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KPMG LLP’s (KPMG) Film Financing and Television Programming: A Taxation Guide, now in its sixth edition, is a fundamental resource for film and television producers, attorneys, tax, and finance executives involved with the commercial side of film and television production. The guide is recognized as a valued reference tool for motion picture and television industry professionals. Its primary focus is on the tax and business needs of the film and television industry with information drawn from the knowledge of KPMG International’s global network of media and entertainment Tax professionals.

KPMG published the first guide more than 15 years ago as a resource for global coverage of incentives and tax updates as they apply to the film and television industry. Subsequent editions expanded into coverage of financing techniques, credits/incentives, and a thorough appendix of withholding tax rates—a valuable reference tool for all finance and tax professionals.

Each chapter of the sixth edition focuses on a single country and provides a description of commonly used financing structures in film and television, as well as their potential commercial and tax implications for the parties involved. Additionally, the United States chapter focuses on both federal and state incentives, highlighting the states that offer the more popular and generous tax and financial incentives. Key sections in each chapter include:

**Introduction**
A thumbnail description of the country’s film and television industry contacts, regulatory bodies, and financing developments and trends.

**Key Tax Facts**
At-a-glance tables of corporate, personal, and VAT tax rates; normal non-treaty withholding tax rates; and tax year-end information for companies and individuals.

**Financing Structures**
Descriptions of commonly used financing structures in film and television in the country and the potential commercial tax implications for the parties involved. The section covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-effective 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.

**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.

Appendices
Additionally, withholding tax tables setting forth the non-treaty and treaty-based dividend, interest, and film royalty withholding tax rates for the countries surveyed are included as an appendix and can be used as a preliminary source for locating the applicable withholding rates between countries.

KPMG and Member Firm Contacts
References to KPMG and KPMG International member firm contacts at the end of each chapter are provided as a resource for additional detailed information.

The sixth edition of KPMG’s Film and Television Tax Guide is available in an online PDF format at www.kpmg.com/filmtax and on CD. The guide is searchable by country.

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 book 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.

Finally, we would sincerely like to thank all of the KPMG International member firm Tax professionals from around the world who contributed their time and effort in compiling the information contained in this book and assisting with its publication. Production opportunities are not limited to the 35 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.

Thank you and we look forward to helping you with any questions you may have.

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January 2012
Chapter 27
Poland

Introduction

With the introduction of the Cinematography Act and the creation of the Polish Film Institute (“PFI”) in 2005, the world of Polish cinema has changed significantly over the past few years. The State supports the film industry in Poland by providing public grants for film production, selected festivals and events, developing archives, education and professional training, as well as for promotion of the Polish film industry abroad.

As such, there has been a rapid increase in the number of films being produced in Poland, as well as the number of foreign filmmakers interested in becoming involved in co-productions and other film services in Poland. The PFI actively promotes Polish cinema on an international level and offers assistance to foreign investors/film producers looking for Polish partners.

The Polish film production market is well-developed and many producers choose to make use of existing facilities when producing in Poland, rather than incurring costs developing their own production base. There are numerous film production companies in Poland, with many specializing in one particular field (e.g. feature films, documentaries, animation). Although the main players within this industry are private businesses, there are also a number of state-owned film establishments. Both private and public entities are eligible to apply for public funding.

In recent years there has also been an increased involvement of independent Polish film distribution companies in film production, contributing to the film’s budget and subsequently acquiring picture rights. This sort of co-production has proven very effective and will no doubt continue to grow going forward.

In 2007, the Association of Polish Filmmakers and several leading film producers jointly founded a foundation known as Film Polski (Polish Film). It was established to promote Polish films in Poland and abroad, but also to handle their distribution. The first film distributed by Film Polski was Twists of Fate by Jerzy Stuhr.

Going forward, the PFI hope to build on the significant increase in Polish film production that has been seen in recent years, and hopefully build on the success of Andrzej Wajda (Lifetime Achievement Academy Award, 2000), Roman Polanski (Best Director Academy Award for The Pianist, 2000) and Jan A. P. Kaczmarek (Best Original Music Score Academy Award for Finding Neverland, 2005).
## Key Tax Facts

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<th>Rate/Details</th>
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<td>Highest personal income tax rate</td>
<td>32%</td>
</tr>
<tr>
<td>VAT rate</td>
<td>Generally 23% (from January 1, 2011 until December 31, 2013)</td>
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<td>Annual VAT registration limit</td>
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<td>Normal non-treaty withholding tax</td>
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<td>19%</td>
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## Film Financing

