

## Section 481 Film Corporation Tax Credit

### Part 15-02-04

This document should be read in conjunction with section 481 of the Taxes Consolidation Act, 1997 (as amended by Finance Act 2018, 2020 and 2021).

Document last reviewed January 2024

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This Tax and Duty Manual (TDM) should be read in conjunction with:

- Regulation 119 of 2019 (Film Regulations, 2019)
- Regulation 358 of 2019 (Film (Regional Film Development Uplift) Amendment Regulations 2019)
- [TDM Part 04-10-01](#) (on travel expenses),
- [TDM Part 04-06-17](#) (on food and accommodation),
- [TDM Part 04-06-23](#) (on family wages) and
- [TDM Part 05-01-06](#) (travel and subsistence for office holders and employees)

Section 481 Relief is subject to EU Commission regulations in the granting of State Aid, as such reference is made to State Aid criteria within this guidance, with definitions taken directly from EU Regulations governing State Aid.

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# 1 Introduction

The purpose of this manual is to provide guidance on the operation of the film corporation tax credit provided for in section 481, Taxes Consolidation Act, 1997 (TCA), supplemented by the Film Regulations 2019 (the Regulations) and the Film (Regional Film Development Uplift) Amendment Regulations 2019. It sets out the relevant principles for determining the value of the credit, explains some of the key terms and details the transitional arrangements from the pre-Finance Act 2018 Revenue certification model to the post Finance Act 2018 self-assessment model for new films and films already in progress.

The relief is available in respect of qualifying films, to film producer companies on particular expenditure provided certain conditions, as laid out in statute and regulations, and as specified in the film certificate, are met.

The relief is given at 32% of the lowest of:

- a) eligible expenditure;
- b) 80% of the total cost of production of the film; or
- c) €70,000,000;

and may be claimed against a producer company's corporation tax liabilities. In the event that the relief due is greater than any tax due by a producer company<sup>1</sup> in respect of a qualifying period, then a payment of the excess will be made by the Revenue Commissioners (Revenue).

Relief is given at an elevated percentage in respect of films primarily produced in an assisted region<sup>2</sup>. This is referred to as the "Regional Film Development Uplift" and is explored in more detail at 2.4.

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<sup>1</sup> See 5.4 for further information on what constitutes a "producer company".

<sup>2</sup> An 'assisted region' is an area specified in paragraph (1) of the Annex to the Commission Decision C(2014)3153

## 2 How to make a claim

### 2.1 Finance Act 2018 changes

Following commencement of the Finance Act 2018<sup>3</sup>, and in contrast to the former position, Revenue is no longer directly involved in the application process and instead, claims under section 481 are made on a self-assessment basis and are subject to [Revenue's Code of Practice for Revenue Audit and other Compliance Interventions](#). This Code is a set of guidelines for outlining the processes that must be followed by Revenue, taxpayers and tax practitioners when Revenue is conducting enquiries.

Under the self-assessment basis, the administration of the film corporation tax credit has been separated into two steps:

1. The first step involves the certification of a film as a qualifying film by the Minister for Culture, Heritage and the Gaeltacht (the Minister).
2. The second step involves the producer company making a claim for credit relief through Revenue's Online Service (ROS).

A 'qualifying film' is a film for which the Minister has issued a cultural certificate under section 481(2).

In anticipation of the move to self-assessment with effect from 27 March 2019, section 26 of Finance Act, 2018 provided for transitional arrangements in respect of applications already in progress. The procedures to be followed in respect of applications subject to the transitional arrangements and the self-assessment system are set out below.

### 2.2 Transitional arrangements – how the changes affect current applications

#### 2.2.1 Revenue certification model applies

Under the former Revenue certification model, on receipt of an application for credit relief from the applicant, Revenue liaised with the Department of Culture, Heritage and the Gaeltacht (DCHG) to obtain a letter of "culture authorisation". Once a letter of authorisation had been received by Revenue from DCHG the application was verified and processed by Revenue. Depending on the circumstances of the claim, Revenue would issue an Approval in Principle (AIP) letter, a non-payment certificate or a payment certificate (see 5.9 for more information). Relief was then claimed by amending the corporation tax return (Form CT1).

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<sup>3</sup> Finance Act 2018 also saw the introduction of the Regional Film Development Uplift dealt with at 2.4 of this manual.

Applications relating to films that have been 'completed'<sup>4</sup>, prior to 27 March 2019, continue to be dealt with under the Revenue certification model i.e. the projects will receive a final Revenue payment certificate enabling the producer company to claim credit relief, to the value of either 100% or the remaining balance (see 2.3.2) through the Form CT1.

## 2.2.2 New system of self-assessment applies

Self-assessment is explored in more detail at 2.3. The following includes the scenarios where the new system applies to applications already in progress.

