

SCREEN  
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IRELAND

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# POLICY ON SECTION 481

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### CORE POLICY

A fiscal incentive such as Section 481 is necessary if Ireland's film and TV industry is to continue to thrive. Those countries with which Ireland competes have similar or comparable incentives. It is imperative for the Irish film and television production industry that a fiscal incentive is maintained and modified as required to keep pace of international market conditions.

Ireland has a long history of supporting its film industry through fiscal incentives, dating back to 1980. Since then the Irish film and TV sector has evolved into a vibrant industry with a sophisticated infrastructure of production companies, studios, service companies and personnel, all of which provide valuable employment in the Irish economy.

In the past five years, there has been a 25% increase year on year in Section 481 funding raised. In 2014, Irish productions committed to spend €237m in the Irish economy as a direct result of Section 481 certified projects.

SPI believes that maintaining Section 481, updating it to ensure it remains internationally competitive and improving it when necessary, is essential to ensure further growth in the sector.

Section 481 provides high end production jobs, it helps to promote Ireland's rich culture around the world, contributes to Ireland's reputation as a global hub for high-tech digital and creative content and contributes to Ireland's profile as a tourist destination.

## Policy on Section 481

### Principles on which this policy is based

Ireland has a long history of fiscal incentive for production dating back to 1980. It was one of the first countries to introduce an incentive. Now countries with which Ireland competes have similar or comparable incentives. The UK, Hungary, Luxembourg, Germany, the Czech Republic, Canada, Australia, New Zealand and South Africa are some of the countries that now provide attractive incentives. In addition, within the US, individual states have introduced incentives in order to try and draw production activity away from the most dominant and traditional location of California.

The result is that Ireland has become an attractive location for incoming film and television production while also supporting indigenous production.

The expenditure in the Irish economy as a result of Section 481 clearly illustrates the need for Ireland to maintain and continue to improve its fiscal incentive, as required.

The table below illustrates the growth in Section 481 funds raised between, 2011 - 2014

Projects Certified by Revenue Commissioners 2011 - 2014  
Section 481

	2011	2012	2013	2014
No of S481 projects	57	52	67	67
<b>S481 Raised</b>	<b>113,423,118</b>	<b>138,539,823</b>	<b>177,383,122</b>	<b>231,593,595</b>
Animation Total	31,982,729	32,127,088	44,942,020	39,104,231
Documentary Total	4,853,720	3,797,207	2,717,403	7,108,573
Film Total	33,231,456	29,243,763	35,856,614	49,221,388
TV Drama Total	48,180,934	77,800,320	99,626,609	141,953,421

To maintain expenditure and promote growth in the sector, Ireland must:

- I) Ensure the continuance of the film and television tax incentive Section 481.
- II) Secure the extension of Section 481 in advance of 2020 to take account of the long lead time required in the international production industry.
- III) Support the recommendations of the Section 481 Policy Group (attached).

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REPRESENTING INDEPENDENT FILM, TELEVISION,  
ANIMATION AND DIGITAL PRODUCTION COMPANIES

## Policy on Section 481

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## Section 481 Policy Group

### Recommendations

The Section 481 Policy Group was organised by Bord Scannán na hÉireann/Irish Film Board and included representatives of Screen Producers Ireland, Animation Ireland, VFX Ireland, Ardmore Studios and a number of professional advisers who are regular advisers to industry entities.

It was convened to consider specific representations made to the Department of Finance and the Revenue Commissioners in relation to the operation of S481. The Group also considered the broader opportunities and challenges that face the film and television industry in Ireland. Having considered the three specific agenda items in relation to the operation of S481, the group worked together to formulate a set of recommendations for Government that will help the sector to achieve its potential to significantly increase its level of activity and job creation.

The Group met six times, Tuesday 21st April 2015, Thursday 30th April 2015, Wednesday the 5th May 2015, Tuesday the 12th May 2015, Wednesday 27<sup>th</sup> May and Wednesday the 1<sup>st</sup> July 2015. Representatives of the Group also met representatives of the Department of Finance on Friday 19<sup>th</sup> June 2015. The three S481 items on the Agenda were:

1. The 21 Month Rule (text Schedule 1).
2. The Broadcast Exclusion (text in Schedule 2).
3. €50m Cap.

The Group gave due consideration to the 3 issues and make the following **Recommendations**:

1. **The 21 Month Rule:** No change.

