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SECTION 481 TAX CREDIT

SIOBHÁN WARD – CROSSING THE LINE PRODUCTIONS
BRIAN GORMEY – PHILIP LEE
RÓISÍN HENEHAN – GRANT THORNTON

8 MARCH 2016

32%

OF LOWEST OF:

ELIGIBLE SPEND

or

80% OF THE BUDGET

or

€70,000,000

Corporation Tax Credit

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IS MY PROJECT ELIGIBLE?

Eligible type of project: Feature film, television drama, animation or creative documentary. The criteria for a creative documentary is that the project is based on an original theme, contains original filming (i.e. not rely heavily on archive), contains a timeless element, and involves substantial prep and post. Other projects are ineligible such as sporting events, games/competitions, review, magazine or lifestyle programmes, unscripted or reality type programmes.

Budget Level : Minimum Budget: €250,000; Minimum Eligible Spend: €125,000

Must be produced on a commercial basis and intended for release in cinemas or broadcast on television (broadcast on internet is also permitted in certain circumstances)

BEFORE APPLYING CONSIDER THE FOLLOWING:

Increased legal / audit fees (but these will contribute towards eligible spend)

Engaging contributors: PAYE/Payroll versus Independent Contractors/Freelancers

Increased risk for production company, directors and shareholders

Tax compliance

PRODUCER COMPANY VERSUS QUALIFYING COMPANY

- **Paid to "producer company" (i.e. the commissioning production company) by way of refund of corporation tax overpayment**

- Producer company **must incorporate a "qualifying company" (i.e. a special purpose company)** to produce the project, or the Irish part of the project, on behalf of producer company. The qualifying company expends the eligible spend - meaning the producer company must pass the tax credit to the qualifying company.

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PRODUCER COMPANY

Producer company must satisfy the following:

- Ireland/EEA tax resident
- Not a broadcast or connected to a broadcaster (including internet exclusive broadcasters such as Netflix or Amazon)
- 100% shareholder of qualifying company
- Carrying on a trade in Ireland from the relevant date
- Tax Compliant – in particular it must file its CT1 return on time. If the producer company in relation to its last accounting period (on which the tax credit is payable) has not made its CT1 return on time, even if it was subsequently accepted after the return date, it is not a producer company and is not entitled to the tax credit.

ELIGIBLE SPEND

(1) Spend on individuals' services in the State (individuals can be EU or non-EU) and (2) spend on goods, services and facilities consumed in the State and provided by a company established in the State.

Does not include work done by Irish personnel abroad or hire of kit supplied by Irish company used abroad.

Does include travel that begins or ends in Ireland.

* Withholding tax on non-EU actors and other on-screen artistes.

SAMPLE FINANCE PLANS

Entire budget is eligible spend:

Section 481 Tax Credit (80% @ 32%)	€128,000
Non-section 481 funding	€372,000
Total funding	**€500,000**

Co-Production – 50% is eligible spend:

Section 481 Tax Credit (50% @ 32%)	€640,000
Non-section 481 funding	€3,360,000
Total funding	**€4,000,000**

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100% OF 32% TAX CREDIT RELEASED AFTER SUBMISSION OF COMPLIANCE REPORT

<u>UNLESS:</u>

ONE OF THREE CONDITIONS MET,
IN WHICH CASE 90% IS RELEASED IMMEDIATELY AND 10% AFTER COMPLIANCE REPORT SUBMITTED

THE THREE CONDITIONS

1. **Confirmation from IFB or the BAI** that its **funding agreement has been executed** and it has agreed to **release funding to producer company**

2. **68% of the amount on which the tax credit is based is lodged to an account held by the qualifying company** and is available towards the costs of production of the film; the **funding agreements for the project have been executed**; and the **conditions precedent to funding in those agreements have been satisfied** – solicitor and auditor confirmation letter required

