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.

United Kingdom

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

United Kingdom

United Kingdom

Introduction

Film[1]

The United Kingdom ("UK") film industry has a strong reputation, enhanced by international critical and commercial successes, including *Star Wars: The Force Awakens*, *Avengers: Endgame* and *The Lion King* to name a few reaching global audiences. In 2019, UK qualifying films released at the worldwide box office earned approximately one quarter of total global receipts, with a Covid-19 impacted figure of approximately 10% in 2020.

Filmmakers are generally attracted to the UK for three main reasons:

1. The high-quality studio, laboratory, and post-production facilities;

2. Talented performers; experienced, professional crew; and industry-leading digital effects and sound specialists; and

3. The beneficial tax incentives available.

Nine of the top 20 highest grossing films released worldwide between 2011 and 2020 were UK qualifying films, while 17 of the top 20 films feature British actors in lead or supporting roles. One of these films, Harry Potter and the Deathly Hallows: Part 2, was helmed by a British director (David Yates) and based on a novel by a UK writer (JK Rowling).

The value of feature film production spend in the UK in 2020 was £1.37 billion, a decrease of 37% on 2019's total as a result of the Covid-19 pandemic when production was halted for several months. 91 percent of the investment was associated with inward investment. Some of the big budget films contributing to this production spend include *The Batman, Cinderella, Doctor Strange in the Multiverse of Madness, Fantastic Beasts and Where to Find Them 3, Jurassic World: Dominion, The Little Mermaid, Mission: Impossible 7* and *The Northman*. The total UK production spend is dependent on a relatively small number of big budget productions, usually inward investment films.

UK film production is dispersed among a large number of production companies. Of these, the majority are associated with a single feature and set up as a distinct production company or special purpose vehicle to make a particular film. Most UK film industry companies in the production and post-production sectors are small companies with turnover under £250,000.

In 2020, a total of 348 UK films received final certification as British and therefore eligible for UK film tax relief or other public support. Due in part to a competitive tax regime, the number of UK films receiving final certification has risen sharply in the last few years, stepping up from around 175 final certifications before 2014 to over 300 since 2018.

In recognition of the economic and cultural value of film, the UK government, national administrations and the European Union provide financial support to film in the UK through a variety of means, including the film tax relief, the National Lottery and government grant-in-aid.

[1] Source: British Film Institute Statistical Yearbook for 2020 – bfi.org.uk/industry-data-insights/statistical-yearbook

Television and the Impact of the Move to Digital[2]

The UK television industry continues to be strong, both domestically and abroad. The arrival of Netflix, Amazon and other streaming services and the overall growth of streaming video subscription services and video on demand and a film-style tax incentive has given a huge boost to the television production industry. These platforms are vying for a global audience and commissioning ambitious, high-quality shows.

Inward production investment has more than doubled from less than £500 million in 2016 to over £1.1bn in 2020. The budgets from mostly U.S. companies accounted for 76 percent of all investment in high-end TV production in the UK.

The UK television market continues to shift from traditional broadcast and pay TV services and DVD sales towards digital video (video-on-demand) in line with evolving viewing habits. Revenues from online on-demand services, such as Netflix and Apple, have been greater than those generated by television-based services (including BT and Sky) since 2012.

On-demand service providers in the UK employ three basic types of business models:

- Transactional (TVoD) which comprises rental digital video, a one-off rental for a limited time, including both streaming and download-to-rent (DTR) and retail or download-to-own (DTO), also known as electronic-sell-through (EST). Most providers of transactional on-demand services such as iTunes or Google Play offer both rental and retail content, though some services deal exclusively with rental content.
- Subscription (SVoD) which provide unlimited access to content for a fixed monthly fee; providers include Netflix, Amazon Prime Video and Apple TV+; and
- Free/advert-supported providers include catch-up services, such as BBC iPlayer.

Key Tax Facts

Highest corporate profits tax rate	19% / 25%[1]
Highest personal income tax rate	45% / 40% [2]
VAT rate	0%, 5%, 20%
Annual VAT registration limit	UK £85,000
Normal non-treaty withholding tax rates: Dividends	0%
Interest	20%
Royalties	20%[3]
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	April 5

1 This large companies rate shall increase to 25% percent from 1 April 2023 onwards .
2 The 45% rate on personal income tax only applies to income exceeding £150,000 p.a.
3 Zero percent withholding for royalties in respect of film and video recording copyright

[2] Source: British Film Institute Statistical Yearbook for 2020 – bfi.org.uk/industry-data-insights/statistical-yearbook

Film Financing

Financing Structures

One of the most common forms of film financing involves the provision of a proportion of a film's total budget in return for an involvement in a co-production or the acquisition of distribution and broadcasting rights. These are discussed below, together with some variations on this theme.

