KPMG

Film Financing and Television Programming

A Taxation Guide

For more than a decade, the KPMG Film Financing and Television Programming Taxation Guide has been recognized as a valued reference tool for industry professionals, filled with information drawn from the knowledge of the KPMG International global network of member firm media and entertainment Tax professionals. The 2022 edition is a fundamental resource for film and television producers, studio and streaming production executives, tax executives, finance executives, and attorneys involved with the commercial side of production.

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

Each chapter focuses on a single country and provides a description of commonly used financing structures, 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 industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts
At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures
Descriptions of commonly used financing structures in production and distribution, and the potential commercial tax implications for the parties involved. This section of each chapter 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.

South Korea

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.

Streaming Tax Considerations
Provides a look at the unique tax issues that need to be addressed in this evolving segment of the industry. With considerations such as identifying tax collection and reporting obligations in a variety of jurisdictions, understanding international tax implications is essential for streaming providers.

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.

We look forward to helping you with your film and television production ambitions.

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South Korea

Introduction

The Korean film industry, which once struggled to attract domestic audiences, has been successfully exporting its products and expanding its influence throughout Asia, Europe, and North America in the past decade. These days, casual observers associate Korean cinema with the broader cultural phenomenon of hallyu ("Korean Wave").

Currently, as there are no specific tax laws governing the financing industry, general tax provisions apply.

Key Tax Facts

Corporate income tax rate (including local income tax) *The tax rate is 11% on the first KRW 200 million of taxable income, 22% on taxable income above KRW 200 million up to KRW 20 billion, 24.2% of taxable income above KRW 20 billion up to KRW 300 billion, and 27.5% of taxable income above KRW 300 billion (including local income tax).	27.5%
Highest personal income tax rate (including local income tax)	49.5%
Value Added Tax (VAT)	0% or 10%
Normal non-treaty withholding tax rates: Dividends (including local income tax)	22%
Interest (including local income tax)	22%
Royalties (including local income tax)	22%
Tax year-end: Companies	Generally, the accounting year-end
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

Various mechanisms for film financing are available. These include the provision of funds by way of share capital or loan finance (or a mixture of both) to a company, the creation of joint ventures involving companies and/or individuals, and the establishment of partnerships. The form of business enterprise that a foreign film industry investor establishes in Korea will depend on the purpose of its business, the tax implications, and Korean government regulations

Co-Production

Two or more parties may enter into a joint venture (JV) agreement to co-produce a film or, alternatively, to produce and/or finance a film whereby typically the rights to exploit the film are divided amongst the parties. The existence of a JV agreement does not necessarily mean that a partnership or a profit-sharing agreement exists.

A JV is not required to pay any income taxes at its level. Instead, its income or loss will be allocated to each owner of the JV and be included into their individual/corporate income tax returns when the owner files their income tax returns. However, a JV may be required to file and pay any other types of taxes including property tax, VAT, etc.

Branch vs. Subsidiary

The branch of a foreign company is established by filing appropriate documents with a foreign exchange bank and registering with the local district court and tax office. Branches registered under the foreign exchange regulations generally conduct business for profit and pay domestic taxes on Korean-sourced income.

The type of subsidiary recognized in the Commercial Code and most commonly used by foreign investors is the stock corporation. To establish a stock corporation, articles of incorporation must be drawn up and notarized. At least one promoter is required for incorporation, and under the Commercial Code, their status as a promoter lasts only until registration.

Equity Tracking Shares

These shares provide for dividend returns depending on the profitability of a film production company's financial performance. The investor acquires such shares in the production company. These shares have similar rights as the production company's ordinary shares, except that the dividends are profit linked.

Corporate Taxation

Determining a foreign investor's tax liability on its activities in Korea largely depends on the existence of a permanent establishment (PE) in Korea. Under the Korean tax law, a foreign investor having a fixed place of business or a PE in Korea will be taxed on its Korean-sourced income at a rate of 27.5% (including local income tax).

If a foreign investor has no PE in Korea, it will not be subject to tax in Korea on its business income but may be subject to Korean withholding tax on Korean-sourced income. In the absence of an applicable tax treaty, dividends, interest, or royalties paid to a foreign corporation will be taxed in Korea at a rate of 22% (including local income tax) under Korean domestic tax laws (15.4% withholding tax rate, including local income tax, will apply to interest payment on government bonds). The withholding tax rate on dividend, interest, or royalty could be reduced under an applicable tax treaty.

Tax Exemption for Foreign Investment

The Korean government grants various tax incentives to attract investment in technology to Korea. If a foreign film investor meets certain conditions, a reduction or exemption on corporate income tax and withholding tax on dividend income may be offered.