- 2.2.2.1 Where an application had been made to Revenue prior to 27 March 2019, culture authorisation had been received, Revenue issued a payment or a non-payment certificate but the film is not yet 'completed' then, regardless of whether a claim for payment was made on foot of certificate, the certificate is now treated as a 'cultural certificate' (see 2.3.1 for further details). Any future claims for credit relief should be made on a self-assessment basis.
- 2.2.2.2 Where an application has received authorisation from the Minister, no Revenue certificate has been issued by Revenue, but the application may have received the AIP letter, the Minister's authorisation is treated as a cultural certificate and the application falls to self-assessment.
- 2.2.2.3 Where an application has not received authorisation from the Minister before 27 March 2019, the application will be assessed by the DCHG and any subsequent claims pertaining to the application will be on a self-assessment basis.

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<sup>4</sup> Please see 5.7 for the meaning of 'completion'.

## 2.3 New applications - applying under the self-assessment system

### 2.3.1 Step 1: cultural certificate application [section 481(2)]

In the case of a new application to be made under the self-assessment system, as outlined at 2.1 above, the first step involves a producer company applying to the Minister in relation to a film project for a certificate stating that the film is a qualifying film for the purpose of the credit (the “cultural certificate”) at least 21 working days prior to the commencement of the main body of the Irish production.

The process of application for a certificate is set out by the DCHG in their [guidance note](#). An application for a cultural certificate must be made directly to the Minister using the [form](#) set out by the DCHG and accompanied by such information and supporting documentation, as prescribed in the Regulations or required in the application form.

A cultural certificate is a statement that a film is a qualifying film for the purposes of the credit and may entitle the producer company to make a claim for the credit. A cultural certificate issued by the Minister will place conditions on:

- a) the producer company;
- b) key personnel on the project;
- c) the nature of the acknowledgement required in the opening or closing credits of the film; and
- d) certain requirements in relation to the skills development of personnel on the project.

Further details regarding these conditions is available at 5.10.

A cultural certificate is issued on the basis of the information supplied during the application process. Any material change in the information supplied that may arise as the project progresses must be notified to the Minister. If the information on which the certificate is based is incorrect, misleading or incomplete, or the Minister is not notified of material changes to the production, the certificate may not be valid for the purposes of making a claim for the film corporation tax credit.

The following flowchart gives an overview of the certification process:





Figure 1: Film Certification Process

#### DCHG certification process

The cultural certificate [s.481(2) and (2C)(c) and Regulations 3 to 6]

#### 2.3.2 Step 2: making a claim through Revenue [section 481(2G)(b)]

Once a producer company has received a cultural certificate and complies with the other conditions set out in section 481, it may claim the film corporation tax credit in its Form CT1. Revenue may request supporting documentation to substantiate the claim at this time. The producer company is required to have all records necessary to support their claim for relief available for consideration by Revenue at the point of making the claim (see Regulations 2-5 and 4.8 for further detail on books and records).

A claim for the credit can be made by an applicant by amending the Form CT1, for the relevant accounting period, through ROS, either:

- a) in full, based on actual expenditure within 6 months of completion (Regulation 9) of the film; or
- b) a claim for up to 90% of the credit based on budgeted expenditure, can be made during the course of the production subject to certain conditions, with the balance claimed, in accordance with Regulation 9, within 6 months of completion (please see 5.7 regarding the meaning of 'completion').

"Budgeted expenditure" refers to an amount expected to be expended on the production of the film, that qualifies for relief as either the "total cost of production" or as "eligible expenditure" (or amounts up to €70,000,000 where relevant).

In accordance with Regulation 7(2), the claim based on budgeted expenditure is conditional upon evidence being available:

- a) by way of a certificate, to demonstrate that funding agreements have been executed and the attaching conditions have been satisfied; or

- b) that shows an amount of not less than 68% of the amount on which the film corporation tax credit is based has been lodged with a financial institution by a qualifying company;
- c) of a broken-down budget showing eligible expenditure and where the eligible expenditure is greater than 50% of the total cost of production, the total cost of production; and
- d) of signed production, financing, distribution, or sale of the film agreements.

### 2.3.3 Accounting period in respect of which relief can be claimed

The relief can be claimed after a Minister's cultural certificate has been granted once all other requirements of the credit are met. The relief is availed of by reducing the tax due for the qualifying period by the value of the credit.

The "qualifying period" is the accounting period the specified return date of which immediately precedes the claim. Where this accounting period is less than twelve months, the qualifying period includes the previous accounting period that commences on a date 12 months or more before the end of the short accounting period. Where the qualifying period is made up of two (or more) accounting periods the corporation tax of the earlier period is reduced in priority to the later period.

The claim is made by amending the Corporation tax return, for which a Form CT1 has been completed and filed. It is not possible to make a claim on a return that has been filed early until the specified return date has also passed. However, it would be possible in such a scenario to make a claim on the previous return which has been filed and for which the specified return date has passed. Some examples are set out below to illustrate this principle.

#### **Example 1**

Producer Company A received a cultural certificate on 1 February 2019. It prepares its accounts for the accounting period to 31 December each year.