Co-Production

A co-production is a film produced under the terms of an international co-production agreement between two or more countries.

In the United Kingdom, such films are made under either a bilateral co-production treaty or the European Convention on Cinematic Co-production. The aim of these agreements is to encourage international cooperation between filmmakers working together to produce a film involving the skills and resources of more than one country.

One of the benefits of making a film as an official co-production is that the producers are typically able to access the support provided to national films in each of the co-producing countries, including, where appropriate, tax incentives.

There are a number of ways in which co-productions may be structured. The tax position of the investors and the conditions for tax incentives would need to be considered when structuring such an investment. Please refer to the comments under Tax and Financial Incentives for high-level details of how official co-productions can qualify for UK film tax incentives.

If a foreign investor produces a film in the UK under a production contract, the foreign investor is likely to be taxed on the basis that business profits arise to a permanent establishment that it operates in the UK, and the foreign investor would have to rely on an applicable treaty (if available) to obtain relief in his or her home country. If there is a delay in receiving the UK tax credit in the domestic country, there would be a tax cash flow cost. Care should be taken to avoid any tax credit mismatch that might prevent the foreign investor from utilizing its tax credit.

For UK tax purposes, the UK authorities interpret the term "permanent establishment" in accordance with the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, which could create ambiguity between the UK tax authority and the foreign investor as to the proper level of profit that should be attributed to the UK activities. In this case, it may be more sensible to create a separate, UK-incorporated special-purpose company to undertake the production, and set an appropriate market rate for the production fee so that this risk could be decreased.

A note of caution needs to be added where a foreign company receives film or TV broadcasting royalties. Care should be taken in interpreting the relevant double tax treaties since the content of the various articles covering such income can vary. Some treaties classify such income as business profits; others classify the income under the royalties article.

The current film tax relief introduced in 2016 only benefits film production companies as opposed to investors. As a result, opportunities are restricted for individual investors other than those available through the Enterprise Investment Scheme (EIS) and venture capital trust (VCT) schemes described below.

Tax and Financial Incentives

Investors

There are currently no specific UK tax incentives for investors in film.

Producers

Corporation tax relief is available to films production companies for films commencing principal photography on or after January 1, 2007. In addition, similar relief is available to animation and high-end television production companies for expenditures incurred on or after April 1, 2013, to the video game industry for expenditures incurred on or after April 1, 2014, to theatre production companies for expenditures incurred on or after September 1, 2014, to orchestra production companies for expenditures incurred on or after April 1, 2016 and to museum and gallery exhibition production companies for expenditure incurred on or after April 1, 2017. Film Tax Relief (FTR), Animation Tax Relief (ATR), High-end Television Tax Relief (HTR), Video Games Tax Relief (VGTR), Theatre Tax Relief (TTR), Orchestra Tax Relief (OTR) and Museums and Galleries Exhibition Tax Relief (MGETR), are collectively termed Creative Industry Tax Reliefs (CITRs).

Children's Television Tax Relief (CTR) has also been added to the relief available to television production companies for expenditure incurred from April 1, 2015, including children's programmes that are game shows or competitions.

VGTR, OTR, MGETR and TTR excluded, CITRs are available to Film Production Companies (FPCs) or Television Production Companies (TPCs) within the purview of the UK tax authority (as opposed to individuals or partnerships), and can take the form of an enhanced tax deduction for qualifying UK production expenditure and/or a cash tax credit.

The rules are designed so that only one company can be an FPC or TPC in relation to a film or programme. In order for a company to be an FPC or TPC, it must be responsible for and actively engaged in pre-production, principal photography, and post production of the film or programme and delivery of the completed film or programme. It must also directly negotiate, contract, and pay for rights, goods and services in relation to the film or programme. A company whose participation is restricted to providing or arranging finance cannot qualify for the relief. Importantly, however, there is no requirement for the FPC or TPC to own the master negative or rights in the film or programme.

There are special rules that apply with regard to an official co-production (i.e., a film or programme that is treated as being British under the terms of one of the international co-production treaties with the UK). In such cases, the FPC or TPC is a co-producer that makes an effective creative, technical and artistic contribution to the film.

There are a number of criteria that the film or programme must satisfy before relief for expenditure is available.

First, the film must be intended for theatrical release. "Theatrical release" means exhibition to the paying public in the commercial cinema. HMRC has issued guidance as to how this test may be assessed. Broadly speaking, a significant proportion (exceeding 5 percent) of the earnings of the film should be intended to be obtained from such exhibition either in the United Kingdom or overseas. For ATR, HTR, and CTR the programme must be intended for broadcast. "Broadcast" means being broadcast on television, or via the Internet, to the general public. HMRC has published guidance on the definition of "intention" with respect to the relief.