### Financing Structures

The financing structures used in Poland vary in accordance with the operational structures and the requirements of the specific project being undertaken. Typically, film financing structures will take the form of one of the following:

**Co-production**

Co-production is a useful way to carry out film production in Poland, particularly for a foreign producer (on the condition that the foreign producer does not lay claim to exclusive distribution rights). The co-production agreement should detail (at least) the budget, financing, management and ownership rights of the production as well as deal with matters related to negatives and credits etc. Each party to the co-production (whether they be individuals or corporate investors) are then subject to tax on their share of the profits as stated in the co-production agreement in Poland, unless the respective double tax treaties provide otherwise.

**Civil partnership**

A civil partnership is set up according to the general principles of Civil Law for the purpose of conducting business activity. The civil partnership itself does not have legal personality and therefore each partner is obliged to register as an entrepreneur and will be taxed on their share of profits from the civil partnership accordingly.
**Partnership**

There are four types of partnerships available under Polish regulations:

- Registered partnership;
- Professional partnership;
- Limited partnership; and
- Limited joint-stock partnership.

All of the above partnerships have their own legal form, however, they are not entitled the legal personality. Consequently, the partnerships themselves will not be taxed; rather, the partners will be taxed on their share of profits from the partnership.

**Limited liability company**

The most common form of operating in the film industry is via a limited liability company. This is a legal entity with a minimum share capital of 5,000 PLN. It may be incorporated by one or more individuals or legal persons for the purpose of carrying on a business or for any other purpose allowed by law. Every company must submit an annual balance sheet and make various other filings with the National Court Registry (e.g. notification of any change of address of the company etc) and other authorities.

**Joint-stock company**

A joint-stock company is a legal entity with a minimum share capital of 100,000 PLN which may be obtained through the issue of shares. A joint-stock company would usually be established for operating a business on a large scale and is a rather complex form of conducting activity.

**Foundation**

Under the Polish Foundation Act, a foundation may be established for public benefit or social purposes, in particular for educational and cultural purposes. A foundation has legal personality and may be established by individuals or by legal persons irrespective of their residency. There are no legal requirements on the minimum initial capital. The founder states the purposes of the foundation and the assets allocated to the foundation in order to fulfill the purpose.

Foundations are eligible for a CIT exemption on their income, provided that it is allocated for the foundation’s statutory activities.
Corporate Taxation

The Polish tax system is a classical tax system where corporate income is fully taxable at entity level, with any distributed profits being taxed again by way of withholding tax. There are no special rules for film producers or distributors, whether domestic or foreign invested; they are treated as ordinary tax payers. However, this is something that the PFI hopes will be introduced within the next couple of years.

Recognition of income and amortization of expenditure

*Polish resident company*

A company is resident in Poland for tax purposes if its legal seat or management office is located in Poland. Polish resident companies are taxable on their worldwide income. In the case of a film production company, income may include (but is not limited to):

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

Receipts are generally treated as income (and are therefore taxable) once they become due and payable, however a cash accounting method applies to interest. Foreign exchange gains can be recognized either on a cash or an accruals basis.

In general, expenses incurred for the purpose of generating taxable income, or retaining/securing the sources of income (e.g. salaries, rents, advertising, travel expenses and legal and professional costs), are deductible for tax purposes unless explicitly excluded by law (e.g. dividends, fines and fiscal penalties, business lunches, unpaid interest, unrealized negative foreign exchange differences and capital expenditure such as the purchase of land, fixed assets and intangibles).

Companies will also receive tax depreciation on fixed assets (except land and non-purchased goodwill). Rates vary from 1.5% for buildings to 30% for computers, and between 20% and 50% for intangible assets. Accelerated depreciation in respect of certain fixed assets is also allowed.
Losses
Losses incurred by a Polish resident company may be carried forward for up to 5 years; 50% of the loss may be set off in each year and loss carry back is not permitted.

Administration
The tax year for corporate taxpayers is defined as a period of 12 consecutive months. Unless a taxpayer decides otherwise and duly notifies the tax authorities, the tax year is deemed to be the calendar year.

The annual tax return must be filed by the end of the third month of the following tax year. Taxpayers are obliged to make monthly advance payments of corporate income tax and these must be paid to the tax office by the 20th of the following month.