The Form CT1 in respect of the accounting period to 31 December 2018 is due to be filed on or before 23 September 2019. Therefore, the claim cannot be made by amending the Form CT1 for the accounting period 31 December 2018 for the certification received on 1 February 2019 until after the 23 September filing date.

The Form CT1 in respect of the period 31 December 2017 was due and filed on 23 September 2018. Producer Company A can amend this Form CT1 to claim relief at any time after certification once all the other requirements of the credit are met.

**Example 2**

Producer Company B received a cultural certificate on 1 October 2019. The producer company prepares its accounts for the accounting period 1 June to 31 May each year. In 2018 it opts for a short accounting period from 1 June to 31 December 2018 after which it intends to prepare accounts from 1 January to 31 December annually.

While the Form CT1 for the accounting period to 31 December 2018 was filed on 23 September 2019 this is for a short accounting period. Therefore the qualifying period includes the accounting period 1 June 2017 to 31 May 2018 and the amendment should be made in the return for the earlier accounting period.

The Form CT1 in respect of the period to 31 May 2018 was due and filed on 23 February 2019. Producer Company B can amend the Form CT1 in respect of the accounting period 31 May 2018 at any time following certification once all other requirements of the credit are met.

**Example 3**

Producer Company C received a cultural certificate on 1 October 2019. The producer company prepares its accounts for the accounting period to 30 June each year.

The Form CT1 for the accounting period for 30 June 2019 is due to be filed by 23 March 2020 but Producer Company C files this return on 1 September 2019 in advance of the receipt of the cultural certificate.

While the Form CT1 has been completed and filed in respect of the accounting period ending 30 June 2019, Producer Company C cannot amend the Form CT1 for the period to 30 June 2019 to claim the relief for the film until both the cultural certificate has been received and the return filing date of 23 March 2020 has passed.

**Example 4**

Producer Company D received a cultural certificate on 31 December 2019. The producer company prepares its accounts for the accounting period to 30 June each year.

The Form CT1 for 30 June 2019 is due to be filed by 23 March 2020, however, Producer Company C files this return early, in January 2020.

The Form CT1 for the accounting period to 30 June 2019 cannot be amended for the cultural certification received on the 31 December 2019 until the specified return date has passed.

However, the Form CT1 in respect of the accounting period to 30 June 2018 was due and filed on 23 March 2019. Producer Company D can amend the Form CT1 for the accounting period 30 June 2018 and claim the relief.

**2.3.4 Documentation**

Prior to making a claim under self-assessment, an applicant is required to have documentation in place in accordance with Schedules 2-5 of the Regulations, that will be made available to Revenue upon its request.

**2.3.5 Excess credit [section 481(3)(b)]**

In the event that the credit claimed exceeds the corporation tax liabilities for the qualifying period and the relevant producer company has no other outstanding taxes, the excess amount can be paid to the producer company.