As a relaxation of the rules, from April 1, 2022, a FPC (for any new film commencing production or ongoing productions that have not completed principal photography by April 1, 2022) can claim FTR for films that were initially intended to be for theatrical release in the commercial cinema, but which are instead released on streaming (or similar) services. To qualify for this relaxation, broadly, a FPC must meet the qualifying conditions for HTR.

Second, for FTR, the film must meet a “cultural test” for a British film and be certified as such. The Department for Culture Media and Sport (DCMS) provided a framework for obtaining certification in this regard, which is based on a points system. Application for certification must be made to the British Film Institute (BFI). For ATR, HTR and CTR the programme must meet a similar cultural test.

A co-production can be certified as British either by meeting the requirements of the cultural test or by meeting the conditions of one of the UK’s international co-production agreements.

Third, 25 percent of the “core expenditure” incurred by the FPC or TPC, or the co-producers in the case of a qualifying co-production, must relate to goods or services used or consumed in the United Kingdom (“UK expenditure”).

Core expenditure for these purposes means expenditures on pre-production, principal photography, and post-production of a film or programme, but excludes expenditures on development and distribution. In addition, the acquisition of preexisting rights from a third party forms part of the development expenditure and does not therefore represent core expenditure for these purposes.

Specific additional conditions apply to each of the television reliefs (i.e., HTR, CTR, and ATR). For the HTR, the programme must be a drama or documentary and must be commissioned to fill a broadcast slot of at least 30 minutes. In addition, the average qualifying production costs must be at least GBP 1 million per hour. For the CTR, the primary audience of the programme is required to consist of persons under the age of 15. For the ATR, at least 51 percent of total core expenditures must relate to animation. Notably, television relief is not available for programs that are advertisements or promotions; news, current affairs, or discussion programs; or produced for training purposes. Programmes containing an element of competition or contest, or are live broadcasts, are also ineligible for relief apart from for CTR, which can include children’s game shows or competitions.

The relief can only be claimed on so much of the FPC’s or TPC’s core expenditure, that is, UK expenditure, up to a maximum of 80 percent of the core expenditure (the “qualifying expenditure”).

In the case of a co-production, it is essential that the UK co-producer incurs all the costs of goods and services used and consumed in the United Kingdom in order to obtain the maximum benefit.

Please refer to the comments in the Corporate Taxation section for details on the computational mechanics of the credit.

In addition to the above tax incentives, the BFI provides funding to support filmmaking in the UK through the Film Fund. The Film Fund supports emerging and world-class filmmakers who are capable of creating distinctive and entertaining work.

Distributors

No specific tax incentives are available for distributors in relation to the acquisition and exploitation of film rights.

The BFI does, however, administer a prints and advertising fund, which is designed to widen and support the distribution and marketing strategy of specialized films and to offer support to more commercially focused British films that nevertheless remain difficult to market.

Actors and Freelancers

There are no specific tax or other incentives available for actors or freelancers who are tax-resident in the UK, other than those generally available. These individuals are not exempted from tax on payments arising in their profession.

Many actors and freelancers consider themselves self-employed. However, depending on the nature of the contract (a contract for services or a contract of service), some of these individuals will be taxed as employees. A contract of service is put in place where a person is working for another (i.e., an employee), but a contract for services is put in place where a person provides services to a client (i.e., a freelancer).

While previously the National Insurance Contributions (NICs) treatment of entertainers was different from that which applied for tax, this is no longer the case. Since April 6, 2014, engagers are no longer required to deduct Class 1 NICs from any payment made to an entertainer engaged on a freelance basis. This includes additional use payments, such as royalties. The engager is required to make payments gross of tax and NICs, and the entertainer must declare these earnings as part of their normal self-employed self-assessment UK tax return. There are specific rules for foreign entertainers; see Non-Resident Artists below.

Other Tax Incentives

Enterprise Investment Scheme (EIS) enables qualifying individual investors to claim income tax relief at 30 percent on the capital cost of shares in a qualifying company up to £1,000,000. The maximum tax relief available is therefore £300,000, and the shares must be held for three years from the date the shares were issued (or three years from the date the qualifying trade started). Otherwise, the income tax relief is withdrawn.

In addition, if the individual investor holds the qualifying shares for at least three years, any capital gain arising is tax exempt. If the shares are disposed of at a loss, the individual investor may elect for the amount of the loss, less any income tax relief given, to be set against income of the year of disposal or income of the previous year.

The scheme is generally available to all unquoted trading companies that are less than seven years old by reference to their first commercial sale and meet certain other criteria. Generally, if the company does not carry on a qualifying trade throughout the investment period, the relief is withdrawn. Those companies trading in the production of films or in the distribution of films they produce should qualify as long as they derive profits from the exploitation of rights held in those films created by the company. Prearranged exit routes for investors are not permitted. Care should be taken with co-production arrangements as HMRC issued a bulletin stating that in certain cases, they believe EIS relief is not available. Money raised under EIS must be used to grow and develop the business. For this reason companies established to produce only one film are unlikely to qualify for EIS.