In order to obtain certainty on a specific case, an individual tax ruling may be obtained on request of a taxpayer. Such individual rulings bind the tax authorities and grant the tax payer certainty on their filing position in relation to the specific point raised.

Thin capitalization rules (“thin cap”)
The Polish thin cap regulations restrict the deductibility of interest paid to certain lenders if the borrower’s debt to equity ratio exceeds 3:1. The restrictions apply (but are not limited to) loans granted by a shareholder/shareholders holding solely/jointly at least 25% of the voting rights of the borrowing company. As such, consideration should be given to the thin cap regulations prior to the implementation of any film financing structure.

Non-Polish resident company
Non-resident companies are subject to tax in Poland on their Polish source income only. Therefore if a non-resident company were to sell the rights to a production in Poland, this income would be subject to tax in Poland (unless a respective double tax treaty provides otherwise).

Where a non-resident company carries out a co-production in Poland, it should not be liable to Polish tax on its profits as such activities should generally not constitute a permanent establishment (“PE”) in Poland under the definition of a PE as defined in most tax treaties. However, if the co-production goes on at a particular place in Poland for a considerable amount of time, there is a risk that it may be regarded as a fixed place of business and therefore constituting a PE. As such the non-resident company would be liable to Polish tax on profits attributable to the PE.
Additionally, care should be taken regarding any production/administration office set up in Poland by a non-resident company to assist with location shooting and production, as the Polish tax authorities may try to argue that it is a PE and therefore chargeable to tax in Poland.

**Withholding tax**

Income of non-resident companies which is derived from entertainment activities is subject to 20% withholding tax in Poland, unless the relevant double treaty states otherwise. This should therefore be considered before entering into any Polish co-production agreements.

Interest and royalties paid to non-residents are subject to 20% withholding tax unless the relevant double tax treaty states otherwise. Interest and royalties paid to certain associated companies within the EU will be subject to 5% withholding tax (note: such payments will be exempt from withholding tax from 1 July 2013).

Dividends are subject to 19% withholding tax (unless the relevant double tax treaty states otherwise). However, dividends paid to associated companies within the EU are exempt from withholding tax if the fully taxable parent holds continuously at least 10% (25% in the case of Switzerland) of the subsidiary for at least 2 years.

**Foreign tax relief**

If a Polish resident company receives income from overseas and suffers tax on that income, double taxation relief is granted by way of an ordinary tax credit. The credit is computed on a per country basis. Where a double tax treaty applies, the treaty relief is mandatory.

With respect to dividends received by Polish parent companies holding at least 75% in subsidiaries from a treaty country, the parent company is not only entitled to tax credit but also to apply underlying tax relief.

**Indirect Taxation**

**Value Added Tax (VAT)**

Following Poland’s accession to the EU on 1 May 2004, important features of the Polish tax system have been harmonized with EU tax law, including VAT. Poland levies VAT at each stage of the production and distribution process and input tax suffered on purchases is deductible from any output tax due. Individuals and entities that supply goods or services in Poland or import/export goods to/from Poland are liable to charge VAT if they exceed the 150,000 PLN threshold.
Where services are provided within the territory of Poland by a supplier not registered for VAT in Poland, VAT can be self-charged by the recipient under the reverse charge mechanism. The reverse charge mechanism covers (but is not limited to) the sale of rights and granting of licenses or sublicenses and is also applicable in the case of intra EC acquisitions and local acquisitions of goods from foreign entities which are not registered for Polish VAT.

Under the reverse charge mechanism, the recipient issues an invoice to itself and charges VAT using the applicable Polish VAT rate (usually 23%). This VAT may be deducted as input VAT in the same VAT return in which the output VAT is declared. Therefore, providing the recipient can fully recover the VAT, the operation is tax and cash-flow neutral.

With regard to VAT rates applicable to film industry, the standard VAT rate of 23% applies to film production, the reduced VAT rate of 8% applies to distribution of films, whilst fees of individual artists are generally VAT-exempt.

**Capital duty**

Tax on civil law transactions (capital duty) is imposed on an initial capital contribution to a newly registered company and on any additional contribution to the company’s capital. The rate is 0.5% of the capital contribution.

**Transfer tax**

The sale and exchange of goods, property and property rights are subject to tax on civil law transactions, unless the transaction is a VATable transaction, with the exception of the sale and exchange of immovable property and the sale of shares, which are subject to transfer tax as a rule.

