Film Financing and Television Programming: A Taxation Guide

Now in its seventh edition, KPMG LLP's ("KPMG") Film Financing and Television Programming: A Taxation Guide (the "Guide") is a fundamental resource for film and television producers, attorneys, tax executives, 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.

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 producers and other industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including film and television development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in the financing of film and television productions, the Guide includes a robust discussion of relevant tax incentive programs in each country.

The primary focus of the Guide 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 member firm media and entertainment Tax professionals.

Each chapter 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. 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 production and distribution 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-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.

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.

Digital Media
For the first time, we have included a discussion of digital media tax considerations recognizing its growing role in the distribution of film and television content.

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.

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

Tony Castellanos
+1 212-954-6840
acastellanos@kpmg.com

Benson Berro
+1 818-227-6954
bberro@kpmg.com

Sweden

Introduction

Although Sweden formerly had a reputation for being a high-tax country, this is no longer the case since the tax reform in 1991, which introduced considerable decreases with respect to corporate and individual taxation as compared to the earlier system.

Key Tax Facts

Corporate income tax rate	22%
Highest personal income tax rate (2011)	59.17%
VAT rate	0, 6, 12, 25%
Annual VAT registration limit	None
Normal non-treaty withholding tax rates: Dividends	30%
Interest	0%
Royalties	0%*
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	December 31

* Royalties are not subject to withholding tax, but they are normally subject to income tax by assessment. Sweden has implemented the EC Interest and Royalties Directive (2003/49/EC).

Traditionally, interest expenses have been fully tax deductible, and Sweden has had no thin capitalization rules. As of 1 January 2013, interest expenses on loans between affiliated companies are generally not deductible, but there are some exemptions.

Film Financing

Financing Structures

Co-Production

A Swedish resident may enter into a joint venture with one or more foreign investors and produce films in Sweden. Such an arrangement does not trigger a tax liability in Sweden for a foreign investor. For this purpose, the position of each investor has to be decided on a case-by-case basis.

Generally, a foreign investor is subject to corporate income tax in Sweden if the investor carries on business which is attributable to real property or a permanent establishment there.

Liability to Swedish VAT may incur if goods or services are provided in Sweden regardless of whether a fixed establishment for VAT purposes exists or not.

The term "permanent establishment" is defined in domestic tax law. The definition follows closely that of the OECD Model Convention. Where a bilateral tax treaty would restrict this concept, the treaty prevails. To the extent that a Swedish tax liability arises as a result of a permanent establishment on these grounds, relief would normally be available in the investor's home country by means of a tax credit, either under a relevant treaty or under domestic law. If the activities of the foreign investor are carried on through a Swedish company (subsidiary), the return would normally take the form of dividends. The withholding tax rate under domestic law is 30 percent, but the rate may be reduced under a relevant tax treaty or the EU Parent-Subsidiary Directive.

Partnership

Two types of partnerships are known in Sweden: general partnerships ("handelsbolag") and limited partnerships ("kommanditbolag"). A Swedish partnership—whether general or limited—is transparent for tax purposes, and the profits of the partnership are taxed in the hands of the partners. From a Swedish perspective, a Swedish partnership cannot be a "resident" under a tax treaty, since the partnership as such is not liable to tax. This means that the partnership as such cannot claim the benefits of a treaty. Under special provisions in some tax treaties, e.g., with the United States and Belgium, a Swedish partnership is a resident in Sweden for the purpose of the treaty, provided certain conditions are fulfilled.

However, for VAT purposes, a general or limited partnership is regarded as a taxable person, which is why it generally needs to register for VAT if conducting business subject to VAT in Sweden.

Equity Tracking Shares

The term "equity tracking shares" is not used in Sweden. Internationally, the term refers to shares which provide for dividend returns dependent on the profitability of a film production company's business.

Yield Adjusted Debt

A film production company may sometimes issue a "debt security" to investors. Its yield may be linked to revenue of specific films. The principal is repaid on maturity, and there may be a low (or even nil) rate of interest stated on the debt instrument. However, at each interest payment date, a supplementary (and perhaps increasing) interest payment may be made where a predetermined target is reached or exceeded (such as revenue or net cash proceeds).

For Swedish tax purposes, this "debt security" would probably be classified as debt. It is assumed that the terms and conditions are at arm's-length.