The 21 month rule provides that the “Producer Company” availing of Section 481 is required to have traded as a bone fide film production company for a period of twelve months and then filed a corporation tax return within the 9 month period after that year end (which it is legally obliged to do) hence 21 months. The period of twelve months is mandatory even though a company may have a tax accounting period of less than a year. The period of 9 months is also mandatory even if the company files its tax return earlier than the final filing date.

It is understood from Revenue that a “producer company” may apply for the Section 481 certificate at any time up to but not on or after the complete delivery of the film project. If a film has a twelve month production schedule, a producer company could commence production in the last three months of its first year of trading and still make an application for a Section 481 certificate for film project within a month after the expiry of the 21 month period.

The basic structure of the new Section 481 is dependent on the producer company having filed a corporation tax return and then seeking a tax rebate under an amended tax return based upon “eligible expenditure” incurred or to be incurred. It was also seen as important that because a producer company can seek an “upfront payment” of the tax rebate that before it did so it had established its bone fides as a production company by trading and making a corporation tax return.

It was also noted that 21 months is not a long time in the life cycle of a project to move from development through to production, so the group did not feel that this rule practically represented a barrier to entry for an overseas company planning to shoot a film in Ireland and apply for S481 directly itself. It was further noted, that new Irish production companies and overseas company making a long term investment in Ireland and falling foul of the 21 month rule could, in the short term, work with a local, qualifying company to access S481, until it had satisfied the 21 month period requirement.

- 2. Broadcaster Exclusion:** The exclusion of broadcasters from availing of Section 481 has been in place for many years. It is part of a wider policy objective of encouraging broadcasters to commission at least a part of their programming from the independent television production sector. The underlying policy is the promotion of a diversity of voices in programme making and to encourage a cost competitive environment in programme production as well as a strengthening and deepening of audiovisual production capacity in Ireland.

This policy in Ireland dates back to 1993 legislation which required RTÉ to commission a certain level of what was then inhouse production from the independent production sector. The current legislation is the Broadcasting Act (2009). This legislation provides for an annual minimum expenditure by RTÉ on independent production, a code of fair trading practice between independent production companies and public service broadcasters and a broadcasting fund operated by the Broadcasting Authority of Ireland.

This policy was also implemented in connection with Section 481 where broadcasters were excluded from availing of Section 481 themselves and were obliged instead to engage independent producers to produce the programmes which were availing of Section 481. The Section 481 Policy Discussion Group believes that in principle this exclusion should continue.

The Section 481 Policy Discussion Group is however conscious that the international environment in relation to broadcasters and the suppliers of programmes to the internet is rapidly developing and changing. There has been a developing convergence of content creation/distribution companies so that there is now a wide spectrum of international media conglomerates where there are production companies, distribution companies, broadcasters and suppliers of programmes to the internet all together in one group of companies. In some cases the distribution/broadcasting elements predominate, in others the content production elements predominate, in others providing programmes to internet services predominates and in others the balance is more or less equal between all the elements.

Some of these multinational media companies invest very large amounts in content creation/programme production throughout the world. They also have varying views about making investments in content creation/programme production in countries which encourage inward investment in audiovisual production. Some of these companies are happy to engage with indigenous producers and some (and even parts only of some) prefer to set up their own operations and access whatever local incentives are available themselves. For the latter companies, who also happen to have broadcasters as part of their group of companies, the way the broadcaster exclusion works could be seen as a barrier to these setting up their own operation in Ireland.

One possible way of addressing this would be that where international media companies have, as a significant part of their operation, content creation/film production activity and were committed to long term production activity in Ireland, the support funding of the IDA could be enlisted. If the company were to benefit from IDA support funding, the IDA could certify the company in such a way that the broadcaster exclusion would not then apply to the operation being set up in Ireland.

