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.

France

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.

Tony Castellanos
+1 212-954-6840
acastellanos@kpmg.com

Benson Berro
+1 818-227-6954
bberro@kpmg.com

Joseph Bruno
+1 212-872-3062
josephbruno@kpmg.com

France

Introduction

The French film and television industry plays a significant role in the French economy. Many domestic and international productions take place in France every year. France also hosts several international film and television festivals (e.g., Cannes, MIPCOM, and MIDEM).

Hence, France has always made an effort to encourage the financing of films through tax and financial incentives. This has led to the creation of an incentive for companies investing in the film and television industry – *Sociétés pour le Financement de l'industrie Cinématographique et Audiovisuelle* (SOFICA) – a special legal structure established to promote activity in the film industry. Certain regulatory bodies, e.g., the *Centre national de la Cinématographie* (CNC), are in charge of promoting the production of French films and allocating these incentives. Furthermore, there are several tax credits available that are aimed at encouraging film and television production in France.

Key Tax Facts

Highest corporate income tax rate	27.5% (25%, effective January 1, 2022)*
Highest personal income tax rate	45%
VAT rates	0%, 2.1%, 5.5%, 10%, and 20%
Normal nontreaty withholding tax rates: Dividends	0%, 12.8%, 15%, 26.5%,or 75%**
Interest	0% to 75%**
Royalties***	26.5% or 75%**
Tax year-end: Companies	Financial year-end
Tax year-end: Individuals	December 31

* Plus a 3.3% surcharge assessed on the portion of the corporate income tax exceeding EUR 763,000.

** The 75% withholding tax rate applies for payment made to an entity located in a non-cooperative state or territory (“NSCT”).

*** French specific IP box regime applicable to patent and software seems to be not applicable in this industry.

Film Financing

Financing Structures

Co-production

A French-resident investor enters into a co-production joint venture (JV) with a foreign investor to finance and produce a film. The JV is located in France, the film is produced there, but exploitation rights for all media (theatrical, television, video, etc.) are divided, with the JV members each exploiting their respective interests in the territory allocated to them under the co-production agreement.

The French investor retains exclusive media rights in the home territory; the foreign investor retains exclusive media rights in its own territory; the rights in all other territories are held by one or another of the parties or jointly. Both parties fund the production costs; the foreign investor produces the film under a production contract with the JV. Each party funds its own share of the production costs based on its anticipated proportion of the revenue to be earned by the film.

Unless materialized by the setting up of a legal entity, this JV would be considered a silent partnership (*société de fait or société en participation*), the results being taxed directly in the hands of the partners if no company subject to corporate tax is set up in France for this purpose and if the names of the partners have been disclosed to the tax authorities. The silent partnership is directly subject to corporate tax on the share of profits of the undisclosed partners.

Although this JV is located in France, the applicable tax treatment must be reviewed in terms of each party's position.

The foreign investor would not be subject to French tax on its overseas income if exploitation can be kept separate from production.

The French investor would be taxed on the full amount of its profits related to film production and exploitation and is subject to the application of relevant treaties.

If the foreign investor produces the film in France and has a production office in France, it may be considered to have a permanent establishment in France and may be taxable on income arising from its French activity. However, it could rely on applicable tax treaties to obtain full or partial relief, depending on various circumstances, specifically, the length of presence in France.

A cost-sharing agreement may therefore be a favorable structure if the foreign investor exploits the film from within its own territory.

Acquisition of Distribution Rights

Distributors who do not enter into a co-production with a production company may participate in the financing of a film in an agreed proportion by advancing a certain amount of funds.

The production company must record these advances by the distributor as operating revenue when the distributor obtains the censor's certificate.

When the advance is considered as a loan and must be reimbursed to the distributor, the transaction falls outside the scope of VAT. On the contrary, when the advance is recognized by the production company, this advance is treated as a payment for the distribution rights. Consequently, the distribution company has to pay VAT on the sums received from theatre operators. When the production company obtains the exploitation certificate, the production company pays the VAT. This VAT is assessed on the advances received from the distributor. Subsequent payments to the producer are deemed to be supplements to the sale price of the rights and are also subject to VAT.

