



BELGIAN TAX SHELTER 2020





FOREWORD

The purpose of this brochure is to provide general information on the Tax Shelter system, based on the law of 12.05.2014 and of 26.05.2016 included in art. 194ter of the Income Tax Code 1992, and on the law of 25.12.2017 and the law of 06.05.2019 reforming the Corporate Tax.

Further details on how the system works are explained in the FAQ (Frequently Asked Questions) of 13.09.2017 and of 25.01.2018, published on the website www.fin.belgium.be.

For more specific questions regarding the concrete application of the Tax Shelter measures, you are advised to contact the Tax Shelter Office, or to introduce a request for an advance decision at the Office for Advance Decisions on tax matter (OAD).

All useful addresses are listed at the end of the brochure under the heading "CONTACTS".



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Design: Strategic Coordination and Communication Department

THE TRAILER

The well known Tax Shelter system has been successfully encouraging the production of audiovisual works in Belgium for more than fifteen years.

An important reform as regards the TAX SHELTER system has been implemented on January 1st 2015.

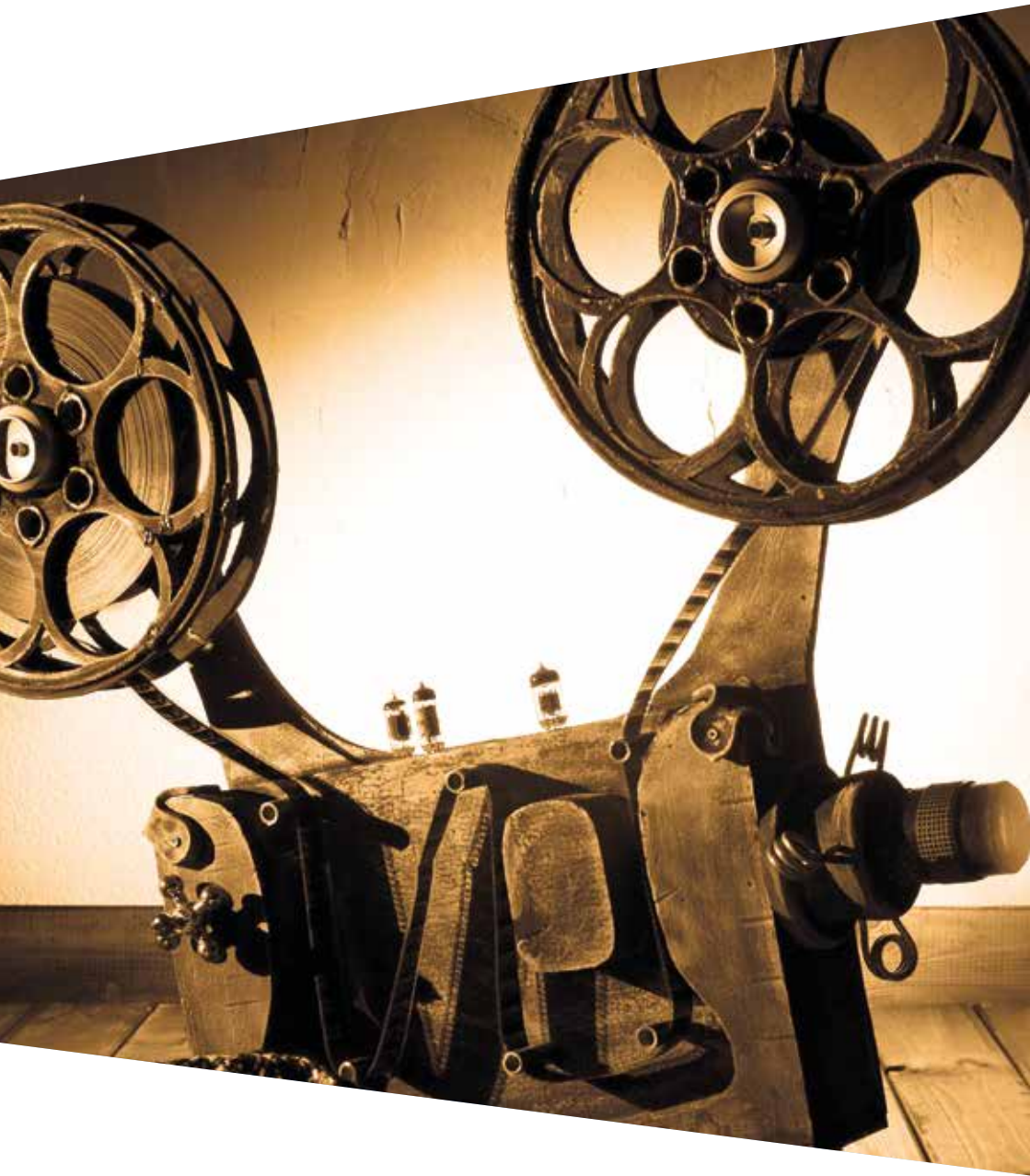
This reform has the following objectives :