3. [Guarantee, surety bond or similar instrument to repay the first instalment (i.e. 90% of 32%) in the event of non-compliance – this option not yet available on the market]

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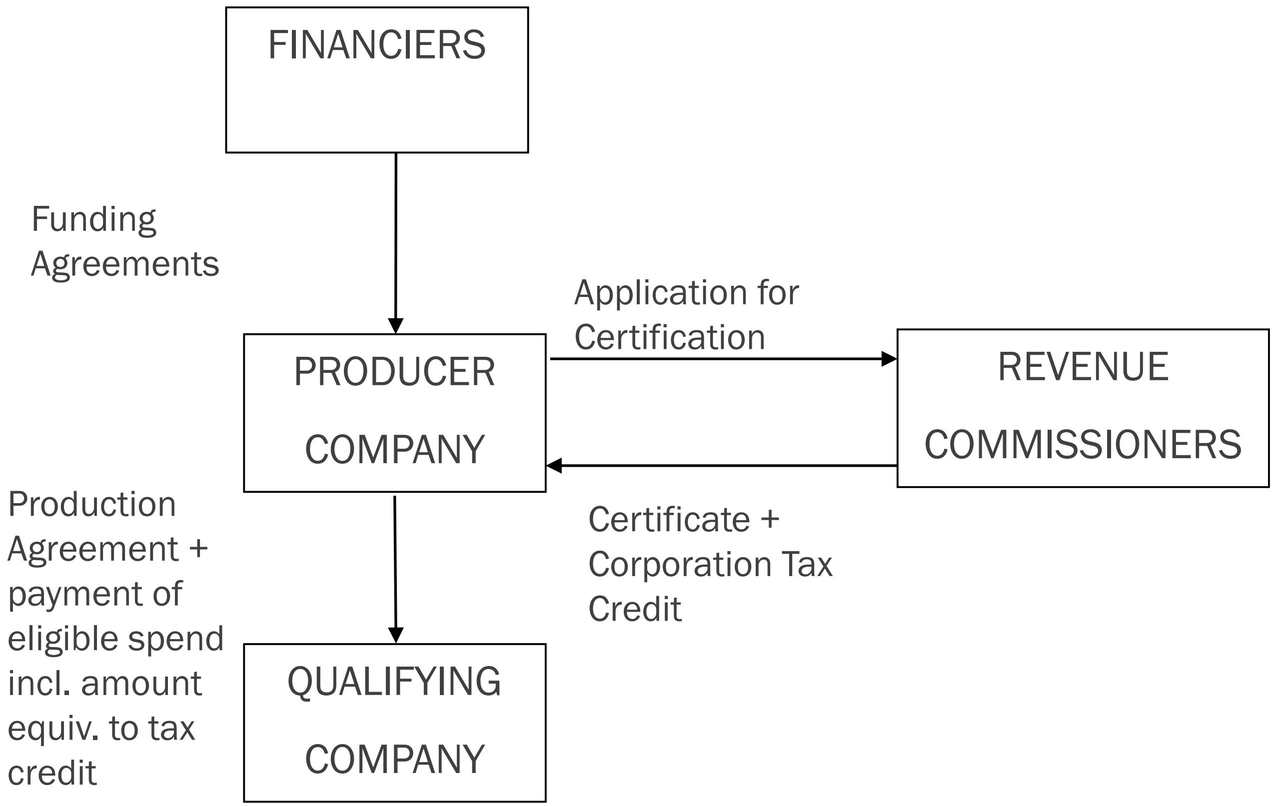
STRUCTURE DIAGRAM



TYPICAL STEPS TO TAX CREDIT

TYPICAL STEPS TO TAX CREDIT

1. Producer company applies for certificate – letters of commitment from financiers required and signed production services agreement between producer company and qualifying company (NB Revenue must be notified within seven days of the first expenditure being incurred following the application)

2. Financial closing i.e. financiers' agreements executed

3. When producer company is able to satisfy one of the three conditions it makes further application to Revenue and Revenue issues certificate

4. Producer company applies for tax credit i.e. amended corporation tax return is entered through ROS for relevant period

APPLICATION FOR CERTIFICATION

1. Application form and appendices (Tabs) sent by email to Revenue through the MyEnquiries section of your production company's ROS. filmrelief@revenue.ie

2. Application form and guidelines available at: http://www.revenue.ie/en/tax/ct/film-relief.html

3. Straightforward form and your lawyer and/or accountant can help you with the various TABs and may even submit the application on your behalf.