Partnership

Financial investors from several territories and the film producers become partners in a partnership located in France. They each contribute funds to the partnership.

The partnership would be treated as a taxable entity in France and would produce the film in France. The partnership may be either a general partnership (*société en nom collectif*), where the partners are jointly and severally liable for debts, or a limited partnership (*société en commandite*), where only the general partners have unlimited liability. In this latter case, the actual production could be undertaken by the general partners as agents of the partnership.

The partnership may then mainly receive royalties under distribution agreements, from both treaty and nontreaty countries.

The film would be distributed by independent distributors in consideration for a fee.

If a general partnership is set up, each of the partners would be taxable in France on its share of the results, and according to the system applicable to the specific partner, i.e., personal or corporate income tax, unless the partnership has elected to be subject to corporate tax.

If a limited partnership is set up, different treatment would apply to the general partners and to the limited partners.

The portion of results attributable to the limited partners would be subject to corporate income tax (paid by the partnership). Any further distribution of dividends in the hands of the limited partners is subject, for the resident partners, to income tax or corporate income tax under specific conditions. Those paid to individuals (French tax resident) are subject to a 30% flat tax (*Prélèvement forfaitaire unique, "PFU*") made up of 12.8% income tax and 17.2% social contributions, while legal entities could be exempt thanks to parent-subsidiary regime, provided that the partnership has opted for corporate income tax.

The nonresident partners are subject to a withholding tax at the domestic rate of 26.5% or 12.8% for individuals, reduced in general to 0% (in a very few cases) 5%, 10%, or 15% by applicable treaties or, with regard to companies canceled by the European Union (EU) parent-subsidiary directive, whenever applicable.

The portion of the results attributable to the general partners would be directly taxable in their hands, according to either personal income tax or corporate income tax regulations.

If a partner is a resident in France and receives dividends from a foreign partnership located in a treaty country, the withholding tax levied abroad may, in principle, be credited against the tax due in France.

Equity Tracking Shares

These shares provide for dividend payments based on the profitability of a film production company's business. Investors acquire such shares in the production company. These shares have the same rights as the production company's ordinary shares/common stock, except that dividends are profit-linked and their holders have a preferential right to assets upon liquidation of the company. The production company is resident in France.

These shares, which are not common in France, would likely be considered preferred shares. The dividends paid on such shares would be treated as ordinary dividends.

It should be noted that it is not possible to provide for fixed interest or yield payable in the absence of profits.

Yield Adjusted Debt

A film production company may issue "debt securities" to investors. Their yield may be linked to revenue from specific films. The principal would be repaid upon maturity, and there may be a low (or even zero) rate of interest stated on the debt instrument. However, at each interest payment date, a supplemental (and perhaps increasing) interest payment would be paid should a predetermined target be reached or exceeded (such as revenue or net cash proceeds).

These "debt securities" would likely be treated as debt.

However, the supplemental interest paid might (although this is rather unlikely) eventually be regarded as a distribution of dividends given the fact that it depends on the results of the company.

The interest may not be deductible for the company in this case and is subject to corporate or individual income tax for the investor.

This interest may be subject to withholding tax if reclassified as a dividend under the dividend article of the applicable double tax treaty.

Tax and Financial Incentives

Investors

If an individual or company subscribes for or acquires shares in another company, the related cost is, in principle, not deductible from the taxable income for the computation of the tax due by the individual or the company. There are several limited exceptions to this principle.

When an individual or company provides a loan to another person, the interest payable is deductible when calculating the taxable income of that company or individual if the loan has been contracted for business purposes. The deduction is made on an accrual basis. If the loan becomes a bad debt, it may be deducted from the profits of entrepreneurs (companies or individuals) by way of a provision, provided that the risk of loss is clearly determined.