Sale and Leaseback

Although it could be possible to enter into leasing contracts for intangible assets, the area of sale and leaseback arrangements is very complicated. Such arrangements must be analyzed on a case-by-case basis.

Tax and Financial Incentives

Investors

There are no tax incentives in this field in Sweden.

Producers
No tax incentives exist, but the production of Swedish film is supported by the foundation "Svenska Filminstitutet," the Swedish Film Institute (SFI).

SFI was established in 1963 and is a foundation whose operations are regulated by an agreement between the Swedish State, on one side, and the film and TV industries, on the other.

SFI is the central organization in Swedish cinema. Its tasks are to:

- Support the production of Swedish films of high merit
- Promote the distribution and exhibition of quality films
- Preserve films and materials of interest to cinematic and cultural history
- Promote Swedish cinematic culture internationally.

The production grants that SFI distributes to various film projects are financed by a levy on cinema tickets enhanced by grants from the film and TV industries and State funds. The funding agreement is based upon the principle that those who exhibit films, at cinemas or on television, should contribute to the financing of new Swedish films. SFI's activities in the field of cinematic culture are paid for entirely by Swedish State funds. SFI is headed by a Board of Governors appointed by the Swedish Government. Its daily operations are overseen by a Managing Director, who is also head of administration.

SFI supports only Swedish films. A film is regarded as Swedish if it has a Swedish producer and the contribution of Swedish artists is of substantial importance. A "Swedish producer" is defined as an individual residing in Sweden, a Swedish company or a branch of a foreign company, or another legal person registered in Sweden. However, a film that has no Swedish producer is still regarded as Swedish, provided the Swedish capital investment amounts to at least 20 percent of its production cost and the contribution of Swedish artists is of substantial importance.

From a VAT perspective it should be noted that financing can either be generally subject to VAT or out of scope of VAT, depending on the nature of the contributions. The area is complex, which is why we recommend that the VAT status of the contribution is checked on a case-by-case level.

Further information on the activities of SFI may be received from Svenska Filminstitutet, PO Box 27126, S-102 52 Stockholm, Sweden, or at www.sfi.se .

Distributors
No tax incentives exist. Royalties paid from Sweden are not subject to withholding tax, but tax is levied on a net basis after a normal assessment procedure in the same way as income from business activities carried on through a permanent establishment in Sweden. However, most Swedish tax treaties with industrialized countries provide for a zero taxation of royalties (except Australia, Canada, Italy, Japan, New Zealand, and certain others). Sweden has implemented the EC Interest and Royalties Directive (2003/49/EC).

Actors and Artists

Nonresident actors and artists, whether employees or self-employed persons, are subject to the special income tax on artists, etc., resident abroad. The tax is in principle levied on the gross remuneration received by the artist and the rate is 15%. Reimbursements for travel costs, meals and accommodation are, however, exempt from tax.

Self-employed actors and artists in film productions, or persons otherwise supplying "cultural services" from a company, are obliged to invoice including Swedish VAT (6%) for activities carried out to private individuals in Sweden. Hence an obligation to register for VAT in Sweden exists. In general, if cultural services are supplied to a company, it should be subject to VAT in the country where such company has its headquarters or in the country where that company has an establishment to which service has been provided. However, it should be noted that the remuneration to artists for live performance of literary or artistic works on stage is VAT exempt, with no right to input VAT recovery.

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in Sweden on any issue of new ordinary or preference shares or loans.

Exchange Controls and Regulatory Rules

There is no exchange control in Sweden, but a work permit may be required by persons from non-Nordic or non-EU countries.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Swedish resident companies, i.e., companies created under Swedish law, and nonresident companies carrying on business through a permanent establishment in Sweden, have to report an arm's-length profit on their production. Non-arm's-length profits can be disputed by the tax authorities.

Whether a foreign company has a permanent establishment in Sweden or not is determined on a case-by-case basis, taking into account all the facts and circumstances in the case. The Commentary on Article 5 of the OECD Model Convention serves as a guideline for this purpose.

Film Production Company – Sale of Distribution Rights

Gains from the sale of intangibles are treated as normal business income and should be reported at the time when the contract payment is enforceable, irrespective of the time when the payment is received. In this context, it, should be observed that the concept of "super royalties" is unknown in Swedish tax law. The arm's-length principle is of decisive importance for the calculation of gains.