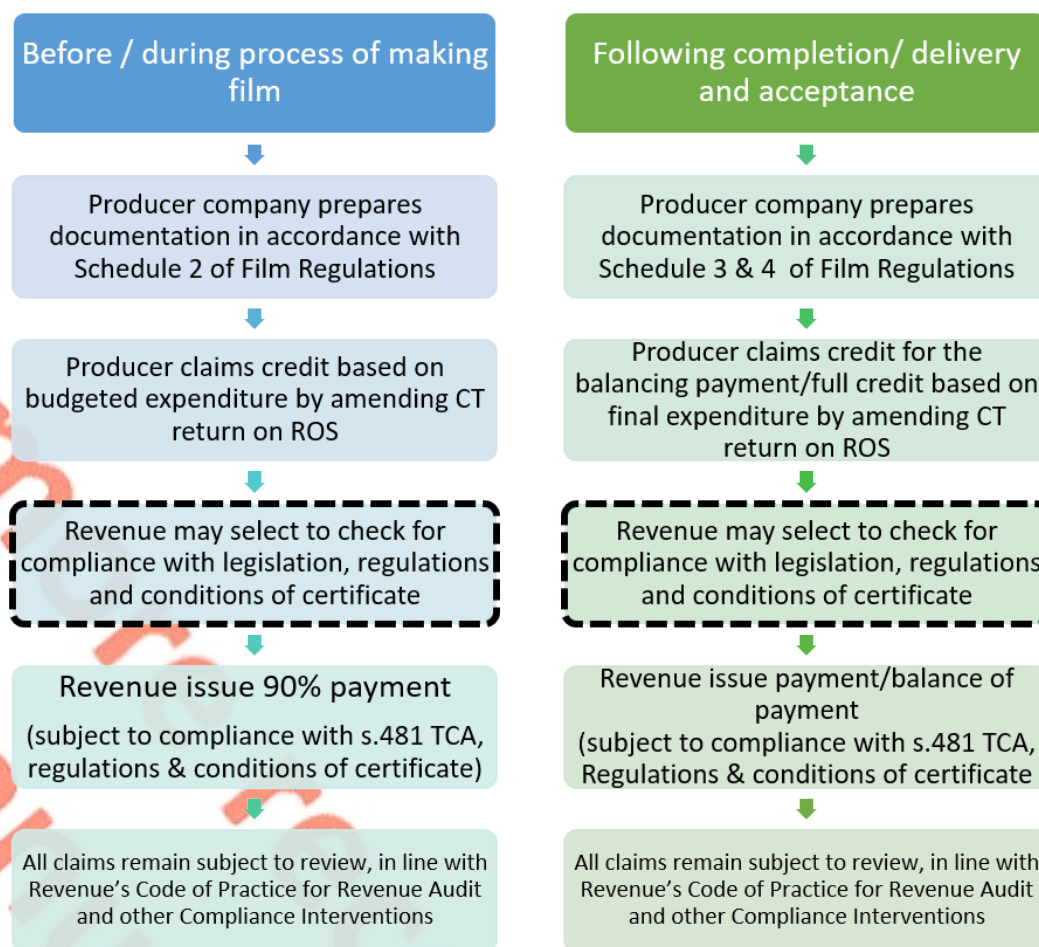


Figure 2: Application Process

## 2.4 Regional Film Development Uplift [section 481(1)(b) and Regional Film Development Uplift Regulations]

Where the Irish production of a film is primarily produced in an assisted region<sup>5</sup>, and can meet certain requirements in relation to training in that locale, a producer company may apply to the Minister for the cultural certificate to specify that the Regional Film Development Uplift shall apply to the film. The uplift operates as an increased rate of film corporation tax credit as follows:

- for claims made on or before 31 December 2021<sup>6</sup> the rate of the credit is 37%,
- for claims made from 1 January to 31 December 2022 inclusive the rate is 35%,
- for claims made from 1 January to 31 December 2023 inclusive the rate is 34%,
- for claims made after this date the rate reverts to 32%.

<sup>5</sup> An 'assisted region' is an area specified in paragraph (1) of the Annex to the Commission Decision C(2014)3153

<sup>6</sup> FA 2020 extended the period for which the credit may be claimed at 37% to 31 December 2021 then tapering as set out above.

Guidance in relation to the Regional Film Development Uplift can be found in the DCHG's guidance note on their website [here](#). Revenue's manual, in all other respects, applies equally to films produced in an assisted region as it does to all other films subject to the normal conditions.

### 3 Calculating the credit

#### 3.1 Costs relief may be claimed against [section 481(1) and the Regulations]

To arrive at the value of expenditure that relief may be claimed against, an analysis of the expenditure must be carried out to determine whether it falls within the parameters of what is permitted by legislation.

A brief synopsis of "qualifying expenditure", the "total cost of production" and "eligible expenditure" is set out below, but further information on the meaning of each phrase is provided at section 5 of this manual.

- An analysis of the total amount of expenditure, incurred to produce the film in both the State and globally, must be carried out to determine what may be deemed "qualifying expenditure" in accordance with Part 7 of the Regulations
- An analysis of the "qualifying expenditure" incurred both globally and in the State, "wholly, exclusively and necessarily" in the production of the film, must be carried out to determine the "total cost of production".
- An analysis of the "total cost of production" incurred in the State only, must be carried out with regard to individuals employed in the production of the film, individuals providing labour only services in the production of the film and the provision of certain goods, services and facilities, to determine the "eligible expenditure" in accordance with Part 8 of the Regulations.

**Qualifying expenditure:** total global expenditure reduced by costs not allowed under Part 7, Film Regulations;

**Total cost of production:** qualifying expenditure less costs not wholly, exclusively and necessarily incurred on production of the film;

**Eligible expenditure:** total cost of production less costs expended outside the State and, of the costs expended in the State, less those costs not incurred on employees, labour only services or certain goods, services or facilities under Part 8, Regulations.

To be entitled to relief, “de minimis” levels apply. The production cannot qualify for the incentive if the value of the total cost of the production is less than €250,000 or if the “eligible expenditure” is less than €125,000. Once the total cost of production and eligible expenditure for a qualifying film have been identified it is then possible to calculate the value of the credit. As set out at section 1, a claim for the film corporation tax credit is calculated as 32% of the lowest of:

- a) eligible expenditure;
- b) 80% of the total cost of production of the film; or
- c) €70,000,000.

### 3.2 Examples of qualifying and eligible expenditure

The following examples are provided to show the process of identifying which costs may be included in calculating the different levels of expenditure for the purposes of section 481.

#### Example 5

Irish producer company AB is producing a film almost entirely based in Ireland. Company AB must first review the production budget with reference to Part 7 of the Regulations to ascertain the qualifying expenditure. This will involve identifying and removing non-qualifying fees, costs after delivery, publicity costs, etc.

Company AB must next reduce the qualifying expenditure down to the total cost of production. Each item of qualifying expenditure must be considered under the wholly, exclusively and necessarily rule in the context of the qualifying film. For example, the purchase of specific period costumes to make a period-set film will meet the wholly, exclusively and necessarily test.