- To improve the investor's security ;
- To increase the amounts actually devoted to the audiovisual production ;
- To better control the system in order to guarantee its durability.

The law as regards the Tax Shelter system is always stipulated in Article 194ter of the Income Tax Code 1992.

The Tax Shelter system is a tax incentive allowing the Belgian or foreign companies established in Belgium to invest in works intended for cinema or television and to obtain in return a tax deduction reducing the taxable profit.

The system is open to Belgian productions as well as qualifying international co-productions with Belgium.



THE WORKS

WHAT ARE THE ELIGIBLE WORKS ?

1. The European audiovisual works such as :

- a fiction, a documentary or an animation feature film intended for cinema,
- a short-length film, except for advertising films,
- a TV fiction feature film, if need be a television serial,
- a TV fiction feature or animated film,
- a TV series intended for children and youth, that is to say fiction feature series with an educational, cultural and news content for a target group of children and teenagers from 0 to 16 years,
- a documentary TV film,
- a web series or a documentary web
- films and documentaries made in virtual reality, intended for cinematographic exploitation in cinemas

They must be approved by the competent services of the French, Flemish or German-speaking Community as European works such as defined in the Directive of March 10th 2010 2010/13/EU called "Audiovisual Media Services Directive".

2. International productions in the following categories: feature film, documentary or animated film intended for cinema, provided that :

- either to fall within the scope of the Directive 2010/13/ EU "Audiovisual Media Services Directive"
- or to fall within the scope of a bilateral agreement as regards the co-production concluded by Belgium (or one of the country's Communities) with another State.

THE ACTORS

1. The investor :

The eligible **investor** is the resident company or the Belgian establishment of a non-resident company other than :

- an eligible production company such as mentioned in the second point (or a company which is linked to this company) ; or
- a broadcasting company,
- which signs a framework agreement pursuant to which it commits itself to pay sums in order to receive a tax shelter certificate ;

2. The Production Company :

The eligible **production company** is the resident company or the Belgian establishment of a non-resident company other than :

- a broadcasting company or a company linked to Belgian or foreign broadcasting companies (except cases foreseen in the law)
- whose main objective is the development and the production of audiovisuals works and
- has been approved as such by the Minister of Finance

3. The Intermediary :

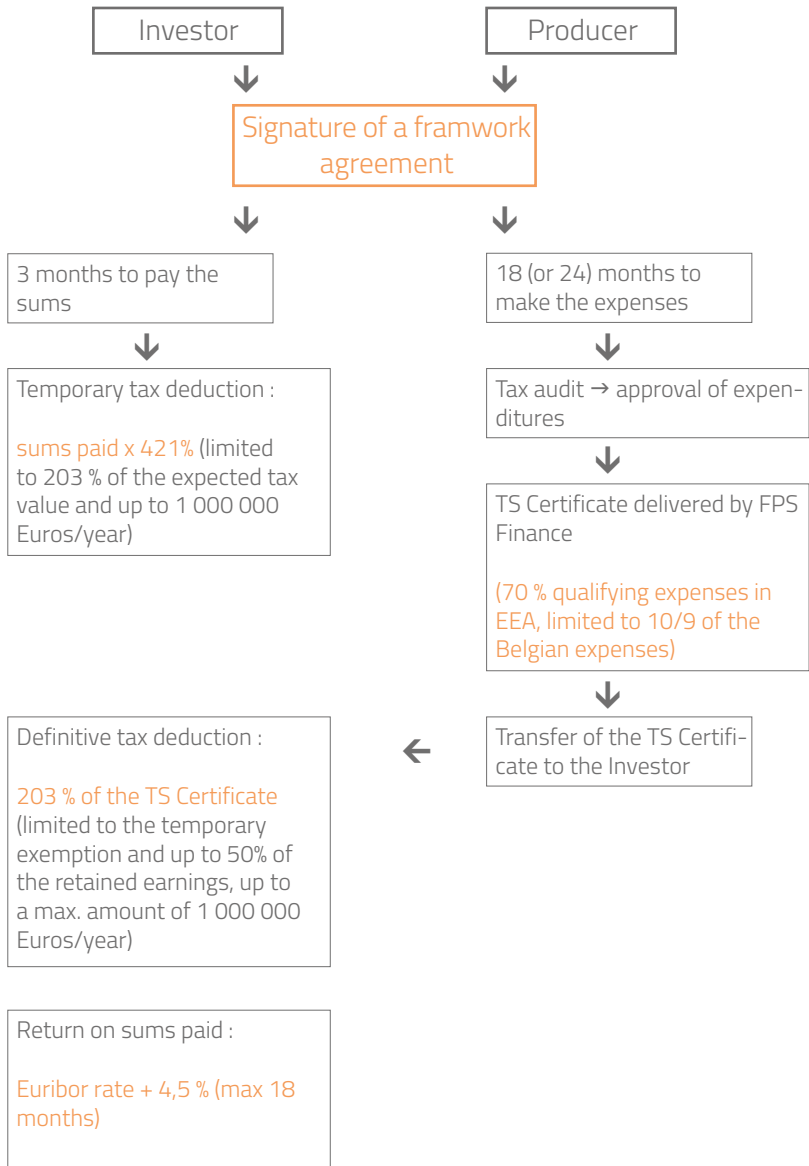
The eligible **intermediary** is a natural or legal person :