Film Distribution Company

Swedish resident companies and permanent establishments of nonresident companies should report income on the accrual basis. Lump-sum payments for the acquisition of intangibles can be amortized over time. Royalty payments are deductible on an accrual basis. Any pricing arrangement between related parties must be based on the arm's-length principle. Sweden has adopted a system of binding advance rulings for tax issues. The due authority is the Council for Advance Tax Rulings. In addition, since 1 January 2010 it is also possible to apply for an Advance Pricing Agreement.

Amortization of Expenditure

Production Expenditure

Intangible assets are depreciated in the same way as tangible assets, i.e., either under the declining balance method at a rate of 30 percent, or under the straight-line method at a rate of 20 percent, provided the taxpayer has "an orderly accounting which is closed into annual accounts." Land is not depreciable.

Tangible assets may be depreciated immediately if the economic life is not more than three years, or if the assets are deemed to be of low value (certain amount limits apply). This possibility is not available in relation to intangible assets.

Other Expenditure

There are no special rules for film distribution or production companies. Consequently, they are subject to the usual rules to which other companies are subjected. This means, in calculating trading profits, they may deduct most normal day-to-day business expenditure such as salaries, rents, advertising, travel expenses, and legal and professional costs normally related to the business.

Losses

An operating loss in one year is treated as a deductible item in the next following year. Thus, the taxpayer cannot choose when the loss should be utilized; but on the other hand, no time limits exist. Changes in ownership may restrict the right of loss deduction, or losses carried forward may be wholly or partly forfeited. As mentioned previously, capital gains are treated as ordinary business profits. Capital losses are treated accordingly.

Foreign Tax Relief

Producers

Swedish resident producers are taxed on their worldwide income. Where income is allocated to a permanent establishment abroad, any foreign tax on such income may be deducted and credited against Swedish tax on that income. A foreign tax may (optional as from January 1 2009) initially be treated as a deductible expense for a Swedish company. Subsequently, the excess foreign tax may be credited either under domestic law or under the relevant tax treaty. Some Swedish tax treaties provide for exemption with respect to profits derived from a permanent establishment in the country concerned. Neither cost deduction nor tax credit is allowed in such cases. There are some treaties with developing countries that contain provisions on tax sparing credit.

Distributors

Foreign withholding taxes may initially be treated as a deductible expense for a Swedish company. Subsequently, the excess withholding tax may be credited either under domestic law or under the relevant tax treaty. Dividends from a foreign subsidiary may be exempt under domestic law or a treaty. A tax sparing credit may occur with respect to dividends (if not exempt), interest, or royalties in treaties with developing countries.

Indirect Taxation

Value Added Tax (VAT)

The standard VAT rate in Sweden is 25 percent; but lower rates apply to, among others, food, hotel accommodation, and domestic travels (12%) and to newspapers and books (6%). However, for e-books, the standard VAT rate applies.

The 6 % VAT rate also applies to most of the services supplied within the film industry. Thus, the entrance fee for cinema performances is subject to 6% VAT. The 6% rate also applies to sales and grants of show rights and other rights protected under the Swedish copyright regulations, as well as to artists and actors taking parts in productions located in Sweden. However, the standard rate of 25% applies to commercials, computer software, information films, and photographs. Moreover, remuneration to artists and actors performing literary or artistic works live on stage is VAT exempt, with no right to recover input VAT.

Imports of Goods and Customs Duties

Customs duties arise only on importation from countries outside the EU and not on importation from other member states of the EU. Also, VAT is payable on the value of the goods including the customs duty. The VAT is refundable; the customs duty is not.

However, if goods are temporarily imported into Sweden, no tax or customs duty is potentially chargeable if the goods are subsequently re-exported without alteration, provided a customs relief such as "Inward Processing Relief" or a duty suspension regime, such as customs warehousing, is used.

The rates of customs duty depend on the origin and nature of the goods that are imported. The rates are set on a European level and should therefore be the same as in other member states. The duty rates are defined in the online customs Tariff database, which is also called TARIC. This multilingual database is available online on the Web site of the European Commission, www.europa.eu.int, under Taxation and Customs Union.