Once the wholly, exclusively and necessarily test has been applied to the qualifying expenditure, this results in the total cost of production which can be used in calculating the credit with reference to the limits. A territorial test must be applied to identify the eligible expenditure – i.e. that portion of the total cost of production which is incurred in the State subject to the requirements regarding employees and certain goods, services and facilities (please see 5.3).

Company AB can now calculate its credit as 32% of the lowest of:

- a) eligible expenditure;
- b) 80% of the total cost of production of the film; or
- c) €70,000,000.

**Example 6**

Irish producer company BC is commissioned by a foreign broadcaster to make a television series. As the series is being produced as a service contract it will be co-produced by the commissioning company with a significant level of costs expended outside the State. Revenue may require sight of the global budget where it is claimed that the eligible expenditure is greater than 50% of the total cost of production (or global budget) under Regulation 7(2)(c).

First, Company BC must review the total agreed budget and reduce it by any costs excluded under Regulations 11 & 12 of Part 7 to identify the qualifying expenditure. Next, they must review the budget and, using the wholly, exclusively and necessarily test, identify any costs that must be removed in order to calculate the total cost of production. Any costs not incurred in the State should then be identified to calculate the eligible expenditure in accordance with Part 8 as this figure will be used in conjunction with the total cost of production to calculate the how much of the eligible expenditure may be used to calculate the credit.

### 3.3 Common queries - establishing value of costs

As outlined in more detail at section 4.8, a producer company should have records in place to substantiate any claim for credit relief. This ensures that in the event of a Revenue compliance intervention, evidence is available to support the taxpayer's claim to relief that the costs were "wholly, exclusively and necessarily" incurred to produce the film.

#### 3.3.1 Costs recharged by the producer company to the qualifying company

Section 481 specifies that a special purpose production company, referred to as a qualifying company, is set up for each film (see 5.5). The legislation requires that the costs be incurred by the qualifying company. Revenue acknowledges that, in certain circumstances, it may be unavoidable that the producer company incurs the cost on behalf of the qualifying company. In this event, Revenue will accept bona fide costs incurred by the producer company being re-charged to the qualifying company and forming part of the producer company's claim where the expense qualifies for relief and the necessary records are available to evidence that. In determining whether costs are bona fide regard should be had to the "wholly, exclusively and necessarily" rule. Such costs may include:



- A direct re-charge of an expense incurred by the producer company on behalf of the qualifying company. This may occur, for example, where the producer company hires a sound stage for a number of days and charges it down to the qualifying company.
- A re-charge of a portion of an expense incurred by the producer company. This may occur, for example, where producer company staff are used for a qualifying film on a part-time basis. The method of apportionment should be substantiated and documented.

Different patterns of expenditure will be seen in different parts of the industry. For example, in animation and VFX the majority of the costs charged to the qualifying company will be a portion of ongoing costs incurred by the producer company, whereas for live action films more of the costs will be one-off items that can be incurred directly by the qualifying company. Therefore, different issues will arise in relation to related party expense for different parts of the industry. Once the cost has been incurred “wholly, exclusively and necessarily” for the purposes of producing the film and satisfactory evidence can be presented to support the claim the cost should qualify for relief.

In determining the value to be attributed to costs charged by the producer company to the qualifying company regard should be had to the nature of the relationship, the fact that generally, the qualifying company is established by the producer company and that as a result they are related parties. In that regard, for amounts paid to company directors or shareholders, or persons connected with those directors or shareholders, reference should be made to the principles set out in Revenue’s TDM [Part 04-06-23 on Family Wages](#) as they will apply to these amounts.

### 3.3.2 Producer Fees

Production overheads and producer related fees are a common related-party transaction, typically associated with live action films, which should be substantiated. It is recognised that production companies have significant expertise in the area of production which is required to ensure qualifying films are developed, produced, completed and delivered to the exact requirements of commissioning entities.

“Eligible producer related fees” are fees paid for producer services carried out by the producer company and included as the total cost of production incurred by the qualifying company. These fees will be categorised in the budget as including “Producer”, “Co-Producer”, “Executive Producer” fees and “Production/Overhead” corporate fees.

Revenue will accept as reasonable, such expenditure, as forming part of the “eligible expenditure”, where such producer related fees relate to services, that:

- a) are typical or representative of what a producer operating in the relevant market segment would normally be expected to do (please see 5.11 for further details);
- b) the services are performed wholly, exclusively and necessarily for the purposes of the film production; and
- c) the fees fall within certain parameters as follows:
  - i. that the eligible producer related fees do not exceed 15% of the global budget where the eligible expenditure is in excess of 80% of the global budget; or
  - ii. that the eligible producer related fees do not exceed 10% of the global budget where the eligible expenditure is less than 80% of the global budget.

Where production companies have in-house expertise in other production areas, for example, Director, Legal Counsel, Head of Production, Writer, Script Editor, other Editorial, the production company is permitted to charge these individuals to the budget at cost-recovery rates only.