4. Must have your SPV company incorporated and this will be noted as the "Qualifying Company" on the form.

5. Must have finalised budget and finance plan with accompanying letters of commitment from all funders. Draft contracts usually accepted too.

ENSURE TAX AFFAIRS ARE UP-TO-DATE

Important to ensure that all tax heads of the producer company, qualifying company and shareholders holding >15% of ordinary share capital of either company are up-to-date and clear before the application for certification is submitted to Revenue.

NB It will delay your application if at any stage there is a tax compliance issue – have your accountants check at all key stages with your local tax office. Even minor issues will hold up the process.

TYPICAL STEPS - TIMING

Steps 1 and 2: Producer company applies for certificate – letters of commitment from financiers required and signed production services agreement between producer company and qualifying company; Financial closing i.e. financiers' agreements executed

USUALLY 2 – 3 WEEKS TO SUBMIT APPLICATION (INCLUSIVE OF 1 WEEK TO INCORPORATE QUALIFYING COMPANY

ALLOW REVENUE 4 WEEKS TO PROCESS APPLICATION

REMEMBER THAT FINANCIERS WILL REQUIRE REVENUE CERTIFICATE IN ORDER TO CLOSE

NB. APPLY AS EARLY AS POSSIBLE

TYPICAL STEPS - TIMING

Steps 3 and 4: When producer company is able to satisfy one of the three conditions it makes further application to Revenue and Revenue issues certificate; Producer company applies for tax credit

WHEN CONDITION IS SATISFIED IT USUALLY TAKES A FEW DAYS FOR REVENUE TO ISSUE A NEW CERTIFICATE (ESSENTIALLY THE SAME AS THE FIRST CERTIFICATE BUT WITH A DIFFERENT LETTER REFERENCE.

CORPORATION TAX RETURN IS UPDATED – TAKES AT LEAST SEVEN DAYS FOR REVENUE TO PAY TAX CREDIT TO PRODUCER COMPANY

COMPLIANCE AND CLAWBACK

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COMPLIANCE REQUIREMENTS – POST-CLOSING

The compliance requirements at application stage have been discussed. It is also important to realise that compliance requirements continue post-closing. The producer company must satisfy the following:

- Continue to trade for at least 12 months after compliance report is submitted to Revenue
- Holds shares in the qualifying company for at least 12 months after compliance report is submitted to Revenue
- Must remain tax compliant for 12 months after the compliance report (same for qualifying company)

CLAWBACK

SEVERE AND WIDE-RANGING

- The tax credit can be clawed back from the producer company, directors of the qualifying company or producer company, and persons owning or able to control, directly or indirectly, a 15% plus shareholding in either company.
- Limited liability is removed – personal liability
- No guidance as to who Revenue will tax first – joint and severally liable

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REASONS FOR CLAWBACK

- Revenue revokes certificate **OR**
- Producer company or qualifying company:
  - **fail to comply with any section 481 requirements** in legislation or regulations
  - failure to comply or satisfy any condition in the certificate (**obvious examples of failure are not spending full amount of eligible spend or not delivering the completed project**)
  - Within 12 months of delivery of compliance report to Revenue, producer company or qualifying company **cease to comply with tax filing and payment obligations**

Whole tax credit is clawed back. Interest is applied.

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CLIENT CHOICE 2014

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