STATUTORY INSTRUMENTS

S.I. No. 357 of 2008

FILM REGULATIONS 2008

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FILM REGULATIONS 2008

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FILM REGULATIONS 2008

The Revenue Commissioners in exercise of the powers conferred on them by section 481 (as amended by section 28 of the Finance Act 2004 (No. 8 of 2004)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, and with the consent of the Minister for Arts, Sport and Tourism in relation to the matters to be considered regarding the issue of authorisations under subsection (2) of section 481, hereby make the following regulations:

PART 1

General

Citation and commencement

1. (1) These Regulations may be cited as the Film Regulations 2008.

(2) These Regulations come into operation on 12 September 2008.

Interpretation

2. (1) In these Regulations, except where the context otherwise requires—

"Act" means the Taxes Consolidation Act 1997 (No. 39 of 1997);

"auditor" means a person qualified for appointment as auditor of a company in accordance with Part X (as amended) of the Companies Act 1990 (No. 33 of 1990);

"eligible goods, services and facilities" means goods, services and facilities which are goods, services and facilities for the purposes of section 481(2A)(*g*)(iv)(II) of the Act by virtue of Part 8;

"film" has the same meaning as in section 481 of the Act;

"Minister" means the Minister for Arts, Sport and Tourism;

"qualifying company" has the same meaning as in section 481 of the Act;

"qualifying film" has the same meaning as in section 481 of the Act;

"records", in respect of records to which Part 5 relates, includes records held in a machine readable form;

"relevant investment" has the same meaning as in section 481 of the Act;

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 12*th September*, 2008.

"top sheet production expenditure summary" means a summary of those items of expenditure that may be accepted by the Revenue Commissioners, in accordance with Part 7, classified into the principal categories of the film production budget or in such a form and containing such information as the Revenue Commissioners may direct.

(2) Subject to paragraph (1), a word or expression that is used in these Regulations and is also used in the Tax Acts has, except where the context otherwise requires, the same meaning in these Regulations as in those Acts.

PART 2

Application to the Revenue Commissioners for certification and the information and documentation to be provided in or with such application

Application for certification — general

3. (1) An application for a certificate under section 481 of the Act in relation to a film shall be made by a qualifying company under subsection (2A) of that section and shall be submitted to the Revenue Commissioners at least 21 days prior to the earlier of—

(*a*) the commencement of the raising of relevant investments, or

(*b*) the commencement of the principal photography, the first animation drawings or the first model movement, as the case may be.

(2) An application made in accordance with paragraph (1) shall be made in the form prescribed for that purpose by the Revenue Commissioners.

Application for certification — specific

4. (1) Each application made to the Revenue Commissioners for a certificate under section 481(2A) of the Act shall be accompanied by the supporting documents listed in Schedule 1 and such documents shall be included in the order and manner listed in that Schedule.

(2) The information required in each section of the application form shall be provided in full.

PART 3

Categories of films eligible for certification by the Revenue Commissioners

Categories of films eligible for certification

5. The categories of films listed in Schedule 2 shall be the categories of films eligible for certification by the Revenue Commissioners.

Categories of films not eligible for certification

6. The categories of films listed in Schedule 3 shall not be categories of films eligible for certification by the Revenue Commissioners.

PART 4

Issue of authorisations by the Minister for Arts, Sport and Tourism

Issue of authorisation

7. An authorisation shall not be given by the Minister under section 481(2) of the Act in relation to a film unless—

(*a*) the film is within a category of film eligible for certification by the Revenue Commissioners, and

(*b*) the Minister is satisfied that the film will either or both—

(i) act as an effective stimulus to film making in Ireland through, among other things, the provision of quality employment and training opportunities, and

(ii) be of importance to the promotion, development and enhancement of the national culture including, where applicable, the Irish language.