It should also be noted that the percentages indicated above are not intended to operate as a minimum-level fee rate for production services. Equally, the percentages may be higher where it can be substantiated. Regard should be had to the arm’s length principle in determining what the market rate would be. The arm’s length principle operates to attribute a price to a transaction at a level where it would be reasonable to consider that the transaction would have been entered into by independent parties.

In that regard, producer companies must ensure that, at all times, they are not in breach of section 481(2A)(f)(i) and the requirement for expenditure to be “wholly, exclusively and necessarily” is adhered to.

### 3.3.3 Cost included in certain contracts between producer company and third parties

As noted above, arrangements can differ across sectors within the film industry. While producer fees may typically be associated with live actions films, single, comprehensive, third party contracts which cover the entire production/piece of work may be a more common feature in respect of the animation industry or VFX.

In that regard, where there is an agreement with a third party, for example, where a producer company has been commissioned to produce a film, or part of a film, by a third party and the producer company engages a qualifying company, then the costs set out under the contract between the third party and the producer company may be re-charged to the qualifying company to enable it to claim the credit subject to the comments below.

Should the claim for film relief ever be subject to a Revenue compliance intervention, the contract may be accepted as a document evidencing the claim for relief. Subject to the other conditions, relating to allowable costs, being satisfied, this may be feasible where, for instance:

- the third party is such that it would be reasonable to assume that the arm's length principle<sup>7</sup> applies to any contract between it and the producer company;
- that any contract entered into with a producer company is comprehensive and detailed; and
- it can reasonably be presented as evidence that the specified costs are "wholly, exclusively and necessarily" incurred to produce the film.

### 3.3.4 Costs that will not qualify for relief

As outlined above for example, in the event of any Revenue compliance intervention, Revenue officers may consider that a contract between a well-established, independent, third party and the producer company provides reasonable evidence to support a claim for relief, subject to the condition that the costs being re-charged were "wholly, exclusively and necessarily" incurred. In other cases, more details may be required. In addition to items of expenditure that would not be considered "qualifying expenditure" or "eligible expenditure" in accordance with Parts 7 and 8 of the Regulations, costs that will not qualify include:

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<sup>7</sup> i.e. that the parties are non-related, independent entities dealing with each other at arm's length.

- Amounts that are re-charged to the qualifying company, but were not costs actually incurred by the producer company. These cannot qualify under the “wholly, exclusively and necessarily” rule as no costs were actually incurred. However, where the amount to be re-charged relates to use of an asset, for example, a set and that set is owned by the producer company and used in the production, then that cost may qualify for relief as capital expenditure, as described under 3.12.
- Amounts re-charged to the qualifying company that are in excess of the cost actually incurred by the producer company. A producer company may not claim relief on any amount recharged to the qualifying company in excess of the cost it actually incurred. Such inflated costs would not qualify under the “wholly, exclusively and necessarily” rule.

#### **Example 7 – leasing space**

If the qualifying company leases space from the producer company, the first question must be: how much is the space costing the producer company? The cost charged to the qualifying company should not generate an un-earned profit in the producer company. Therefore, if the producer company is leasing the space from a 3<sup>rd</sup> party, a portion of the cost of that lease (allocated on floor space) may be an appropriate amount to charge.

#### **Example 8 – employee costs**

A producer company has a number of full-time crew on its payroll, whose services are provided to each of its qualifying companies as required. In calculating the amount that can be charged for their services regard should be had to both the salary of each crew member, but also the costs associated with having full time employees (e.g. HR costs, hiring costs, training costs etc.) The value at which the crew are recharged should take account of the ongoing costs of employment.

### **3.4 Catering**

Reasonable on-site catering, away from the production office, which is available to all staff for the duration of a shoot, at a location, will be accepted as eligible expenditure. For smaller productions this may be the provision of a fully stocked fridge, rather than a catering truck. It is important to note that where a person is away from the production site

where the on-site catering is available the normal rules will apply to reimbursements (e.g. they must either be within the civil service rates, necessary and subject to PAYE or invoiced under a contract for services).

### 3.5 Travel and subsistence expenses - employees

The reimbursement of travel and subsistence expenses to employees involved in the production of the film, where those reimbursements are in line with civil service rates (refer to Tax and Duty Manual (TDM) [Part 05-01-06](#)), will in most cases be accepted as incurred wholly and exclusively in the production of the film. This covers both “per diem” (i.e. daily) expenses and re-charges of vouched expenses. Generally, reimbursements in excess of the allowed amounts will not be included as expenditure upon which credit relief may be claimed.

However, where such amounts are subject to PAYE and they are wholly, exclusively and necessarily incurred in the production of the film they may be accepted as forming part of the total cost of production. Revenue’s manuals listed below should be consulted.

[TDM Part 04-10-01](#) (on travel expenses),

[TDM Part 04-06-17](#) (on food and accommodation),

[TDM Part 04-06-23](#) (on family wages) and

[TDM Part 05-01-06](#) (travel and subsistence for office holders and employees)

### 3.6 Travel and subsistence expenses - Self employed

Where the qualifying company reimburses individuals other than employees for travel and subsistence, that reimbursement must be made pursuant to the individual’s contract for services and any such amount should be included on an invoice from that individual to the qualifying company. Such invoices should provide clear details of the expenses in respect of which the reimbursement is sought (for example so that it is possible for the qualifying company to determine whether or not the expense relates to goods / services acquired from an Irish supplier).