Certain limits exist on the deductibility of interest paid on loans granted by shareholders or related parties. Such limits regard either the maximum rate of interest payable or the maximum amount that may be deducted based upon debt/equity ratios or earning tripping rules.

Specific incentives are available for investments in films:

- Individuals who are residents in France may deduct from their taxable income 30% (36% in certain cases) of the contributions in cash to the capital of a company whose exclusive activity is film financing, which are approved by the Department of Arts, up to a limit of 25% of their global net income and with a limit of EUR 18,000. The tax relief is repayable to the tax authorities if the individuals sell their shares in the SOFICA within five years following the acquisition.
- With regard to companies approved since January 1, 2017, the tax reduction rate can be increased to 48% when certain conditions regarding the companies' investments are met.

It should be noted that this incentive concerns capital contributions made up until December 31, 2023.

Producers

The French government provides grants and other financial incentives to encourage the production of films in France.

The *Soutien automatique à la production des oeuvres cinématographiques de long métrage* is an automatic support for the production of entertainment films running more than one hour. The producer must obtain prior approval from the general director of the CNC. Several conditions must be met in order to benefit from this incentive, including the following:

- The film must be directed by enterprises whose presidents, general directors, and managers are French or EU nationals or from European States with which the EU has conclude international agreements relating to the audiovisual sector
- The authors, actors, and crews must also be resident in an EU member state.
- The films must be made in France (including overseas territories).
- The approval can be given to films realized under an international co-production, but only under conditions fixed by international agreements.

This automatic support must be used either for the repayment of debts or for investment in a new production.

The amount of the support is based on the yield from the exploitation of the film.

The government has also set up some selective incentives. The main one is an advance on receipts ("*avance sur recettes").* Such advance may be given before or after realization, under different conditions:

- Advance on receipts before realization:

Such an advance corresponds to an interest-free loan reimbursable by the film's receipts. The application form may be filed by the author of the script or by the director if they are French nationals or French residents. It can also be filed by the producers if the film is French, or if it is realized through an international co-production. The original version of the film must be, in general, in French. The decision to grant this advance is taken by the minister of culture based upon an opinion given by a consultative commission composed of professionals. If the decision is favorable, the candidate benefits from a commitment available for 24 months, during which shooting must begin. The payment of the advance is subject to an investment approval. The producer will have to repay this advance in installments based upon the agreement reached with the CNC.

- Advance on receipts after realization:

Only the producer can file an application for this incentive. The conditions are the same as for an advance before realization, but this incentive is allocated in consideration "*of the nature of the subject, the characteristics, qualities and conditions of realization of the works.*" In addition, a financing deficit higher than the producer's salary should exist, based on the financing plan and the final cost of the film. An agreement must be signed between the CNC and the producer to begin the payment of the advance, which is subject to the existence of a distribution agreement The repayment of the advance is made according to a repayment schedule.

Tax Incentives for Companies

Production entities subject to corporate tax that produce approved long-running films in the French territory with the support of French or European technicians may, upon agreement of the CNC, benefit from a tax credit equal to 20% of the technical expenses incurred for the production, and 30% for animation films. The total of the credit and of the other public subsidies which might be available, cannot exceed 50% of the production budget, or 60% for difficult and low-budget films (or of the French portion of the budget for international co-productions). In addition, the tax credit is limited to EUR 30 million per production. The tax credit isoffset against the corporate income tax due for the year where the expenses are incurred, any excess being refundable to the company.

Another credit is available, upon agreement of the CNC, to audiovisual production companies subject to corporate income tax, which locate mainly on the French territory the production of documentaries, fictions, or animation films realized with French or EU authors, artists, and crew. It is equal to 20%or 25% of the expenses incurred, limited to EUR 1,250–-10,000 (fiction films), EUR 1,450 (documentary films), and EUR 3,000 (animation films) per minute shot and delivered, and can offset the corporate tax (any excess being refundable).