Finally, under the EIS, individuals and trustees of certain trusts may defer the payment of capital gains tax on an asset where the proceeds are reinvested in subscription shares of a qualifying EIS company. It is possible to defer a capital gain under the EIS rules and for the capital gain to qualify for Business Asset Disposal Relief (previously known as Entrepreneurs' Relief).

A Venture Capital Trust (VCT) provides similar tax relief to individual investors, as EIS described above, and facilitates indirect investments into a range of small, higher-risk, unquoted trading companies. A qualifying VCT fund must be quoted on a regulated market (as named by the European Union or EU), and there are certain rules governing the permissible "mix" of companies in which the VCT can invest. A qualifying investor can subscribe for up to £200,000 in ordinary shares in a VCT fund per tax year and receive income tax relief at 30 percent in respect of the investment. The individual is exempt from income tax on any dividends arising from the ordinary shares in the VCT. Further, any capital gain arising on disposal of the VCT shares may also be exempt from capital gains tax.

The combined maximum total amount that a company can raise via SEIS, EIS, and VCTs is normally £5,000,000 (£10,000,000 for a knowledge-intensive company) in any 12-month period. In addition, the combined maximum amount a company can raise in its lifetime under the various schemes is £12,000,000 (£20,000,000 for a knowledge-intensive company).

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in the UK on any issue of new ordinary or preference shares, or loan capital.

A document-based duty, “stamp duty,” is payable in the UK at the rate of 0.5 percent on the transfer of ordinary or preference shares/stock, or marketable securities. In general, no duty is payable on loan capital.

Exchange Controls and Regulatory Rules

There are no specific exchange controls or other regulatory rules relating to the restriction of currency movements in the UK. There is, therefore, nothing to prevent a foreign investor or artist repatriating income arising in the UK back to his or her own home territory, other than evaluating the tax consequences of doing so.

Corporate Taxation

FPC/TPC: Overview

An FPC or TPC company that is liable for corporation tax in the UK is subject to special rules relating to the taxation of activities and relief for losses.

Companies can choose to elect out of the rules. However, they will not be eligible for Creative Industry Tax Relief available to FPCs/TPCs (Film Tax Relief/High-end Television Tax Relief).

Please refer to the section *Tax and Financial Incentives* for the definition of FPC and TPC, and an overview of the conditions that the film/programme must meet to qualify for Film Tax Relief/High-end Television Tax Relief.

FPC/TPC: Taxation of Activities

The film production and television production rules set out a consistent approach to calculating taxable profits for FPCs/TPCs. Expenditure that would otherwise be treated as capital because it relates to the creation of the film (rights which would be reflected as an asset on the balance sheet) is treated as revenue expenditure. This treatment extends only to costs that relate to the creation of an asset (the film) and does not apply to expenditure on plant and machinery because that is capital regardless of the creation of the film.

For the purposes of determining its taxable profit/loss, an FPC/TPC is required to bring into account a proportion of the total estimated income for the film/programme that is treated as earned during that period. That proportion is calculated by multiplying the total estimated income from the film/programme by the total of costs incurred to date (and reflected in work done) and dividing the result by the total estimated cost of the film/programme. It is HMRC’s intention that “estimates” for these purposes should be made in accordance with generally accepted accountancy principles.

Income for the above purposes is construed widely and includes receipts from the making and exploitation of the film/programme, including but not limited to, the following:

- Receipts from the sale of the film/programme or rights in it;
- Royalties or other payments, or use of the film/programme or aspects of it (for example, characters or music);
- Payments for rights to produce games or other merchandise; and
- Receipts by way of a profit share agreement.

FPC/TPC: Film Tax Relief/Television Tax Relief

As long as the relevant conditions are met (as described in the Tax and Financial Incentives section above), an FPC/TPC is eligible for an enhanced deduction in computing its taxable profit/loss. The value of the enhancement differs for each regime, as outlined below:

The amount of additional deduction is 100 percent of enhanceable expenditure. Enhanceable expenditure is the lower of the UK qualifying expenditure or 80 percent of total qualifying expenditure.

FPC/TPC: Loss-making Enterprises

To the extent that an FPC/TPC has a trading loss for a period in respect of a specific film/programme production (taking into account the enhanced deduction noted above), it may surrender all or part of that loss in exchange for a cash tax credit. However, the amount of loss that may be surrendered is limited to the qualifying expenditure for the period. The rates of payable credit are outlined below:

Film Tax Relief: 25% percent for all films.