### 3.7 Others

Amounts paid in respect of individuals (e.g. flights to Ireland for spouses, children or specific personnel providing services to an actor) who are not providing any service to the qualifying company directly will not form part of the total cost of production.

### 3.8 Expense Items

Care should be taken in respect of taxi costs that the use of taxis is wholly, exclusively and necessarily incurred on the production of the film. Where taxis are used in a manner that would not give rise to a benefit-in-kind (BIK) on an employee, then it is likely that the cost can be included within eligible expenditure. Details of passenger name, from/to destination, amount, date and purpose of each trip should be recorded where taxis are reimbursed.

Receipts are required to substantiate all items of expenditure including petty cash.

### 3.9 Entertainment and hospitality

Staff entertainment costs, such as office parties, wrap parties, gratuities, flowers or gifts, are not wholly and exclusively incurred in the production of the film. They therefore do not qualify as part of the total cost of production.

### 3.10 Publicity [Regulation 12(a)]

Publicity and launch parties cannot relate to the production of the film, meaning that costs associated with these cannot form part of the total cost of production. Equally, web presence and social media campaigns are not eligible expenditure. Cinema hire, to show the film, is not a cost of production but it is accepted that reasonable cinema hire for test screenings, prior to completion of a film, is a cost of production.

### 3.11 Gifts/ Gratuities and voluntary payments

Gifts and gratuities will not form part of the total cost of production. Any amount paid by the qualifying company which it did not have to pay – a voluntary payment – will not be eligible expenditure. Fees linked to production but are not necessary to the production such as association & membership fees, for example Screen Producer's Ireland Levy, do not form part of the total cost of production or are not eligible expenditure.

Note: section 481 provides that for costs to qualify as amounts upon which relief may be claimed, they must be incurred in the production of the film. Other bona fide, business expenses, that fall outside of what is permitted by section 481 may still qualify for a corporation tax [deduction](#) at a rate of 12.5%.

## 3.12 Capital items [Regulation 12(e)]

### 3.12.1 Larger capital items

Consideration must be given to items of a capital nature, used for the production which have a value at the end of that production. Regulation 12(e) stipulates that expenditure on capital assets used in a production, which are not used up in that process are non-qualifying expenditure, meaning they may only be included as expenditure if used up during the production.

Revenue accepts that a production company may utilise capital items over the course of a number of productions (e.g. IT equipment or a set). Revenue will accept as reasonable, the apportionment of the cost across a number of productions, where it is clear that while the capital item is not used up in the production of a particular project, that project could not be produced without utilising those capital items.

An apportionment calculated in line with the principles of Capital Allowances may be considered reasonable. This will depend on the circumstances of each case, some items may have an accelerated rate which may be more appropriate to use. It will be the responsibility of the production company to provide evidence of the cost they are claiming on an individual production and equally across all productions where the cost is being claimed.

#### **Example 9**

A production company purchases expensive IT equipment to produce a TV series in January 2020. On completion of the 12-week shoot, the IT equipment still has a value and can still be utilised.

It is not appropriate to claim the full cost of that equipment in the expenditure of the TV series, as it is not used up. The production company intend to use the IT equipment again in the production of a film later in the same year. They believe they will have further use for it in 2021 in the production of season 2 of the TV series in 2021 but no other use in that year.

In the normal course of business, this item is depreciated at 12.5% per annum based on the net cost of the asset. It may be acceptable that an apportionment of 12.5% across the 2 productions may be claimed as qualifying expenditure in 2020. It may equally be possible to claim the full 12.5% solely against season 2 of the tv series in 2021 if it is put to no other use in that year.

### 3.12.2 Smaller Capital Items

Equally where larger capital items in general would not naturally be used up in the course of one production, it is not realistic that smaller capital items (e.g. phones, laptops, tablets etc.) are always used up over the course of one production. Revenue will apply a similar principle to the apportionment of smaller capital items to that of larger.

#### **Example 10**

Ten smart phones are purchased for use by actors hired during the production of a film to be shot on location in Ireland. The 4 week shoot commences in March 2020 and ends in April 2020, at which time the phones are handed back to the production company.

The smart phones still have a value and will continue to be used on other productions. It is not appropriate that the entire cost of these phones is charged to the production of the film.

It may be acceptable that an apportionment be claimed as qualifying expenditure in 2020. In some instances, it may be acceptable that an accelerated apportionment is claimed, as the useful economic life of the asset may be less than the norm. Equally, if an item is only in use for a small period of the year, the apportionment should reflect that.

### 3.13 Professional fees (Regulation 12)

In calculating the taxable trading profits of a company, it has been a long-standing practice that the costs of preparing the accounts and the tax return are treated as wholly, exclusively and necessarily incurred for the purposes of producing a qualifying film. On that basis, reasonable costs associated with a production accountant will be accepted as eligible expenditure.

