

This manual relates to the film investment incentive that was replaced in January 2015 by a corporation tax incentive. For films from that date please refer to manual 15-02-04.

## **Procedures in relation to Relief for Investment in Films**

### **Part 15-02-06**

This document should be read in conjunction with section 481 Taxes Consolidation Act 1997

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**The following only applies to films certified prior to 31 December 2014**

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## 1 Legislation

The law provided for tax relief by both individual and corporate investors for investment in qualifying films.

The scheme provided tax relief towards the cost of production of certain films. The maximum amounts which can be raised under the scheme are up to 80% of the cost of production for all budgets up to the cap of €50,000,000. In no case may the total cost of production of the film which is met by relevant investments exceed €50,000,000.

Tax relief on 100% of their investment is available to individual investors and to corporate investors.

Individual investors can invest up to €50,000 under the scheme in any year of assessment. An investor who cannot obtain relief on all his or her investment in a year of assessment, either because his or her investment exceeds the maximum of €50,000 or his or her income in that year is insufficient to absorb all of it, can carry forward the unrelieved amount to following years up to and including 2015, subject to the normal limit of €50,000 on the amount of investment that can be relieved in any one year. A corporate investor and any connected companies can invest up to €10,160,000 in any 12-month period. The total amount which can be invested in any one film cannot exceed €3,810,000.

Investment may be made by an individual company or a corporate group. Where the total investment exceeds €3,810,000, the excess can only be invested in productions with a budget of €5,080,000 or less.

## 2 Procedures

Contact with Revenue by the qualifying company, in relation to the relief for investment in films usually takes place at three stages:

- the pre-investment stage;
- the post-investment stage; and
- the compliance stage.

## 3 Pre-Investment Stage

A qualifying film is a film for which the Revenue Commissioners have issued a certificate under S 481 TCA 1997. The certificate is issued by the Revenue Commissioners, but both the Minister for Arts, Heritage and the Gaeltacht and the Revenue Commissioners have specific responsibilities in relation to the certification process. Notwithstanding the dual roles, there is a simplified application procedure so that the producer or promoter has to deal with only the Revenue Commissioners.

An application form by a qualifying company for a certificate, along with the required documentation, giving details of the proposed film should be submitted to:

Film Relief Unit  
Business Taxes: Policy & Legislation,  
Revenue Commissioners,  
Stamping Building,  
Dublin Castle,  
Dublin 2

The following documentation should be submitted with the application form:

- Covering letter of application.
- Memorandum and Articles of Association of the Qualifying Company.
- Certificate of Incorporation of the Qualifying Company.
- Track record and CVs for Producer; Director; Writer(s).
- Synopsis of Film.
- Completed Screenplay, Sample Television Scripts or Storyboard.
- Production Schedule.
- Screenplay and Writers' Agreements and Option agreement.
- Production, Financing and Distribution Agreement.
- Production Budget.
- Confirmation that no agreements, arrangements or understandings exist or are proposed that would impact on investor risk.
- Schedule of Fees.
- Letters of intent and, if applicable, letters of commitment from sources of funding other than relevant investments.
- Pre-Sales and Distribution Agreements.
- Completion Bond Contract, if applicable.
- Person Hours Schedule.
- Full List of Heads of Departments.
- Other relevant agreements and documentation.

- A diagram detailing all the parties involved, their respective responsibilities and the flow of funds between them.
- Details of any issues that might impact on the conditions for relief under section 481 of the Act.
- 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.
- Confirmation that no financial arrangements of a type referred to in section 481(2C)(b) of the Act exist or are proposed.

Any areas of doubt in relation to whether the company would be regarded as a qualifying company should be clearly outlined.

On receipt of a properly completed application form and required supporting documentation the Revenue Commissioners may, following consultation with the Minister for Arts, Heritage and the Gaeltacht, issue a certificate under S 481 TCA 1997. The certificate will include several conditions. Where a company fails to comply with any condition, the Revenue Commissioners may revoke the certificate.

## 4 Post-Investment Stage

At the post-investment stage certain procedures have to be followed to establish an investor's entitlement to relief as follows:

Form FILM 1 must be completed by the company in which the investment is made. It is imperative that this form is completed in its entirety. The declaration at Page 5 of the form must be made by the secretary of the company or the person acting as its secretary.

The completed form together with a list of investors outlining the number of shares subscribed for, the amount invested, date of investment, RSI number of each investor and any further relevant final documentation should be sent to:

Film Relief Unit  
Business Taxes: Policy & Legislation,  
Revenue Commissioners,  
Stamping Building,  
Dublin Castle,  
Dublin 2

If the authorised officer is satisfied with the information submitted on form Film 1, he will issue a form FILM 2 which authorises the company to issue certificates, forms FILM 3, relating to subscriptions for eligible shares to the shareholders.

These certificates on form FILM 3 enable the investors claim relief. A form for each investor is prepared in Revenue and issued to the investee company secretary, who makes some

entries on this form before passing it on to the investor. An investor may not claim relief until they are in possession of the relevant FILM 3.

## 5 Compliance Stage

The company to whom a certificate was issued must submit to the Revenue Commissioners a compliance report within 4 months of completion of the qualifying film, containing the attachments referred to therein. This information will be available to the Revenue Commissioners in connection with any review of events, to evaluate whether or not the company has fulfilled its obligations. Particular attention will be paid to ensure that:

- The amount actually raised under section 481, does not exceed the amount specified on the certificate.
- The amount actually spent on the total cost of production is correctly stated.
- The amount actually raised under section 481, does not exceed the percentage of the amount spent on the total cost of production, as specified on the certificate.
- All the documentation and final signed, dated and witnessed versions of all agreements, required to be submitted, by the company, as part of the application for certification, have been submitted.