Advertising Tax

When commercials are viewed via film in a cinema advertising, tax increases. The tax is 8% of the payment received for showing the commercial. Liability to pay the tax falls on the one who has made the commercial public, normally the owner of the cinema.

Personal Taxation

Nonresident Artists

As mentioned above, nonresident artists, whether employed or self-employed, are subject to a special final withholding tax of 15% on their remuneration. The term "nonresident" means a person who does not have "his or her real home and dwelling" in Sweden, and who does not stay there permanently. A stay is considered as "permanent" if it lasts six months or more. The tax, is in principle levied on the gross remuneration, but certain reimbursements for accommodation, travel costs, etc. are tax-free. Under most tax treaties, Sweden may exercise its taxing right in full, but some treaties make exceptions for certain artists visiting Sweden, e.g., within the framework of cultural exchange. The Sweden-U.S. tax treaty has a threshold for levying the tax (gross remuneration of US$6,000). Social security contributions are levied from 2010 if the artist is covered by the Swedish social security system.

Resident Artists (self-employed)

Such artists are taxed on their worldwide income in the same way as income from business profits. The rates are progressive and vary (in 2014) from approximately 29% to approximately 59%. In addition, they have to pay Social Security contributions amounting to 28.97% of taxable income. The contributions are deductible for tax purposes.

Employees (other than artists)

The income of resident employees is taxed at progressive rates varying (in 2014) between approximately 29% and 59%. The tax consists of Municipal tax ranging between approximately 29% and 34% and a State income tax. In 2014, the State income tax will be levied at two different rates, 20 and 25%; 20% is to be levied on annual income between SEK420,800 and SEK602,600; and 25% of annual income exceeding SEK602,600. A basic deduction of approximately SEK 12,600 is normally allowed for the purposes of both taxes. Further, a tax credit of approximately SEK 26,000 is allowed. A Swedish resident employer and a foreign employer, having a permanent establishment in Sweden, have to withhold preliminary income tax when paying remuneration. Special preliminary tax tables are used for this purpose. Where the final tax, based on a tax return and an assessment procedure, deviates from the preliminary tax, any difference has to be paid by the employee or is refunded to him or her.

Nonresident employees are subject to a special tax regime. Tax is in principle levied on the gross remuneration and the flat rate is 20%. In the case of temporary employment in Sweden exemptions apply with respect to compensation for certain lodging and travel costs. Furthermore, where the stay in Sweden does not exceed 183 days in any 12-month period the remuneration is exempt, provided it is not paid by a Swedish resident employer or, in the case of a foreign employer, the remuneration is not borne by such employer's permanent establishment in Sweden. The term "nonresident" means a person who does not have "his or her real home and dwelling" in Sweden, and who does not stay there permanently. A stay is considered as "permanent" if it lasts six months or more.

Any employer, Swedish or foreign, employing personnel in Sweden is liable to pay Social Security contributions amounting to approximately 32% (31.42% in 2014) of the remuneration and any taxable benefits. The contributions are deductible for corporate tax purposes. The employee also pays contributions at a rate of approximately 7%, although in the latter case, contributions are not payable on remuneration and taxable benefits exceeding approximately SEK 459,183 (in 2014).

Where a nonresident employer does not have a permanent establishment in Sweden, the employer and the employee may agree that the employee pays the employer contributions on behalf of the employer. The same rate of 31.42% applies (plus his or her own 7%). A Social Security convention or EEA agreement may restrict or prohibit the levying of Swedish Social Security contributions.

Digital media

Indirect Tax

As a main rule, digital media is considered to be a service at the standard VAT rate of 25%, If supplied to a company, the service should in general be subject to VAT in the country where the purchaser has its headquarters or in the country where that company has an establishment which to service has been provided.

New legislation came into force on 1 January 2015 regarding electronic services (including radio/TV and telecom) to private individuals in accordance with the EU VAT directive. With the new legislation, the electronic service should be subject to VAT in the country where the individual is resident or in the country where the service is consumed (if other than the resident country).

KPMG’s Media and Entertainment Tax Network Members:

Christer Öhman
KPMG Bohlins AB
P.O. Box 16106
SE – 103 23 Stockholm
Sweden
Phone +46 8 723 9631
Fax: +46 8 10 55 60