- who intervenes within the framework of the negotiation and signature of the framework agreement so that a tax shelter certificate can be delivered, in return for a remuneration or advantage,
- that person is not an eligible production company and neither an eligible investor
- and has been approved as intermediary by the Minister of Finance



THE SCREENPLAY

HOW DOES IT WORK ?





HOLLYWOOD

PRODUCTION _____

DIRECTOR _____



I. FOR THE PRODUCTION COMPANY

System based on a framework agreement, production expenses and a Tax Shelter certificate.

1. THE FRAMEWORK AGREEMENT :

This is a legal Agreement concluded between an investor and a production company, sometimes with an intermediary's participation. In this agreement the investor commits himself to pay a sum to the production company in order to finance the production expenses of an eligible work. The production company commits itself according to the law, to use this sum for its expenses so that it can obtain a Tax Shelter certificate. This certificate allows the investor to receive their tax advantage.

The framework agreement must be notified within the month after its signature to the Federal Public Service Finance by the production company or the intermediary.

It must include mentions such as : name and object of the production company and the investor, identification of the work, the expenses budget, the agreed remuneration method, ...

2. THE PRODUCTION EXPENSES

2.1. Qualifying production and exploitation expenses in the European Economic Area : expenses linked to the production and carried out in the European Economic Area as regards the production and exploitation of an eligible work ;

2.2. Eligible Belgian expenses :

- charges constituting taxable professional income for the beneficiary as regards the personal income tax, the corporate income tax or the non-resident income tax, pursuant to the standard taxation system
- carried out within a maximum time limit of 18 months since the date on which the framework agreement has been signed (maximum time limit of 24 months for animated films)
- At least 70 per cent of these expenses must be expenses directly linked to the production (direct expenses)
- At most 30 per cent of these expenses can be expenses not directly linked to the production (indirect expenses)

2.2.1. Expenses directly linked to the production - It concerns expenses which are linked to the creative and technical production of the eligible work, such as :

- the charges for the artistic rights except for charges as regards the development of the screenplay which date from the period preceding the framework agreement ;
- the salaries and other allowances of the staff or the allowances of the independent service providers ;
- charges for the payment of actors, musicians and other artistic posts as far as they contribute to the performance and the direction of the eligible work ;
- the social contributions relating to the salaries and charges mentioned in the second and third points ;
- the charges as regards the settings, the props, the costumes and attributes, which are visible on the screen ;
- the transport and accommodation costs restricted to an amount corresponding to 25 per cent of the charges mentioned in the second and third points ;

- the charges as regards the equipment and other technical means ;
- the charges as regards the laboratory and the master's creation ;
- the insurance policy charges directly linked to the production ;
- the charges as regards the publishing and the publicity specific to the producer's work: press file's creation, basic website, editing of a trailer and the premiere of the film ;
- the remuneration paid to the production manager, the post production coordinator and the line producer.