PART 5

Records to be maintained and provided by a qualifying company

Types of records

8. (1) The records which a qualifying company shall provide to the Revenue Commissioners when requested to do so for the purposes of section 481(2C)(*c*) of the Act shall include—

(*a*) the books of first entry, including a cash receipts book, purchases day book, cheque payments book, creditors ledger and petty cash book,

(*b*) trial balance, all ledgers and journals to which all transactions are posted,

(*c*) the back-up documentation from which the books of first entry were completed, including—

(i) suppliers' invoices, credit notes, statements, and delivery notes,

(ii) cheque stubs and petty cash vouchers, and

(iii) bank statements and correspondence including those items verifying lodgements into bank accounts and transfers out of such accounts,

and

(*d*) auditors' linking documents including documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts.

(2) Notwithstanding any other provision of the Act, the Revenue Commissioners may request the records to which paragraph (1) relates at any time within a period of up to 6 years after the later of—

(*a*) first delivery and acceptance of the qualifying film, or

(*b*) where the qualifying company fails to submit a complete compliance report on time, within 6 years of the provision of such report.

Records to indicate certain breakdown of expenditure

9. The records which a qualifying company shall provide to the Revenue Commissioners when requested to do so for the purposes of section 481(2C)(*c*) of the Act shall include records which provide a breakdown of expenditure to show—

(*a*) the amount of money expended directly on the employment of eligible individuals and on the provision of eligible goods, services and facilities, and

(*b*) the amount of money expended otherwise than in accordance with paragraph (*a*).

PART 6

Notification of completion of production and provision of copies of film and compliance report

Notification of completion of production

10. A qualifying company shall within 4 months of the completion of production of a qualifying film, notify the Revenue Commissioners in writing of the date of such completion of production.

Provision of copies of film

11. (1) A qualifying company shall within 4 months of the completion of production of a qualifying film, provide 2 copies of the film to the Revenue Commissioners and 2 copies of the film to the Minister.

(2) The copies of the film shall be provided in DVD or VHS PAL format or such other format as may be specified in the certificate issued by the Revenue Commissioners in relation to the film.

(3) The copies of the film shall be forwarded to the Revenue Commissioners and to the Minister by registered post.

Compliance report — certificate issued by the Revenue Commissioners

12. (1) A qualifying company shall within 4 months of the completion of production of a qualifying film, provide a compliance report in relation to the film to the Revenue Commissioners.

(2) Such report shall be made in the form prescribed for that purpose by the Revenue Commissioners.

(3) Such report shall include the items listed in Schedule 4.

(4) Such report shall be forwarded to the Revenue Commissioners by registered post.

PART 7

The type of expenditure that may be accepted by the Revenue Commissioners as expenditure on the production of a qualifying film

Acceptable expenditure

13. Subject to Regulation 14, the type of expenditure which may be accepted by the Revenue Commissioners as expenditure on the production of a qualifying film shall include all expenditure necessary to produce the film from the development phase up to and including post-production together with the cost of providing an archive print.

Unacceptable expenditure

14. No sum shall be included in the type of expenditure which may be accepted by the Revenue Commissioners as expenditure on the production of a qualifying film in respect of any of the following—

(*a*) costs associated with the distribution or promotion of the film,

(*b*) costs arising after delivery of the materials contracted for with the relevant distributor or broadcaster,

(*c*) legal, accountancy and other costs of raising relevant investments,

(*d*) costs of organising or providing pre-sales monies including those connected with facilitating a return for investors,

(*e*) costs of acquiring rights other than those necessary for the production of the film,

(*f*) expenditure on capital assets used in the production of the film which are not used up in that process,

(*g*) amounts that are paid out of, or are dependent on, or arise from rights in, the receipts, earnings or profits of the film, and

(*h*) fees or other payments deferred unless the payment of such sums is made no later than 4 months after the first occasion on which the completed film is delivered to any financier or distributor thereof.

PART 8

Eligible goods, services and facilities and conditions to be satisfied

Interpretation — Part 8

15. In this Part—

"provided within the State" means—

(*a*) (i) in the case of goods which are dispatched or transported, that the dispatch or transportation to the person to whom they are provided begins in the State, and

(ii) in the case of goods which are not dispatched or transported, that the goods are located in the State at the time they are provided,

(*b*) in the case of facilities, that the facilities are located in the State,

(*c*) in the case of transport, that the transportation takes place within the State, or, where transportation takes place across borders, that the journey begins or ends in the State, and

(*d*) in the case of a service, that the activities constituting such a service are carried on in the State and that any goods, facilities or transport associated with such service satisfy the conditions of paragraph (*a*), (*b*) or (*c*) of this definition, as the case may be;

"relevant person" means a person carrying on a business in the State from a fixed place of business.