This tax credit is creditable against the corporate tax due for the year when the expenses incurred, any excess being refundable to the company, and is subject to the above EUR 30 million per production limit and 50% or 60% public subsidies' limits.

It should be noted that, subject to the approval of the European Commission, expenses for the audiovisual adaptation of shows incurred until December 31, 2022, are eligible for these both tax credits (when the conditions of application are met) up to 10% of their amount, limited to EUR 1,450 per minute shot and delivered. There are also other incentives to encourage the production of short films. These include:

- Financial contributions approved by the minister of culture and granted by the CNC,

- A subsidy that may be given for short films that obtain an award, commendation, or prize for quality.

Generally, all such grants, except for the tax credits, are repayable. It should be noted especially that even if a producer has benefited from an advance on receipts before the realization of a film, the commission can give another opinion after the realization of the film. If this opinion is negative, the minister of culture may ask for immediate repayment of the advance.

Distributors

There are some incentives available for distributors acquiring film rights. These are available under the following conditions:

- The distributing enterprises assume effective liability for the distribution operations
- The amount allowed must be invested within four years of the first day of the year following the one in which the amount was calculated
- The distributors must guarantee that they will incur a minimum level of expenses on behalf of the producer.

If the distributor has not respected these conditions, he or she must repay to the financial support fund the amount already invested.

Actors and Artists

There are no specific incentives available for actors or artists except that they are allowed to deduct from their taxable income all of their actual professional expenses.

Other

Other subsidies exist to assist the modernization of movie theatres and the development of technical activities, and to promote the export of French films.

In the context of the COVID-19 crisis, companies that recorded a decrease of at least 10% of their turnover over the period from March to December 2020 (compared to the same period in 2019) benefit from a tax credit of 15% of expenses related to audiovisual and cinematographic creation, incurred during this period. These expenses must have been incurred in France, in the EU or EEA (excepted in Switzerland).

To be eligible, companies must operate as a publisher of on-demand television, radio, or audiovisual media services, and be subject to the corporate income tax. The tax credit can offset against the corporate income tax, and any excess is refundable to the company.

Other Financing Considerations

Tax Costs of Share or Bond Issues

Most contributions to share capital are exempted from registration duties

A transfer of stock of a SA is subject to a 0.1% tax (transfer of stock of a listed SA is not subject to this tax, except if the transfer is evidenced by a written deed). A transfer of shares of a SARL or of an SNC is, in most cases, subject to this same 3% tax, not limited. A transfer of shares in a non-listed real estate company (whatever its legal form) is subject to a 5% tax, not limited. A specific exemption exists in case of transfer of stocks or shares within a group of companies.

Mergers and spin-offs are exempted from registration duties made between companies subject to corporate tax. For other companies, the tax will depend on the nature of the reorganization and on the assets contributed.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

French-resident Company

If a company is set up in France to produce a film without acquiring any rights in that film, i.e., a "camera-for-hire" company, the tax authorities may query the level of production fees attributed to it, if they consider that it is not sufficient (below an arm's-length rate).

The level of attributed income may equal the percentage of investment or should cover the costs and permit the camera-for-hire company to earn a reasonable profit.

In theory, it may be possible to negotiate in advance an acceptable production fee income with the tax authorities, but this is not a common practice at all.

Non-French-resident Company

A production office administering location shooting in France would be regarded as a permanent establishment taxable in France if it was permanent and actually participated in the production and shooting of films in France, subject to the exemptions provided by an applicable double tax treaty (for example, an installation and project set up for less than a prescribed time period).

In this situation, the French tax authorities would seek to tax an amount of profits comparable to those that would have been earned by a resident company carrying on the same business.

It is unlikely that a production office could be regarded as causing a foreign company to be resident in France for tax purposes, since the office is not the site of central management and control of the company.

The regime could be the same for a company undertaking location shooting in France without being a French resident and without having a production office in France.

The term "permanent establishment" has been interpreted by the French Tax Supreme Court (the Court). The Court has indicated that a permanent establishment exists if the following conditions are found:

- A license for a business installation
- An installation established in a definite place for a certain period of time
- An installation used for business activities.