Income Deduction for a Specialized Cultural Industry Company

If a specialized cultural industry company established under the Framework Act on the Promotion of Cultural Industries distributes at least 90% of distributable profits, such amount shall be deducted from the amount of income in the business year subject to the disposition of surplus in which the dividend has been resolved.

Organizational Expenditure

Under Korean tax law, business start-up expenditure—such as legal costs, registration fees, and acquisition costs for facilities—are tax deductible for the period in which those expenses are incurred.

Net Operating Loss
Net operating losses can be carried forward up to 15 years. Such carried forward losses can offset up to 60% of the taxable income in fiscal year (up to 100% in the case of small or medium enterprises pursuant to Article 6 (1) of the Restriction of Special Taxation Act and enterprises performing a rehabilitation plan).

Foreign Tax Credits
Where a domestic corporation has paid or is liable to pay foreign tax abroad, the tax paid or payable abroad is deducted from the corporation tax up to an amount equivalent to the ratio of the income from foreign sources to the total taxable income.

Thin Capitalization
The International Tax Coordination Law contains a thin capitalization rule whereby, if a Korean company borrows from its foreign controlling shareholder an amount in excess of two times its equity (six times for financial institutions), interest on the excess portion of the borrowing will not be deductible in computing taxable income. Money borrowed from a foreign controlling shareholder includes amounts borrowed from an unrelated third party based on guarantees provided by a foreign controlling shareholder. The nondeductible amount of interest shall be treated as deemed dividends or other outflows of income.

Transfer Pricing
The tax authorities have authority to adjust a transfer price based on an arm's length price and to determine or recalculate a resident's taxable income when the transfer price used by a Korean company and its foreign-related party is either below or above the arm's length price.

The arm's length price should be determined by the most reasonable method applicable to the situation. The method and reasoning for adopting a particular method in determining the arm's length price should be disclosed by the taxpayer to the tax authorities in a report submitted within six months of the end date of tax year.

Indirect Taxation

VAT

Under the VAT law, a corporation engaging in the supply of goods or services and imports of goods in the course of business, whether for profit or not, is liable for VAT. For VAT purposes, the supply of goods and services and imports of goods can be classified as either a VAT-leviable transaction or a VAT-exempt transaction. For VAT-leviable transactions, two VAT rates apply: (i) 10% general VAT and (ii) zero-rate VAT. Zero-rate VAT is applied on exported goods or special transactions specified in the VAT law.

VAT should be collected and filed by a company who supplies goods or services in the course of business. However, in the case of imports of goods from a foreign corporation, since the foreign corporation is located in a foreign jurisdiction, they are not classified as a taxpayer who has a VAT obligation for Korean VAT purposes. In such a case, the Customs House imposes and collects the VAT in addition to the customs duty on the imported goods at the time of import.

Customs Duty

A person who imports goods is liable to pay customs duty according to quality and quantity of imported goods when an import declaration is filed.

Personal Taxation

Nonresident Artists (self-employed)

Nonresident artists who do not have a permanent establishment in Korea are subject to 22% withholding tax (including local income tax) in Korea. The withholding tax obligation must satisfy the filing and payment requirements. Where there is a tax treaty entered between two countries, the tax treaty will override the domestic law in determining the withholding tax obligation.

South Korea

Resident Artists (self-employed)

Resident artists are subject to 3.3% withholding tax (including local income tax) on their income in Korea. In addition, they are required to file a comprehensive income tax return.

Employees

A withholding tax system on wages and salaries operates in Korea. Employers are required to make monthly payments to Korean tax authorities in respect of their employees' personal tax liabilities arising from their salary or bonuses paid to them. The withholding tax system operates on the basis of a prescribed withholding tax table. If an employee has salary income only or salary income and retirement income, a year-end adjustment on the income tax on salaries is made by the employers to help ensure that the tax withheld during the year equals the employee's total tax liability. If the tax withheld is greater than the total liability, the employee is entitled to a refund.

Social Tax Compliance Requirements

There are four types of social taxes in Korea: National Pension, National Health Insurance, Employment Insurance, and Industrial Accident Compensation Insurance. Foreigners are required to participate depending on the type of visa issued but may be exempt under an applicable agreement. You should seek specialist tax advice in this regard.

National Pension

The required contribution is 9% of an employee's monthly compensation, which is shared equally between the employer and the employee (i.e., 4.5% for each). The monthly contribution is capped at KRW 235,800.

KPMG Media and Entertainment tax network members:

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