For High-end Television Tax Relief the tax credit rate is also 25 percent.

The tax credit repayment is claimed via the FPC's/TPC's corporation tax return, which should be submitted within 12 months following the end of the relevant accounting period. There is no requirement for HMRC to pay the credit within a set time frame. The tax return can be amended and resubmitted to include a film or television tax relief claim up to 12 months after the filing due date.

FPC/TPC: Loss Utilization

While a film/programme is in production, losses (including those arising as a result of the enhanced deduction) may only be carried forward and set off against future profits of the same film/programme trade (i.e., the same film is treated as a separate trade for tax purposes).

Once a film/programme is completed or abandoned, losses arising otherwise than by way of the enhanced deduction may be offset against profits of the FPC/TPC in that accounting period, an earlier accounting period, or surrendered to be offset against profits arising elsewhere in the group.

Once the film/programme trade ceases, any terminal losses may only be offset against profits from other films/ programmes made by the same FPC/TPC or surrendered intragroup to be offset against profits made by another FPC that has already commenced pre-production of a qualifying film/ programme.

FPC/TPC: Non-UK-Resident Company

If a company is not resident in the United Kingdom but has a production office to administer location shooting there, it is possible that the UK tax authorities may try to impose tax by regarding the production office as a permanent establishment, unless specific exemptions can be obtained by virtue of a claim under an applicable double tax treaty. In this case, it might be possible to argue that the location is similar to a construction or installation project that does not exist for more than the defined period or that it is not a "fixed place of business" as provided for in the appropriate article.

If a company is not resident in the UK and does not have a production office there, but undertakes location shooting, it is unlikely that it would have a UK tax liability because it would not be regarded as having a permanent establishment. If the company was not resident in a jurisdiction with an applicable double tax treaty the company could be subject to UK income tax on UK activities.

Non-resident companies making a "culturally British" film or programme should consider setting up a UK company to carry out production in order to benefit from the film and television tax credits as explained further above.

The location of servers storing digital content for online distribution and viewing could potentially lead to a taxable presence in the United Kingdom or other overseas locations, bringing the risk for part of the operations within the purview of UK corporation tax.

Television Broadcaster

Television Broadcaster: Background

The television broadcaster, the cable channel provider, and the satellite channel operator are, like the cinema exhibitor, final links in the production chain. They differ in the UK from the cinema exhibitor, in that they often provide a vital resource in the financing process. Their own income can, of course, stem from various sources.

The UK public broadcaster, the BBC, derives a substantial amount of its income from a statutory license fee payable by each UK address, but even the BBC defrays an increasing proportion of its costs by selling its programming overseas, entering into co-productions and making advances to producers to help fund films and programming in return for first transmission rights and a share of any subsequent profits.

The principal source of income for non-public service broadcasters in the UK is advertising income, but the publisher-broadcaster can also derive income from the sales of its own product to third parties abroad, either by appointing third-party sales agents to increase their exploitation income or undertaking this activity in-house. Broadcasters have begun to commission increasing amounts of their own programming, whether in-house or from UK independents.

A film or television programme distribution company that acquires distribution rights over products for sublicensing elsewhere may adopt either of two methods to recognize income in its accounts. It may recognize the total income the sublicensing generates in the distributor's domestic or overseas territories in its trading and profit and loss account, and then expense the royalty payments it makes back to the licensor in the same account. In this case, the distribution company's profit would effectively represent its commission income.

Alternatively, the distribution company may recognize solely its commission income in its trading and profit and loss account and deal with the gross income it receives from the sublicensees and with the payments it makes to the licensors in its balance sheet. With this method, the distribution company's turnover would represent its commission.

Distribution Company: Foreign Tax Relief

If a UK-resident film distributor receives income from non-resident companies but suffers overseas withholding tax, it is normally able to rely on the UK's wide range of double tax treaties to obtain relief from the tax suffered.

If no such treaty exists between the countries concerned, the UK resident would expect to receive credit for the tax suffered on a "unilateral" basis. There are statutory rules that govern the method by which UK companies obtain relief for the withholding tax suffered.

The domestic UK legislation relating to double tax treaties provides that, where overseas taxes have been computed by reference to specific income arising overseas, credit should only be allowed against any UK tax computed by reference to that same income.

Related Parties: Transfer of Film/Program Rights; Distribution as Sales Agent

Where a worldwide group of companies holds rights to films, videos, or television programming and grants sublicenses for exploitation of those rights to a connected (related) UK-resident company, the group needs to take care to ensure that the level of license payments and commission income to be earned by the UK company can be justified. UK transfer pricing legislation requires transactions between connected parties be conducted on arm's-length terms. There is also a requirement for the taxpayer to prepare and keep documentation to support the arm's-length price. There is no specific safe harbour the

UK tax authorities seek to apply. They can be expected to have regard to comparative deals that other unconnected parties may make, particularly those directly involving the taxpayer or a related party, together with the taxpayer's functions and risks under the intragroup contracts in place.