The existence of a permanent installation, e.g., an office, etc., in France or of a dependent agent having the power to conclude contracts on behalf of his or her principal, or the performance of a complete cycle of activity in France, are also regarded as permanent establishments under French domestic law, in the absence of a treaty.

Of course, the existence of a permanent establishment will also depend on the specific definition given by the relevant article in the applicable double tax treaty.

Film Production Company – Sale of Distribution Rights

If a French-resident production company sells the distribution rights in a film or television program to a distribution company or partnership based in a treaty country, the payments received would be regarded as royalties taxable in France, with relief given in general for any withholding tax, which may be levied abroad.

The distribution rights acquired by a French-resident company have to be depreciated over a defined period (see below for the depreciation rules), and the receipts would be regarded as trading receipts.

The transfer of intangible assets offshore is not governed by any special tax rules (except transfer pricing rules). The selling price and any payments should represent arm's-length prices.

Film/Television Program Distribution Company

Payments by a distribution company to a production company for distribution rights would be treated as royalties paid for the purchase of an asset.

For tax purposes, depending on the rights granted to the purchaser, the cost would have to be capitalized and depreciated or be treated as a normal expense.

The income arising from exploiting distribution rights would be recognized as ordinary trading income.

The rules above would be applicable even if:

- The production company is resident in a nontreaty country;
- The distribution company exploits the rights in other countries; or
- The distribution company sublicenses the acquired rights locally and abroad.

The income earned from the exploitation of distribution rights over a period that covers more than one financial year would be recognized during the years to which the income relates, irrespective of the date of receipt.

In principle, the tax treatment would be similar to the accounting treatment. It is normally not possible to argue for a tax treatment that would be more beneficial than the accounting treatment.

Transfer of Film Rights Between Related Parties

If a worldwide group of companies grants a sublicense for exploitation of film rights in France to a resident group company, the French tax authorities may query the level of profit arising locally and examine the level of the royalties paid abroad.

The acceptable level of attributed income would depend on the level of the investment of the French company. There are no specific regulations applicable in this respect.

If the income is remitted by the resident company to a low-tax country by virtue of a sublicensing distribution agreement, the tax authorities would very likely examine the level of such attributed income in order to prevent tax avoidance. The French company would, based upon Article 238.A of the French Tax Code, have to demonstrate that the payment is arm's-length and paid in consideration of a real service. In addition, in the absence of a treaty, a 26.5% (75% if payment is made to a so-called non-cooperative state or territory) withholding tax would be levied.

The Television Broadcaster

The television broadcaster, the cable chain provider, and the satellite chain operator are like the cinema exhibitor, the last link in the production chain. They provide an essential resource in the financing process, whether they are providing funding for films or programming.

The income of the French public broadcaster comes from a statutory license fee payable by each French home owning a TV. In addition, a substantial amount of its income comes from advertising, sales of programs overseas, participation in co-productions and advances to producers to help financing and programming in return for first transmission rights, and a share of any subsequent profits.

The principal source of income of the private sector broadcasters in France is fees paid by the customer and advertising income.

The cable chain operator and certain private chains derive their income from a mixture of subscriptions and advertising.

Amortization of Expenditure

Production Expenditure

When a production company owns the rights to a film, the expenditure can be amortized as follows (subject to changes deriving from the introduction in France of the International Financial Reporting Standards principles):

- At the end of each financial year, the amortization of expenditure is based on the income generated by the film.

In principle, the depreciation coefficient is based upon the period having elapsed since the first day of the month, following the last day of shooting and determined according to the following rates:

Period	Monthly rate
First month	30%
Second month	25%
Third month	20%
Fourth month	15%
Next two months	2%
Last six months	1%

- If, at the end of any year, the total amount of depreciation connected with the income of the film is lower than a theoretical amount (cost of the film multiplied by the above depreciation coefficient), the depreciation can be completed up to this last amount by deducting it from the net available income of the other films produced by the company.

