

VAT treatment of Independent Film and TV Productions

This document should be read in conjunction with paragraph 18 of Schedule 3 to the VAT Consolidation Act 2010 (VATCA 2010)

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Table of Contents

| | |
|--|---|
| 1. Cinematographic and audio visual goods | 3 |
| 2. Applicable VAT treatment..... | 3 |
| 3. Contract types..... | 4 |
| 3.1. Contract Type 1: Production funding with a licence agreement and recoupable investment | 4 |
| 3.2. Contract Type 2: Licence only..... | 4 |
| 3.3. Contract type 3: Development funding only | 4 |
| 4. Broadcasting Funding Scheme..... | 5 |
| 5. Deductibility of VAT incurred by Producers..... | 5 |

Introduction

Broadcasters in Ireland acquire a significant amount of programme content from producers operating within the independent production sector (“Producers”). The purpose of this guidance is to clarify the VAT treatment applicable to the commissioning of programme material, together with a number of related matters.

1. Cinematographic and audio visual goods

Paragraph 18(2)(c) of Schedule 3 of the Value-Added Tax Consolidation Act 2010 (VATCA 2010), provides that the [reduced rate of VAT](#) applies to the supply of cinematographic and video film that records particular persons, objects or events, supplied under an agreement to photograph those persons, object or events.

A characteristic of the supply of goods for VAT purposes is the transfer of ownership of the goods by agreement. For example, where a Producer makes a programme and transfers ownership together with copyright of that programme, in its entirety, to another person then there is a supply of a good for VAT purposes and that supply is liable to VAT at the reduced rate.

However, where a Producer makes a programme and grants certain rights only, such as broadcasting rights for a specified period of time, to a broadcaster, but also retains certain other rights in the programme, then the supply by the Producer to the broadcaster is not a supply of a good for VAT purposes notwithstanding the technical delivery schedule that details physical materials to be delivered.

The supply is that of a service and that service is liable to VAT at the [standard rate](#).

2. Applicable VAT treatment

An examination of a producer’s contract will provide evidence as to whether a supply of goods or services has taken place for VAT purposes.

Where the contract grants limited rights only (e.g. transmission rights for a fixed period, exploitation of broadcasting rights and renegotiation of rights at a future date) this has the hallmarks of the supply of a service rather than a good. The supply of a right or licence is a service within the meaning of Section 25 of the VATCA 2010 where the supply of the service is effected for consideration and the legal relationship between the provider and the recipient of the service is one based on reciprocal performance.

3. Contract types

Revenue has identified three contract types that require clarification in relation to the applicable VAT treatment.¹

3.1. Contract Type 1: Production funding with a licence agreement and recoupable investment

The grant of the licence, being the right to broadcast the programme for a fixed period, together with other current and future exploitation rights, is the supply of a service chargeable at the standard rate of VAT in accordance with section 46(1)(a) of the VATCA 2010.

The recoupable amount payable to the Producer is outside the scope of VAT.²

3.2. Contract Type 2: Licence only

This is the supply of a service chargeable at the standard rate of VAT in accordance with section 46(1)(a) of the VATCA 2010.

3.3. Contract type 3: Development funding only

Under this contract type a person is asked to develop a production idea and all physical materials, including scripts, tapes and recordings are transferred by the Producer to the broadcaster by the end of the development process.

This delivery is the supply of a good for VAT purposes, chargeable at the reduced rate of 13.5% in accordance with paragraph 18(2) of Schedule 3 of the VATCA 2010.

The applicable VAT treatment outlined above, as evidenced by contracts between the Producers and the broadcaster, must be applied to new contracts entered into from 1st August 2014.

¹ This was completed following a review undertaken in conjunction with industry participants.

² The recoupable amount (investment) is the amount of the production funding which is repayable by the producer in certain circumstances (e.g. generation of commercial revenues from exploitation of a specific production). It is treated as a subsidy in the nature of a production subsidy that, in line with the CJEU [C-381/01], is not regarded for the purposes of Article 73 of the VAT Directive 2006/112/EC as a subsidy directly linked to the price of the supply. The amount of the recoupable investment is therefore to be treated as being outside the scope of VAT.

4. Broadcasting Funding Scheme

Producers may avail of funding under the Broadcasting Funding Scheme³, established under the Broadcasting Act 2009, for production and development costs on high quality programmes on Irish culture, heritage and experience, programmes to improve adult literacy and programmes dealing with the themes of media literacy and global affairs.

Currently, this Scheme enables Producers to share the revenues from their film/television or radio project with the funding body until such time as the funding body has recouped its investment. Funding provided under the Broadcasting Funding Scheme has the same characteristic as recoupable investment described at Contract Type 1 above and is similarly outside the scope of VAT.

5. Deductibility of VAT incurred by Producers

Producers, being accountable persons for VAT purposes, may, in computing the amount of tax payable in respect of a taxable period, deduct in full the VAT charged to them during the period by other accountable persons by means of invoices which relate to their production activities. In this regard, no restriction of input VAT deduction is required in respect of the receipt of recoupable investment or funding which is outside the scope of VAT, as outlined above.

³ This includes recoupable investment funding paid towards production and development costs by the Broadcasting Authority of Ireland, (Sound and Vision) the National Broadcaster (RTE and TG4) and Bord Scánnan na hÉireann / Irish Film Board.