The Section 481 Policy Discussion Group recommends that further consideration be given to the operation of the broadcaster exclusion so that while the original policy for its existence, as outlined above is preserved, any unintended consequences in terms of inhibiting significant foreign direct investment in film content creation production in Ireland would be avoided or mitigated.

3. **€50m Cap:** It was agreed to recommend that the cap of €50m per project be removed.

The cap of €50m on the total amount of “eligible expenditure” for each film project to be certified under Section 481 appeared to limit the attractiveness of Section 481 for larger budget feature films and large scale/high budget TV drama series. There is no upper limit on “eligible expenditure” in the UK although caps are a feature in many other competing territories. Also the value of the euro against the main audiovisual currencies has been going down in the recent past.

The group recognised that the lifting of the cap in particular could form an important component of a policy to encourage the growth and development of the film, television drama and animation sectors in Ireland and encourage investment in the provision of necessary infrastructure to service large scale inward productions thereby creating new jobs and more foreign direct investment.

The Olsberg SPI/Nordicity Report commissioned in the UK, with an introduction from the Chancellor of the Exchequer was published in February 2015 and appears to make a valuable contribution to the discussion. The Report said that for every £1 of film tax relief credit spent in the UK, £12.49 in additional Gross Value Added was created in the UK economy through direct and multiplier effects. This equated to a taxation return to the Exchequer of £3.74 in additional tax revenue for each pound of relief granted. The group is committed to commissioning a similar report for Ireland and would welcome the co-operation of the Department of Finance in such a review of the cost benefit analysis to facilitate the measuring of its effectiveness in the future.

The Group believes that the twin pillars to a successful film and television production industry in Ireland is an attractive fiscal incentive and a well-supported national screen agency. Providing adequate funding for indigenous productions is a crucial part of being able to offer the infrastructure to support larger incoming productions. Improvements to S481, particularly the lifting of the cap, should be considered in tandem with restoring adequate funding to the Irish Film Board in order to support indigenous productions.

## Schedule 1

### Section 481 Definition of “Producer Company” (extract)

‘producer company’, in relation to a film corporation tax credit specified in a film certificate, means a company that—

(b) commencing not later than the time the qualifying period commences, carries on a trade of producing films—

(i) on a commercial basis with a view to the realisation of profit, and

(ii) that are wholly or principally for exhibition to the public in cinemas or by means of broadcast,....

and

(e) has delivered to the Collector-General, on or before the specified return date, a return, in accordance with section 959I, in respect of—

(i) the accounting period referred to in paragraph (a) of the definition of ‘qualifying period’, or

(ii) each accounting period ending in the qualifying period, referred to in paragraph (b) of that definition,

as the case may be;

‘qualifying period’, in relation to a film corporation tax credit specified in a film certificate, means—

(a) the accounting period of the producer company, in respect of which the specified return date for the chargeable period, within the meaning of section 959A, immediately precedes the date the application referred to in subsection (2A)(a) was made, or

(b) where the accounting period referred to in paragraph (a) is a period of less than 12 months, the period—

(i) commencing on the date on which the most recently commenced accounting period, which commences on or before the date which is 12 months before the end of the accounting period referred to in paragraph (a) commences, and

(a) commences, and

(ii) ending on the date the accounting period referred to in paragraph (a) ends,

and references in subsection (3) to corporation tax and corporation tax paid shall be construed accordingly;”,

## Schedule 2

### Section 481 Definition of “Producer Company” (extract)

‘producer company’, in relation to a film corporation tax credit specified in a film certificate, means a company that—.....

(c) is not a company, or a company connected to a company—

(i) that is a broadcaster, or

(ii) in the case of—

(I) a company, whose business consists wholly or mainly, or

(II) a company connected to another company, where the aggregate of the activities carried on by the company and every company to which it is connected, consists wholly or mainly,

of transmitting films on the internet,

### Broadcasting Act 2009 Definition of “Broadcaster” (extract)

“broadcaster ” means a person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not);

“broadcasting service” means a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:

(a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or

(b) other audio and audiovisual services provided by way of the Internet;