Television Broadcasters, etc.: Film and Program Acquisition Expenditures

The depreciation of the acquisition cost of the rights is not specifically covered by the French General Tax Code but is recognized by a decision of the French Highest Tax Court.

It could be possible to depreciate the rights either over the period for which the rights have been granted or based on the number of showings.

Other Expenditures

Either a film distribution company or a “camera-for-hire” company can deduct or amortize the sums paid for acquiring the rights of the film and its overhead. There is no specific expenditure. The rules for deduction or depreciation are the usual rules applicable to other companies. Certain expenditures are immediately deductible (salaries, rent, and advertising). Other expenditures are not immediately deductible and must be depreciated (building fixed assets).

Losses

In principle, when a company has no income from a specific film in a given year, its expenditure may be offset against any other income received by the company from other films in that year.

In practice, many companies produce no more than one film during a certain period of time, and it could be difficult to apply the above principle.

Foreign Tax Relief

A resident film producer, who receives income from nonresident companies, may claim relief by way of a tax credit for the withholding taxes levied abroad if a tax treaty exists between France and the other country.

Other taxes

As television broadcaster, television program distribution companies are subject to a special television services tax (*TST-D*) of 0.5% to 3.5%. This tax is based on most subscription incomes exceeding EUR 10 million.

Distribution companies, public and private television broadcasters are subject to the television services tax (*TST-E*) of 5.15%. This tax is based on incomes from the broadcasting of advertising messages, the product of the contribution to public audiovisual broadcasting, and sums derived from the operation of interactive pay services offered to viewers (SMS, surcharged calls, telematic services) and paid by electronic communications operators, exceeding EUR 11 million.

Indirect Taxation

Value Added Tax (VAT)

General

Under the EU harmonized VAT system, France charges VAT on the sale and supply of goods and services.

The tax paid on expenses may offset the tax on sales, except for certain items on which the tax is not recoverable and must be expensed, e.g., on cars.

In addition, the French system denies a credit for tax incurred at an earlier stage when the goods or services are not used for the purpose of the company and its business activities.

Supply of a Completed Film

When a resident company delivers a completed film to another resident company, this supply of rights is generally charged at the rate of 5.5%.

If the second company is resident in an EU country, the supply of rights would be VAT exempt in France. To receive this treatment, the buyer would have to give its VAT identification number to the French supplier.

If the second company is resident outside the EU, the supply of rights is VAT free.

In both cases, there would be no specific reporting rules, but the amount of the sales would have to be reported on the VAT return as an exempt supply.

When a company delivers a film, it would, in principle, account for VAT at the date of the payment since the delivery of a film is regarded as a supply of a service (although the company may also elect to account for VAT at the date the invoice is issued).

Complex transactions and composite offers

The French 2021 Finance Act transposed into domestic law the European Union case law applicable to complex transactions and composite offers, specifying that these rules do not apply transactions whose main element falls under the 2.1% rate.

It also specified the specific rules for determining the taxable basis of complex transactions involving at least one telecommunication, radio or television broadcasting service or electronic service which are supplied for an all-inclusive price.

Finally, the text abolished the possibility for taxable persons to apply an allocation key in respect of single and indivisible transactions whose elements, having a different VAT treatment, are of equivalent importance, leading, in such a case, to the application of the highest VAT rate to the entire transaction.

Royalties

When a resident company pays a royalty to another resident company, the rate of VAT is 5.5% or 10%.

VAT is payable on a royalty paid to a nonresident company (EU or not). The rate of the VAT is 5.5% or 10%. The French-resident company would have to account for the VAT due thereon and to recover it in the same month using the "reverse charge" procedure.

Peripheral Goods and Merchandising

As a general rule, the rate of VAT depends on the nature of the goods involved, whether or not they are connected with the distribution of the film.

For instance, books, magazines, and music publishing are subject to a 5.5% rate, but CDs, DVDs, toys, or clothes are subject to the normal 20% rate.