Eligible goods, services and facilities

16. Subject to Regulation 17, goods, services and facilities are goods, services and facilities for the purposes of section 481(2A)(*g*)(iv)(II) of the Act where they are used or consumed in the State in the production of a qualifying film and they are provided within the State by a relevant person directly or indirectly to a qualifying company.

Other person engaged

17. Where a relevant person engages, or arranges for another person to provide goods, services or facilities, such goods, services or facilities shall not be goods, services and facilities for the purposes of section 481(2A)(*g*)(iv)(II) of the Act unless that other person is also a relevant person.

PART 9

Miscellaneous

Currency exchange rate

18. The currency exchange rate to be applied to the expenditure on the production of a qualifying film, in any application to the Revenue Commissioners

for a certificate under section 481 of the Act or in any compliance report submitted in accordance with Regulation 12, shall be the currency exchange rate at the time of application or such other currency exchange rate as the Revenue Commissioners may, having regard to any particular circumstances, consider just and equitable.

PART 10

Revocation

Revocation

19. The Film Regulations 2004 (S.I. No. 869 of 2004) are revoked.

SCHEDULE 1

Documentation to accompany an application made for a certificate under section 481(2A) of the Act

1. Tab A Covering letter of application.

2. Tab B Memorandum and Articles of Association of the Qualifying Company.

3. Tab C Certificate of Incorporation of the Qualifying Company.

4. Tab D Track record and CVs for Producer, Director, Writer(*s*).

5. Tab E Synopsis of Film.

6. Tab F Completed Screenplay, Sample Television Scripts or Storyboard.

7. Tab G Production Schedule.

8. Tab H Screenplay and Writers' Agreements and Option Agreement.

9. Tab I Production, Financing and Distribution Agreement.

10. Tab J Production Budget, including—

    (*a*) a top sheet production expenditure summary,

    (*b*) details of each element of expenditure that may be accepted by the Revenue Commissioners as expenditure on the production of a qualifying film, including details of any such expenditure incurred—

    (i) directly in the State on the employment of eligible individuals, and

    (ii) on the provision of eligible goods, services and facilities.

11. Tab K Confirmation that no agreements, arrangements or understandings exist or are proposed that would impact on investor risk.

12. Tab L Appendix A — Schedule of Fees.

13. Tab M Letters of intent and, if applicable, letters of commitment from sources of funding other than relevant investments.

14. Tab N Pre-Sales and Distribution Agreements.

15. Tab O Completion Bond Contract, if applicable.

16. Tab P Appendix B — Person Hours Schedule.

17. Tab Q Full List of Heads of Departments.

18. Tab R Other relevant agreements and documentation.

19. Tab S A diagram detailing all the parties involved, their respective responsibilities and the flow of funds between them.

20. Tab T Details of any issues that might impact on the conditions for relief under section 481 of the Act.

21. Tab U Where any agreements requested above are unavailable at the time of application, an outline of the proposed agreements, including details of the purpose of each agreement.

22. Tab V Confirmation that no financial arrangements of a type referred to in section 481(2C)(*b*) of the Act exist or are proposed.

SCHEDULE 2

Categories of films eligible for certification by the Revenue Commissioners

1. Feature film.

2. Television drama.

3. Animation (whether computer generated or otherwise, but excluding computer games).

4. Creative documentary, where the project—

   (*a*) is based on an original theme, preferably demonstrated by a script or treatment, the design and style of which bear the undeniable stamp of creative originality and personal perspective,

   (*b*) contains a certain timeless element so that there is no loss of interest when the event with which it may be linked has passed,

   (*c*) involves production arrangements which give evidence of, in particular, a substantial period of preparation and a significant period devoted to post-production, and

   (*d*) contains significant original filming and does not merely report information.