The rate of tax on civil law transactions on the sale and exchange of immovable property located in Poland is 2% of the market value of the property. In respect of the sale of other goods and property, the rate is 1%.

**Personal Taxation**

**General rules**

An individual is considered to be a resident of Poland for income tax purposes if his centre of personal and economic interest is located in Poland, or if his stay there exceeds 183 days in a tax year. Polish resident individuals are subject to tax on their worldwide income while non-Polish resident individuals are subject to tax on their Polish source income only.

The tax year for individual tax payers is the calendar year and an annual tax return must be filed by 30th April of the year following the tax year. Income tax must be paid in advance each month and adjusted accordingly
at the year end, although tax payers earning business income may opt for quarterly advance payments in the year in which they commence the business activity or where their annual turnover in the preceding year was lower than EUR 1,200,000 (including VAT).

The Polish PIT Law lists the following categories of income: (1) income from dependent services, including employment and pension income, (2) income from independent services, (3) income from business, (4) income from particular agricultural sectors, (5) income from immovable property (rental income), (6) income from investments and property rights, (7) income from the sale of immovable property, property rights and movables and (8) other income. Tax is generally levied on the aggregate net income from all categories after accounting for deductions. The net income from each category is the difference between the sum of receipts (both in cash and in kind) and any related expenses. Poland employs a scale of progressive income tax rates (i.e. 18% basically and 32% to income over approx. 21,000 EUR) to tax individuals. However, certain income items are taxed separately at flat rates.

Tax losses may be carried forward for 5 years and up to 50% of the loss may be offset in each year. Tax losses may not be carried back.

Artists (self-employed)

Income tax implications
For Polish income tax purposes, an artist’s income derived from his or her professional services will be considered “income from professional services” or “income from business,” depending on how the services are performed.

In the first case, the “income from independent services” will be aggregated with their other net income and taxed at the appropriate rate. Net income is defined as being the difference between the sum of receipts (both in cash and in kind) and expenses, in the pre-defined amount of 50% of the receipts.

With regards to the taxation of “income from business,” it may be taxed based on general rules or the taxpayer may opt for a 19% flat rate taxation of business income. However, taxpayers who opt for the flat rate taxation are not entitled to some personal deductions and credits that would otherwise be available.

Non-resident artists and tax credit
As stated above, non-resident tax payers are only subject to tax in Poland on their Polish source income. The taxable income of non-residents is generally calculated under the same rules that apply to residents.
If the taxable income derived by a non-resident cannot be accurately determined from the tax payers’ financial records, it is estimated as a percentage of turnover (20% in the case of film production activities). However, this method to establish taxable income is not applied if a tax treaty provides otherwise.

It should be noted that a 20% withholding tax is levied on income from certain independent services performed by non-residents, including (but not limited to) income from artistic, literary, scientific, educational and journalistic activities, unless a double tax treaty states otherwise.

As stated above, a Polish self-employed artist is subject to tax in Poland on their worldwide income. Where a Polish resident suffers overseas tax on its income, double taxation relief is granted by way of an ordinary tax credit. The credit is computed on a per country basis. Where a double tax treaty applies, the treaty relief prevails.

**Employees**

*Income tax implications*

Income from employment includes all kinds of remuneration and benefits in kind. Employers are obliged to deduct advance payments on salaries and other remuneration paid to employees and these deductions must be paid to the Polish tax authorities by the 20th of the following month.

*Social security implications*

Employees are liable to make social security contributions based on their gross income. The contributions are payable by employees at the following rates:

<table>
<thead>
<tr>
<th>Contribution</th>
<th>Rate</th>
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<tbody>
<tr>
<td>Old age pension</td>
<td>9.76%</td>
</tr>
<tr>
<td>Disability insurance</td>
<td>1.50%</td>
</tr>
<tr>
<td>Sickness and maternity insurance</td>
<td>2.45%</td>
</tr>
<tr>
<td>Health insurance</td>
<td>9.00%</td>
</tr>
</tbody>
</table>

All of the above contributions are withheld by employers and the system applies equally to residents as it does to foreign nationals who have an employment contract with a Polish employer. Individuals working in Poland, who are EU member states nationals, should be covered by the EU social security regulations, which became effective in Poland following EU accession in 2004. Depending on the individual circumstances of each assignee, they may be subject to social security in their home country (based on A-1 form provided certain conditions are fulfilled), the country of their employment, or the country where the work is actually performed. Each case should be investigated carefully to determine appropriate social security contribution payment requirements and obligations.
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