Where a UK-based company distributes the product of a connected party or acts as its sales agent in consideration for commission income, it is necessary to set an arm's-length market rate for that distribution fee or commission.

Whatever rate is set under the appropriate operating/transfer pricing model, full details should be recorded to justify the rates set in the particular circumstances. It is generally wise to obtain evidence at the time a deal is struck to verify that the rate agreed upon can be substantiated at a later date should the tax authorities query the deal.

Withholding Tax on Royalties

The UK tax regime generally requires tax to be withheld from royalty payments made to holders of copyright resident outside the United Kingdom at the basic rate of 20 percent.

However, double tax treaties may apply a reduced or nil withholding tax rate in respect of certain royalties. Furthermore, gross payments may be made in relation to copyright in a cinematographic film or video recording or the soundtrack of such a film or recording so far as the soundtrack is not separately exploited.

Indirect Taxation

Value Added Tax (VAT)

UK VAT law is primarily governed by the VAT Act 1994 which dictates how VAT should be accounted for by taxable persons on the supply of goods and services within the UK. Companies making supplies of goods and services within the UK would normally be required to register for UK VAT. UK-established businesses with a taxable turnover of less than £85,000 in any 12-month period are not required to register for VAT. Since December 1, 2012, the UK VAT registration threshold no longer applies to non-resident taxable persons and entities not established in the UK.

Ordinarily, businesses which are VAT-registered in the UK are entitled to recover the VAT in which they incur on their purchases to the extent that those purchases will be used to make taxable supplies. There are, however, a number of input tax blocking orders which restrict the recovery of input tax on certain expenditure, such as business entertainment and cars.

Supply of a Completed Film

The delivery of a completed film is regarded as a supply of rights and therefore as a supply of services for UK VAT purposes. From a UK VAT perspective, the place of supply of services to a business customer (B2B), and thus the country in which applicable VAT is due, can broadly be determined by where the business customer belongs. This is known as the 'general rule.'

As such, UK VAT would be chargeable where a UK-established company delivers a completed film to a company also established in the UK. The UK company delivering the completed film would be required to account for any applicable VAT to the tax authorities within one month and seven days (or one month if it makes payments on account ("PoA")) of the end of the VAT accounting period in which the supply was made, or, if earlier, a "tax point" was created. VAT accounting periods typically cover three months, but businesses in a net repayment position should apply for monthly VAT return periods. The basic tax point is the completion of the service. However, if a company receives a payment or issues a tax invoice in advance of delivery of a completed film, the receipt of payment or date of the invoice would create a tax point.

Where a UK-established company delivers a completed film to a company established outside of the UK, the place of supply would not be the UK and thus UK VAT would not be chargeable. Despite the supply being outside the scope of UK VAT, the UK-established company would still be entitled to recover the VAT incurred in making the film (subject to the normal rules).

Pre-Sale of Distribution Rights

A UK company must charge VAT at the standard rate of 20% on the "pre-sale" of distribution rights to a UK-established company. Conversely, the pre-sale of distribution rights to a company established outside of the UK would not be subject to UK VAT.

Royalties

Where a UK-resident company pays a royalty to another UK-resident company, VAT would be charged at the rate of 20%.

A UK-established company that receives a supply of a royalty from a company established outside of the UK would be required to self-account for UK VAT under the "reverse charge" mechanism. In such a case, the UK-established company will charge itself VAT on its UK VAT return and simultaneously recover the VAT self-accounted for on the same VAT return to the extent that it relates to its taxable supplies.

Peripheral Goods and Merchandising

The UK domestic sale of peripheral goods connected to the distribution of a film, such as books, magazines and the publication of music (in paper and electronic format), and children's clothing may be zero-rated. However, the sale of other merchandising, such as CDs, other clothing, posters, toys etc. would likely attract VAT at 20%. If these goods are to be imported from outside the UK, then duty and import VAT would normally be due at the time of importation, although it is possible to use Postponed Import VAT Accounting ("PIVA") to instead self-account for import VAT on the VAT returns.

Film Crew and Artists

Supplies of film crew and acting services, where the film crew and actors are acting in the capacity of businesses in their own right, would generally fall under the general B2B place of supply of services rule, i.e., the place of supply would be where the business customer belongs. Where the business customer is established in the UK, UK VAT would be chargeable.

As an exception to the aforementioned general B2B rule, if the services provided relate to the admission to cultural, educational, entertainment or other similar events, including any ancillary services, then the place of supply would be the country in which the event physically takes place.