## Appendix Leaflet IT57

The Scheme was introduced to promote the Irish film industry, by encouraging investment in Irish made films which make a significant contribution to the national economy and Exchequer and/or acts as an effective stimulus to the creation of an indigenous film industry in the State. The scheme was broadened in 1993 to include individual investors. The details of the scheme are contained in Section 481 of the Taxes Consolidation Act 1997.

### Summary of the Scheme

- The scheme provides tax relief towards the cost of production of certain films. The maximum amounts which can be raised under the scheme are:-
  - a. up to 80% of the cost of production for all budgets up to the cap of €50,000,000.
  - b. in no case may the total amount raised under Section 481 exceed €50,000,000.
- Tax relief on 100% of their investment is available to individual investors and to corporate investors.
- Individual investors can invest up to €50,000 under the scheme in any year of assessment. An investor who cannot obtain relief on all his or her investment in a year of assessment, either because his or her investment exceeds the maximum of €50,000 or his or her income in that year is insufficient to absorb all of it, can carry forward the unrelieved amount to following years up to and including 2015, subject to the normal limit of €50,000 on the amount of investment that can be relieved in any one year.
- A corporate investor and any connected companies can invest up to €10,160,000 in any 12 month period. The total amount which can be invested in any one film cannot exceed €3,810,000.
- Investment may be made by an individual company or a corporate group. Where the total investment exceeds €3,810,000, the excess can only be invested in productions with a budget of €5,080,000 or less.
- There are conditions governing the investment in relation to-
  - a qualifying film
  - a qualifying company
  - qualifying investors
  - relevant investment
  - shares

Summaries of these conditions are outlined in the following below:

## Qualifying Film

A qualifying film is a film in respect of which the Revenue Commissioners has given a certificate. Certification takes into account the contribution which the film will make to the development of the film industry in Ireland, and the promotion and expression of Irish culture. A detailed examination of the application is undertaken by Revenue to ensure that the project complies with the statutory requirements. Revenue on being satisfied that the film will be a qualifying film for the purposes of legislation, issues a certificate to that effect. Revenue is not obliged to certify a film, and if an application for certification is made after filming has commenced, Revenue will not certify the film. Revenue may also attach certain conditions to the certification of a film.

## Qualifying Company

A qualifying company for the purposes of the scheme, is an Irish incorporated and resident company, or a company which is carrying on a trade in the State through a branch or agency. The company must exist solely for the production and distribution of one and only one qualifying film. This ensures that the funding is clearly targeted for the production of a specific film so that the investor will be aware of how the investment is to be utilised. A film company seeking Section 481 finance cannot have in its name the words "Ireland", "Irish", "Eireann", "Eire", or "National".

## Qualifying Investors

A qualifying investor is an individual investor who is not connected with the film production company. An individual is connected if he or she or an associate controls the company. An allowable investor company is a company which is not connected with the film production company. In general companies are connected with each other if one controls the other, or both are under the control of the same person or persons.

## Relevant Investment

In order to qualify for relief, an investment must be a relevant investment.

A "relevant investment" is a sum of money which is paid:

- directly by the investor, on his own behalf;
- in a qualifying period;
- in respect of shares in a qualifying company;
- for bona fide commercial reasons and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax; Any scheme whereby an investor has not the possibility of recovering more than his investment cannot be regarded as a bona fide commercial venture.
- at risk to the investor;
- to be used within 2 years, for the purpose of enabling the qualifying company to produce a qualifying film; and
- on the basis that it will not be repaid otherwise than in the event of the company failing to have a film certified.



The minimum limit on a relevant investment is €250.

A relevant investment made by one spouse may be treated as being made by the other spouse where a married couple have elected to be jointly assessed in the name of the latter spouse.

## Shares

The investment must be made in new Ordinary Shares, i.e. shares which do not have a right to a dividend at a fixed rate and which have no existing or future preferential right to a dividend or to redemption or to the film company's assets in a winding up.

## Tax Relief

Tax relief can be claimed at any time, after principal photography has commenced. However, a sum of money paid does not qualify for relief unless it is used within two years of payment in the production of a film. A claim for relief in respect of a Section 481 investment must be accompanied by a certificate (form FILM 3) issued by the company following authorisation by the Revenue Commissioners.

## General Provisions

The legislation contains an anti-avoidance provision. In effect relief is available only where it is demonstrated that the investment is made for bona fide commercial purposes and not as part of an artificial tax avoidance plan; that the investment is actually used in the making of a film; and that the investment will not simply be returned to the investor in some guise or other.

## Withdrawal of Relief

Relief is given once principal photography has commenced, but before the company has an opportunity to satisfy all the conditions governing relief. If it subsequently transpires that these conditions cannot be satisfied the law provides for the withdrawal of the relief already given.

## Capital Gains Tax

In relation to capital gains tax an investment under the scheme is treated favourably. In computing gains for capital gains tax purposes there is a general rule that any amount which has been allowed as a deduction from income tax or corporation tax cannot also be allowed for capital gains tax purposes. This rule will not be applied where an investment in a company was by way of a subscription for new ordinary shares and the shares are held for at least one year. In such cases the amount of the purchase price of the shares will be allowed as a deduction in computing any capital gain on their disposal, notwithstanding that tax relief has been given in respect of part of that amount. If the shares are sold at a loss this treatment will not operate so as to create a tax allowable loss for capital gains tax purposes and the sale of the shares will be dealt with on a no gain no loss basis.