Promotional Goods or Services

Unless otherwise provided, the tax rate applicable to the provision of promotional goods and services would be 20%. The free provision of promotional goods and services would not be subject to VAT. On the other hand, and unless specific conditions apply, the VAT borne on such goods and services is not recoverable.

Film Crews and Artists

The supply of catering on location, paid by the crew and actors, is taxable at 20% if there is a supply of services in addition to the supply of goods.

Imports of Goods

If a resident company imports goods from a foreign country, VAT, and eventually, customs duty would be due.

Customs Duties

No tax or customs duty would be due on goods temporarily imported into France and re-exported without alteration (under the processing relief or duty suspension regime).

Otherwise, France levies customs duties on the imported goods based upon the EU unified tariff.

Personal Taxation

The French definition of an "artist" (which is not given by the General Tax Code, but by administrative instructions or by precedents) includes actors, entertainers, sportsmen, and pop stars.

Nonresident Artists (Self-employed)

Income Tax Implications

A nonresident artist is subject to tax on his or her French-source income only. The income tax is initially collected by way of a withholding tax levied at the rate of 15% (75% if the artist is domiciled in a non-cooperative state or territory).

Even if withholding tax is deducted at source, levied by the employer or by the artist himself, the artist is obliged to file a return showing his or her French income. The tax is then computed according to the normal progressive scale and the withholding tax deducted from the tax due.

It is not possible to negotiate a different rate of withholding with the tax authorities. Any expense incurred can only be utilized as a deduction when calculating taxable income for income purposes.

Payments made to other parties (personal service companies) are also subject to French tax (under Article 155.A of the French Tax Code) if one of the following conditions is met:

- The party is controlled by the artist
- The party's main activity is to receive payments on behalf of the artist, or
- The party is established in a tax haven country.

VAT Implications

Self-employed artists are obliged to register for indirect tax purposes if the services they render are liable to French VAT. In practice, this does not occur very often.

Resident Artists

An individual, i.e., an artist, is regarded as a resident in France and therefore liable to French income tax on his or her worldwide income if he or she meets one of the following conditions:

- He or she maintains his or her household in France;
- He or she has his or her usual residence in France and is physically present for 183 days in a calendar year;
- He or she carries on the major part of his or her professional activities in France;
- He or she is a director of a company headquartered in France with annual turnover at least equal to EUR 250 million, unless he or she can demonstrate that this activity is not his or her principal activity; or
- He or she has in France the center of his or her economic interest.

These rules are subject to the provisions of the relevant tax treaties concluded by France.

Income Tax Implications

The tax is assessed at progressive rates between 0% (net taxable income of not more than EUR 10,064 after all deductions) and 45% (net income of more than EUR 158,122) for a single person. The progressive scale of tax is revalued each year.

Capital gains on shares and dividends are subject to a 30% flat tax ("*Prélèvement forfaitaire unique," PFU*) made up of 12.8% income tax and 17.2% social contributions, but it is still possible to opt for taxation at the progressive scale for shares acquired before January 1, 2018. Excepting case of option, the duration of ownership of the shares by the taxpayer is not factored into the calculation.

Taxable income includes all the various categories of income received by the taxpayer, i.e., salary after a flat 10 limited deduction capped at EUR 12,652, industrial or commercial profits, noncommercial income, agricultural income, real estate income, interest, dividends, and capital gains. Losses or deductions may, in certain cases, be deducted directly from the total income of the taxpayer. The global income (including earnings made by family members) is divided into a number of parts or "shares" (a single person: one share; a married couple: two shares; one dependent child: one-half share; each child after the third: one share), and the progressive scale is applied separately to the individual amounts of these share units. The final tax liability equals the total of the tax liabilities applicable to each share. The result, therefore, is to limit the effect of the progressive rate of tax (even if the tax reduction resulting from the shares for children is substantially limited).

VAT Implications

Self-employed artists are obliged to register for indirect tax purposes if the services they render are liable to French VAT.