Actors sometimes work as waged or salaried employees under standard contracts. In these circumstances, there is no supply for VAT purposes and their services are outside the scope of VAT. It should be stressed that it is not the job title that is the determining factor as to the VAT treatment, but the nature of the relationship and any service provided.

Supplies of Digital Content

Supplies of digital content, such as audio files or video files, which are automatically delivered over the Internet, or electronic network, and where there is minimal to no human intervention, are classified as electronically supplied services (ESS) for UK VAT purposes.

Prior to January 1, 2021, there were special rules for ESS supplied to customers in the EU. However, the UK left the EU on January 1, 2021 and so these rules no longer apply with effect from January 1, 2021. The current rules are as per the following:

Business-to-Consumer (B2C) ESS Supplies

As an exception to the general B2C rule for supplies of services, supplies of electronically supplied services to individual consumers are taxable in the UK for VAT purposes where the consumer belongs in the UK. If the individual consumer belongs outside of the UK, then UK VAT would not be chargeable.

Business-to-Business (B2B) ESS Supplies

In instances where a UK-established company makes a supply of an electronically supplied service to a business customer, the place of supply is determined by where the customer is established. As such, a UK established company would charge UK VAT on an ESS supplied to a UK established customer. Where the customer is established outside of the UK, the service would be outside the scope of UK VAT. In theory an ESS could be covered by 'use and enjoyment' rules, which would result in VAT being due in the country where the service is actually used and enjoyed. In practice, it is likely that the ESS would be consumed by the business customer in the country in which they are established, and therefore the use and enjoyment provisions would only apply if the customer has establishments in multiple countries.

Imports of Goods and Customs Duties

Where tangible goods are imported into the UK, customs duties (see below) may be payable in respect of the goods, and import VAT at the appropriate rate would be payable. Import VAT is charged on the total value of the goods, which includes cost of the goods, transport, postage and packaging, insurance, and any duty payable. The rate applied will be the same VAT rate applicable to similar goods sold domestically in the UK. Customs duty and import VAT due will depend on the duty rate applicable for the assigned classification code of the particular goods, where they are being imported from and their respective values.

For VAT-registered companies, the VAT is recoverable in the normal way, subject to the company holding adequate supporting evidence. Customs duty is not recoverable and represents an absolute cost to the business. Data transferred by intangible means, such as via the Internet, is not subject to customs duty but may be subject to VAT.

In most cases, the applicable method used by importers to value goods for customs is "Method 1" or "transaction value" and is the price paid or payable for the imported product.

If Method 1 is used by importers, it is important to note that the price paid or payable on the products imported must be subject to the addition or deduction of certain elements (e.g., freight, insurance, royalties, etc.). This could become a complex area for imports into the EU and UK, especially for products typically used in the film industry where there are often royalty agreements in place.

However, there are various duty relief and suspensive regimes available, including Temporary Admission Relief (TA), which can be used to temporarily admit goods with total or partial relief from duty and tax. While much of the relief available can benefit the film industry, various strict criteria must be fulfilled in order for relief to be claimed, such as the time limits for subsequent re-export and the use to which the goods are put. As always, it is prudent to seek professional advice on the specifics.

The following rates of customs duty are the maximum payable in the UK in the circumstances stated below:

Type of Goods	Customs Duty Rate
Exposed and developed film of a width of 35 mm or more – consisting only of a soundtrack[3]	0%
Exposed and developed film of a width of 35 mm or more – negatives and intermediate positives[4]	0%
Exposed and developed film of a width of 35 mm or more – other positives[5]	0%
DVD[6]	0%
Computer-operated projectors[7]	0%
Colour Television Projector [8]	14%

Note that all the items above are "standard-rated" supplies for VAT purposes, in respect of which 20 percent is charged on the value inclusive of customs duty.

Personal Taxation

Resident or Non-Resident?

A UK-resident artist is liable to UK income tax in respect of all profits derived from his worldwide activities (subject to any relief available under a double taxation agreement, or for non-UK domiciles relief that is also available under the remittance basis of taxation).

A Statutory Residence Test (SRT) applies to determine an individual's residence status for UK tax purposes. The SRT applies to individuals for income tax, capital gains tax, inheritance tax, and corporation tax but not for national insurance and non-tax purposes. This legislation supersedes all previous residence legislation, case law, and guidance.

The SRT consists of:

- Automatic tests for non-residence;
- Automatic tests for residence; and
- UK ties and day counting, known as the Sufficient Ties Test (STT), for individuals who are not automatically non-resident or resident.

To apply the rules, you consider each tax year separately and apply the above tests to it in order. Once you meet an automatic test, you do not consider any later tests. The STT makes a distinction between "arrivers" (defined as individuals who were not resident for all of the previous three tax years) and "leavers" (defined as individuals who were resident in one or more of the previous three tax years). This reflects the government's view that residence has an "adhesive nature."