2.2.2. Expenses not directly linked to the production : among others the following expenses :

- Expenses as regards the administrative and financial organisation as well as the assistance to the audiovisual production ;
- the financial costs and the commission paid as regards the recruitment of enterprises investing in a framework agreement intended for the production of an audiovisual work ;
- the charges as regards the financing of the eligible work or the amounts paid on the basis of a framework agreement, including the charges of legal assistance, the lawyers' fees, the guarantee fees, the administrative fees, the commissions and the performance charges ;
- the invoices from the eligible investor, with the exclusion of the invoices from the audiovisual facility companies, when the goods or services mentioned in the invoice are directly linked to the production and insofar as the amount of these invoices corresponds to the price which would have been paid if the companies taking part in this project were totally independent from each other ;
- the distribution costs which are payable by the production company.



3. THE TAX SHELTER CERTIFICATE :

A **tax certificate** is issued by the FPS Finance at the request of the production company on the basis of a **framework agreement** and **expenses** carried out for the production and exploitation of the work.

Tax value of the Tax Shelter certificate :

- 70 per cent of qualifying production and exploitation expenses, carried out in the European Economic Area, insofar it concerns expenses directly linked to the production of the work,
- with a maximum amount equal to 10/9 of the amount of the production and exploitation expenses carried out in Belgium, whose 70 per cent are expenses directly linked to the production.

Limits as regards the tax value of the Tax Shelter certificate :

If the total amount of Belgian expenses, or the total amount of direct Belgian expenses are not reached, the tax value is proportionally reduced.

The total amount of the tax values as regards the Tax Shelter certificates issued for a work cannot exceed 15 000 000 Euros.



4. OTHER OBLIGATIONS OF THE PRODUCTION COMPANY OR THE INTERMEDIARY

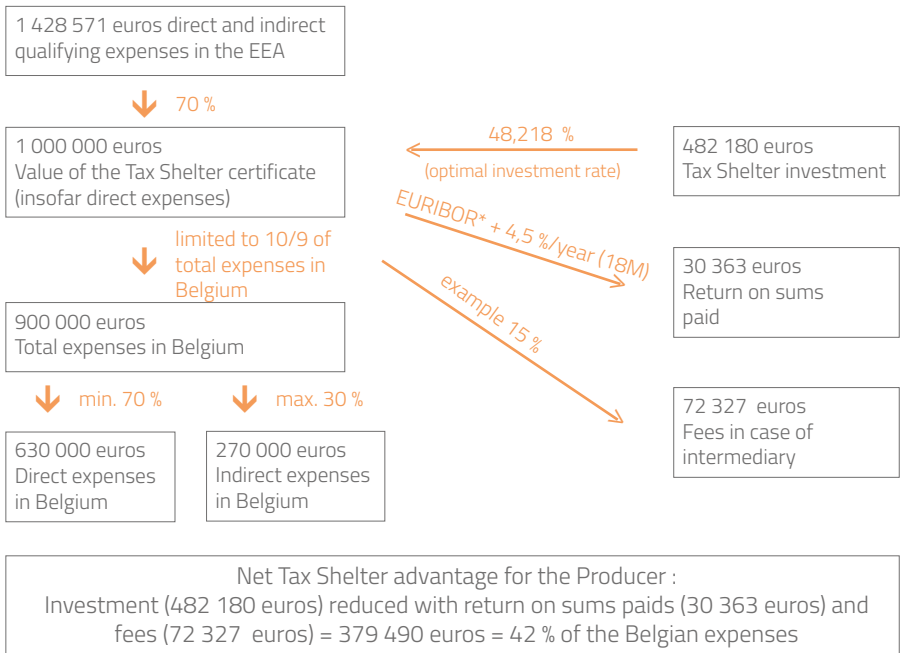
Being approved pursuant to the Royal Decree of December 19th 2014 (Belgian Official Journal of December 31st 2014).

To observe the law of June 16th 2006 concerning the public offers for undertaking negotiations on regulated markets (see the FSMA's prospectus if need be) as regards the search for investors.

To mention the final credits the support granted thanks to the Belgian Tax Shelter system.

5. WHAT IS THE ADVANTAGE FOR THE PRODUCER ?

Example : Production budget with 1 428 571 euros of qualifying expenses (direct and indirect in the EEA)



* EURIBOR rate 12M - Ref 2nd semester 2019

II. FOR THE INVESTOR

The investor prefinances the producer's expenses ;

- reduces temporarily his/her taxable income according to the sums paid within the three months after the signature of the agreement ;
- receives a remuneration for the sums paid calculated on the basis of EURIBOR's rate- 12 months + 450 basis points ;
- receives a Tax Shelter certificate, which allows him/her to change the temporary cut of his/her taxable income into a permanent cut.