Employees

Income Tax Implications

Employees are liable to personal income tax in respect of payments of salaries or wages (noncash benefits are considered to be salary).

Since January 1, 2019 and the introduction of the automatic withholding system, resident companies are obliged to withhold monthly the tax due by the employee on their salaries. The rate of the withholding is determined based on the last annual tax return of the taxpayer. On the other hand, employers paying salaries to nonresident employees have, in general, to levy and to pay to the tax authorities, on a monthly basis, a withholding tax at the rate of 0, 12%, or 20% depending on the level of the salaries.

Social Security Implications

Employees are liable for personal Social Security contributions in respect of payments of salaries or wages (including non-cash benefits). The overall rate is around 25% of the gross salary. The contributions are directly withheld by the employer and paid by him or her to the local Social Security bodies.

Employers are also liable to pay their own contributions assessed on the gross salary paid, at a ratearound45%, and depending on the level of the salary.

The same income tax and Social Security rules apply to a nonresident company as soon as it hires employees in France, regardless of the structure used.

Specific levies on French residents amounting to 17.2% of the gross proceeds are due in certain cases on certain income (i.e., dividends and capital gains). Such levies are only partly deductible to determine the taxable income of the taxpayer.

Digital Media

The electronic services sector remains, in principle, subject to the general rules.

However, the growth of this sector has recently been raising many fiscal issues due to the fact that the existing rules (OECD principles and tax treaties) allow the digital businesses to implement beneficial tax strategies enabling them to limit their tax liability in high-tax countries.

In order to curb this trend, France has ratified the BEPS multilateral instrument (*MLI*) in 2018. This convention, which amends thousands of bilateral tax treaties, aims to give to signatory States the practical tools to plug the loopholes in current international rules. The MLI includes rules based on four actions of the BEPS plan: it contains measures against hybrid mismatch arrangements (Action 2) and treaty abuse (Action 6), articles strengthening the definition of permanent establishments, notably with regard to digital actors (Action 7), and measures to make mutual agreements procedures more effective (Action 8).

Moreover, OECD Inclusive Framework is currently working on an in-depth reform of the international tax system for the digital economy, which is based on two pillars: Pillar 1, which deals with a new method of allocating taxing rights based on a Nexus approach, and Pillar 2, which focuses on a minimum tax rate principle on digital services global profits.

In the global context of the fight against base erosion and profit shifting, the French tax authorities are currently strengthening their control over this sector and do not hesitate anymore to launch massive tax raids.

Regarding VAT, the territoriality rules applicable to electronic services have been modified as from January 1, 2015. As from this date, electronic services provided to individuals located inside the EU will be taxable in the country where the individual is located (and no more in the country where the provider is located). Furthermore, principles related to composite services described above were transposed by the 2021 Finance Act.

Moreover, persons who, whether established or not in France, make available to the public in France services giving access for consideration to cinematographic or audiovisual contents, on individual request formulated by an electronic communication process (known as "video-on-demand" services), are subject to a 5,15% tax based on the related incomes, and on advertising messages broadcasting incomes.

At last, since January 1, 2019, the most important companies of the digital sector are subject to a tax on products resulting from the supply of certain digital services in France, known as the "GAFA tax." Thus, companies whose annual revenues exceed EUR 25 million for services provided in France and EUR 750 million for worldwide services are subject to a 3% tax, based on the amount of revenues related to services provided in France.

The implementation in France of the OECD BEPS project in France might, however, very likely result in additional regulations aimed at fighting the international base erosion and profit shifting, especially in, but not limited to, (but not only) in the digital economy.

KPMG Media and Entertainment Tax Network Members:

Xavier Houard
KPMG Avocats
Tax Partner – Technology Media & Telecommunications (TMT) Practice
Tour Europlaza
20 Avenue André Prothin
92400 Paris La Défense, France
Phone: +33 1 55 68 49 53
xavierhouard@kpmgavocats.fr