[3] We assume this falls under commodity code 3706102000.
[4] We assume this falls under commodity code 3706102000.
[5] We assume this falls under commodity code 3706109900.
[6] We assume this falls under commodity code 8523491000.
[7] We assume this falls under commodity code 8528692000..
[8] We assume this falls under commodity code 8528721000.

The definitions behind each of the tests and UK ties, together with individual circumstances, need to be carefully considered before concluding whether an individual is resident or non-resident for UK tax purposes.

The SRT abolished the concept of ordinary residence for tax purposes, but overseas workday relief is retained for non-UK domiciled individuals. The calculation of overseas workday relief can be very complex. An interactive guidance flowchart on the SRT can be found on the KPMG in the UK website.

Income Tax & Social Security Implications

Resident Artists

The work status of an artist is fundamental in determining how the artist is treated for both tax and National Insurance purposes. Employed artists will be subject to employment income tax provisions and Class 1 National Insurance contributions under the Pay as You Earn (PAYE) tax collection regime. By contrast, the income of an artist who is self-employed is normally taxed as trading income and liable to Class 2 and Class 4 contributions, with no application of PAYE.

Generally, in practice, the UK tax authorities treat casual and freelance staff engaged on film and television production as employees. However, the exact determination of employment status is dependent on the particular set of facts and applicable principles derived from UK case law. The UK tax authorities have published extensive guidance on their view of the correct treatment to be applied. In particular, the guidance contains a list of jobs (“grades”) that it accepts as self-employed. This is not unconditional however, and the guidance needs to be considered with some care.

Non-Resident Artists

The UK authorities tax the income arising to a non-resident artist from any performance in the UK, as well as tax income received outside the UK in connection with a UK performance and tax profits arising from merchandising if they can link this to a performance in the UK. Unlike in certain other territories, the UK authorities do not consider merchandising income to represent a royalty for the exploitation of name or likeness.

Tax is collected by the Foreign Entertainers’ Withholding Scheme. The foreign entertainers’ withholding tax rules apply whether an actor undertakes a live performance on stage before an audience or performs solely before the camera in a studio or on location.

If a non-resident artist receives any payment arising from, or in consequence of, an activity within the terms of the scheme, the UK payer is obliged to deduct withholding tax and account for this tax to the authorities.

The withholding tax rate is 20 percent, subject to any reduced rate that can be negotiated if profits are sufficiently low or there are substantial expenses. However, the authorities can be restrictive with regard to the extent to which they allow deductions to be set against tax.

The 20 percent represents a payment on account; the artist’s final liability would be calculated at the applicable rates based on their total profits (together with any other income that is taxable in the UK).

For the tax year ending April 5, 2022, the tax rate is 40 percent on any profits exceeding £50,270 (assuming a personal allowance is available), and the top rate of 45 percent applies to profits exceeding £150,000. It is worth noting that these rates are applied to income after percentage commissions and other allowable expenses, and therefore, the effective rate on the gross would normally be lower.

Unlike many territories, the UK authorities also require the filing of a final return, as well as a tax payment. Whether the payments are made by a UK resident or not, early negotiation is recommended with the Foreign Entertainers Unit to ensure all appropriate deductible expenses are deducted. A personal allowance may also be available depending on circumstances; for the tax year ending April 5, 2023, this is £12,570. The entertainer may be able to claim a credit for all or part of the UK tax deducted if he or she has sufficient tax liability in his or her country of residence.

VAT Implications

The provision of entertainment services could create a requirement to register for UK VAT. However, in certain circumstances, it may be possible to mitigate this liability by structuring contracts so that the place of supply of the services is brought outside the UK. The UK tax authorities recently challenged the rules concerning where entertainment services are supplied. As such, there is an increased risk to performers that their services may be deemed by the UK tax authorities to fall within the scope of UK VAT. We recommend that early advice is sought in relation to any entertainment services that are to be made in the UK. Please note that entertainers can typically apply to be registered for UK VAT. As such, they would be required to charge VAT (currently 20 percent) on the services they provide within the UK. This would give an entertainer the right to deduct any UK VAT incurred in relation to their business activities (subject to certain restrictions).

KPMG Media and Entertainment Tax Network Members:

Kashif Javed
KPMG in UK
15 Canada Square
London E14 5GL
United Kingdom
e-mail: kashif.javed@kpmg.co.uk

Peter Chapman
KPMG in the UK
One Snowhill
Birmingham B4 6GH
United Kingdom
e-mail: peter.chapman@kpmg.co.uk

Tim Jones
KPMG in the UK
15 Canada Square
London E14 5GL
United Kingdom
e-mail: Tim.Jones2@KPMG.co.uk