1. TAX EXEMPTION

1.1. Temporary exemption on the basis of the sums paid :

- taxable benefit temporarily exempted for the taxable period, during which the framework agreement is signed,
- up to 421 % of the sums that he/she commits to pay within the three months after the signature of the framework agreement,
- restricted to 203 % of the estimated tax value of the Tax Shelter certificate (taxable surplus if need be, with implementation of interest for late payment),
- and limited to 50 % of the reserved benefits during the taxable period, with a limit of 1 000 000 euros per taxable period



Requirements as regards the granting and maintenance of the exemption :

- The exempted benefits must be entered in a separate account in the liability and cannot be considered as a basis for the calculation of remuneration or any other allocation until the date on which the Tax Shelter certificate is issued by the production company or the intermediary to the investor ;
- The total amount of the sums really paid pursuant to framework agreements by all the investors for the same work cannot exceed 50 per cent of the total amount of the budget of expenses as regards this work and must be used for the implementation of the budget ;

1.2. Final exemption on the basis of the Tax Shelter certificate :

- The exemption only becomes permanent if the Tax Shelter certificate is issued at the latest on December 31st of the fourth year following the year during which the framework agreement has been signed. Otherwise the temporarily exempted benefit becomes taxable for the last taxable period during which the Tax Shelter certificate could be validly issued.
- If a Tax Shelter certificate is issued for a lower amount than the amount initially planned, the exemption is proportionally cancelled + possibly interest for late payment.
- For the taxable period during which he/she claims the final exemption, the investor must enclose in his/her tax return a copy of the Tax Shelter certificate received from the Tax Shelter Office.

1.3. Putting off the exemption :

If there are no benefits or if they are insufficient during a taxable period, there is a possibility to put off the exemption until the assessment year linked to the fourth taxable period following the year during which the framework agreement has been concluded.

2. YIELD ON SUMS PAID

The production company can grant the investor :

- a sum calculated on the basis of the instalments really carried out by the investor within the framework of the framework agreement
- for a period from the day of the first instalment until the day on which the tax shelter certificate is delivered, but with a maximum of 18 months
- on the basis of a rate not exceeding the average of the **EURIBOR rate- 12 months** of the last day of each month of the six-month period preceding the **instalment and increased by 450 basis points**.





3. IMPORTANT REMARKS

No economic or financial advantage can be granted to the investor (except commercial gifts with a low value). The guarantee that the work will be completed and the delivery of the Tax Shelter certificate are not considered as a economic or financial advantage.

The investor cannot have held or cannot hold directly or not rights as regards the work in which he/she invests.

The charges and losses, capital losses, provisions and provisions for depreciation as regards the delivery of the Tax Shelter certificate are not deductible or exempted.

A MAGICAL STORY :

A WIN-WIN-WIN SITUATION

For the Production Company :

- The financing of an important part of its eligible production expenses

For the Investor :

- A return on tax saving of 5,25 p.c./year
- A return on sum paid at Euribor 12 Months + 4,5 p.c./ year (max 18 months)
- A secure risk

For the Belgian economy :

- An expenditure to be made by the producer in Belgium
- An increase of economic activity, with the creation of direct and indirect jobs in the audiovisual sector ...

CONTACTS

1. For more information

Brochure : Belgian Tax Shelter - 2020

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Coordination International Relations
North Galaxy
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B-1030 Brussels
Tel. : +32 (0) 257 938 69
E-mail : taxinvest@minfin.fed.be
Web : www.fin.belgium.be

2. For a request of approval, sending of framework agreement, Tax Shelter certificate, etc.

Federal Public Service Finance
Tax Shelter Office
Boulevard du Jardin Botanique 50 PO Box 3353
B-1000 Brussels
Tel. : +32 (0) 257 722 30
E-mail : taxshelter@minfin.fed.be
Web : www.fin.belgium.be

3. For a request for ruling

Federal Public Service Finance
Office for Advance Decisions
Rue de la Loi 24 (Parliament Corner)
B - 1000 Brussels
Tel. : +32 (0) 257 938 35
E-mail: dvbsda@minfin.fed.be
Web : www.ruling.be



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