SCHEDULE 3

Categories of films not eligible for certification by the Revenue Commissioners

Films comprising or substantially based on—

(*a*) public or special performances staged for filming or otherwise,

(*b*) sporting events,

(*c*) games or competitions,

(*d*) current affairs or talk shows,

(*e*) demonstration programmes for tasks, hobbies or projects,

(*f*) review, magazine style or lifestyle programmes,

(*g*) unscripted or reality type programmes, or

(*h*) product produced in-house by a broadcaster or for domestic consumption in one country.

SCHEDULE 4

Documents to accompany a compliance report in relation to a qualifying film

1. Evidence that the film has been shown in a commercial cinema or television or has been commercially distributed in DVD or Video format.

2. A copy of the film in DVD or VHS PAL format or such other format as may be specified in the certificate issued by the Revenue Commissioners in relation to the film.

3. A report by the qualifying company's auditors for the purposes of the certificate issued under section 481 of the Act, which includes—

(*a*) details of the amount of money expended directly in the State on the employment of eligible individuals and on the provision of eligible goods, services and facilities, itemised in accordance with the top sheet production expenditure summary,

(*b*) details of the amount of the entire production expenditure on the qualifying film, itemised in accordance with the top sheet production expenditure summary,

(*c*) a statement—

(i) of the amount raised by the qualifying company under section 481 of the Act,

(ii) that the amount raised by the qualifying company under section 481 of the Act, was expended by the qualifying company on—

(I) the employment of eligible individuals and,

(II) the provision of certain goods, services and facilities, as set out in these Regulations,

as required by the certificate issued by the Revenue Commissioners to the qualifying company, and

(iii) that the amount raised by the qualifying company under section 481 of the Act, was not in excess of the amount of relevant investments specified in the certificate issued by the Revenue Commissioners under section 481 of the Act, to the qualifying company,

(*d*) details of any outstanding creditors or any other amounts due by the qualifying company at the date of the auditors' report,

(*e*) in a case where a payment of an amount equal to at least 30 per cent of the relevant investments was made by the qualifying company to any person or to a group of 2 or more persons, who are connected (within the meaning of section 10 of the Act) with each other, details of:

(i) the identity of that person or persons;

(ii) the nature of the goods, services or facilities provided by that person or persons to the qualifying company; and

(iii) the amount or amounts paid to that person or persons;

(*f*) details of any foreign currency rates used,

(*g*) details of any related party transactions in accordance with generally accepted accounting principles,

(*h*) a statement that no significant relevant events have occurred since the date notified to Revenue, in accordance with Regulation 10, which would alter, to any material extent, the figures or confirmations contained therein, and

(*i*) the date upon which the completed qualifying film is first delivered to any financier or distributor of the qualifying film.

4. Details of the source of all amounts used to finance the entire production expenditure on the qualifying film, including any payments to allowable investor companies or qualifying individuals in respect of relevant investments.

The Minister for Arts, Sport and Tourism consents to the making of these Regulations, insofar as they relate to the matters to be considered regarding the issue of authorisations under subsection (2) of section 481.

L.S.

GIVEN under the Official Seal of the Minister for Arts, Sport and Tourism,
3 June 2008

MARTIN CULLEN.
Minister for Arts, Sport and Tourism.

The Minister for Finance consents to the making of these Regulations.

L.S.

GIVEN under the Official Seal of the Minister for Finance,
8 July 2008

BRIAN LENIHAN.
Minister for Finance.

GIVEN under my hand,
2 September 2008

JOSEPHINE FEEHILY.
Revenue Commissioner.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be legal interpretation)

Film Regulations 2008

These regulations which are made by the Revenue Commissioners under the provisions of section 481 of the Taxes Consolidation Act 1997, deal with certain administrative arrangements, which are already provided for in Guidance Notes issued in October 2005 and July 2006. The Regulations give legal certainty to Revenue's practice of requesting additional information and for the provision of more detailed certification by the auditors of the qualifying company.

The changes provide for, among other things, amending the requirement to submit an application under section 481 of the Taxes Consolidation Act 1997 of 7 days in advance of the earlier of—

(*a*) the commencement of the raising of relevant investments, or

(*b*) the commencement of principal photography, the first animation drawings or the first model movement, as the case may be,

to 21 days.

These regulations replace Film Regulations 2004. They apply to applications made on or after 12 September 2008.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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