for: promotional campaigns, organizing events abroad to promote Polish achievements of filmmakers, etc. Applications are accepted continuously.

Modernization of cinemas

The main purpose of the grant is to support the operation of cinemas and to improve conditions of their functioning. As a result of the co-financing, it is possible to cover some costs related to the modernization of cinemas (e.g., sound system, screen).

Incentives granted by the Polish-German Co-Development Fund (features and animated films, creative documentaries),

The purpose of the Polish-German Co-Development Fund is to support co-production activities between producers from Poland and Germany in the development of film projects and - as part of smaller budgets (usually up to EUR 750,000) of film productions between Polish producers and producers from the MDM and Medienboard regions. The Fund finances projects for the development of a full-length feature film, animated film and creative documentary film. The next grant application deadline is June 30, 2022.

Regional funds, financing film production in particular voivodeships, for example in Masovia, Pomerania, Silesia, etc.

Around 10 regional funds operate in Poland in the following regions/cities: Masovia, Lesser Poland, Lower Silesia, Warmia-Masuria, Silesia, Gdynia, Lublin, Lodz, Subcarpathia and West Pomerania. Each year, each of them subsidizes the production of Polish feature and documentary films related thematically or locally with the region. Currently, no regional fund conducts year-round calls for grants. Most grants have a 2-3 week application deadline.

Creative Europe 2021-2027

As Poland is a member of the EU, creators have access to grants provided by the European institutions, for example, to the initiative "Creative Europe 2021-2027" including the component "Media" covering the audio-visual and film sectors. This initiative is regulated by the Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme. The initiative has a budget of more than EUR 2 billion, more than 50% of which is earmarked for the support of cinema and the audiovisual sector.

Finally, it is also possible to benefit from Eurimages, a fund run by the Council of Europe, supporting European cinema.

Poland

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