The costs of acquiring rights necessary for the production of the film may form part of the total costs of production. Therefore, any legal fees associated with acquiring those rights will also be included in the total costs of expenditure.



Costs incurred for tax consultancy services and costs in respect of the Companies Registration Office obligations i.e. the company formation, statutory returns and associated filing fees are not allowable.

### 3.14 Financing costs

Expenses incurred in raising financing are incurred to put the company in a position to produce a film, but they are not wholly, exclusively and necessarily incurred in the production of a film. Therefore, these amounts are not eligible expenditure.

Where a loan is advanced to assist with development of a project the cost of repaying that loan is not eligible expenditure. However, the actual costs which the loan was taken out to meet may have been incurred wholly and exclusively in developing the project and may qualify as eligible expenditure.

### 3.15 Training costs

Costs related to skills development on the production of a film, for example as required by the Minister for the purposes of the certificate, may be eligible and would not incur a BIK<sup>8</sup> for the individual.

### 3.16 Development expenditure

Costs may be incurred in Ireland during the development of a film project. If the same producer company continues to produce the film this may be eligible expenditure for the purposes of the production of a film.

However, if another producer company purchases the rights to further develop the project in place of the former producer company, this cost is now considered to be an intellectual property (IP) acquisition cost. While the IP acquisition costs, and subsequent relevant costs, may be included in calculating the value of expenditure upon which relief may be claimed, any costs incurred prior to the point of the IP acquisition must be ignored in calculating this sum.

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<sup>8</sup> [BIK](#)

## 4 Eligibility to relief

### 4.1 Tax compliant [section 481(2A)(b)(ii)]

The producer company, the qualifying company and other companies controlled by the producer company, in addition to anyone linked to the producer company or qualifying company through a 15% shareholding must be tax compliant in order to be eligible for relief. This includes ensuring that PAYE is correctly operated on emoluments for all employees.

The obligation to be tax compliant is set out under section 481(2A)(b)(ii). If the accounts are prepared by an agent or accountant, they may keep the records on behalf of the taxpayer. However, the taxpayer is ultimately responsible for their record keeping. Further information regarding taxpayers' obligations in relation to keeping books and records is set out at section 4.8.

### 4.2 Corporate Structure [section 481(2A)(f)(ii)]

Simple structures provide the most transparent mechanism for the delivery of the project. Complicated structures involving a large number of companies or other entities for the production, financing or distribution of a film may result in any claim for film relief being refused where it is reasonable to consider that there is no commercial rationale behind the structure. Equally, a producer company may not be entitled to make a claim in respect of film relief where the corporate structure hinders Revenue in verifying or establishing compliance with the conditions of the relief.

### 4.3 Budgeted Film Corporation Tax Credit [section 481(2G)(b)(i)]

#### 4.3.1 Inflated expenditure [section 481(2A)(f)(i)]

A producer company shall not be entitled to make a claim for a "budgeted film corporation tax credit" under section 481(2G)(b)(i) if it would be reasonable to consider that any item of proposed expenditure is inflated i.e. artificially increased.

#### 4.3.2 Project funding [Regulation 7(2)]

Signed and fully executed finance agreements from all those contributing funding form part of the documentation required to support a claim for the budgeted film corporation tax credit. These agreements must indicate the amount of each contribution and when the funding will be made available to the producer company or another entity participating in the production of the film (for example, a co-producer). The funding must be made available to the company on terms whereby it will not be repaid until the film has been delivered and accepted. The funding must be made available by way of a cash contribution, for example by way of a loan or subscription for shares or other cash investment. It is not acceptable to provide the funding in non-cash form by, for example, deferring fees.

#### 4.4 Undertaking in difficulty [Rescuing and Restructuring Guidelines]

Relief in respect of section 481 cannot be granted where the producer company or the film group (4.4.1) it is part of is an undertaking in difficulty.

A producer company or a company in the film group will be considered an “undertaking in difficulty” when, without intervention by the State, it will almost certainly go out of business in the short - medium term. Therefore, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:

- (a) in the case of a limited liability company, where more than half of its subscribed share capital and share premium has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital;
- (b) in the case of an unlimited company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses; or
- (c) where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

For the avoidance of doubt where the undertaking is part of a group and on consolidation the overall group is not an “undertaking in difficulty” then the producer company or other company within the film group will not be considered an “undertaking in difficulty”.

#### 4.4.1 Film group [Regulation 2]

A film group is made up of a producer company and all of its partner businesses and linked businesses.

#### 4.4.2 Linked businesses

Two businesses (being businesses carried on either by a company or a sole trader) are considered linked businesses where:

- (a) one business holds the majority of the voting rights in the other business;
- (b) one business can control the board of the other business;
- (c) one business has a right to exercise dominant control over the other because of a contract or because of something in the business' constitutions; or
- (d) one business, which is a shareholder in another business, can actually control that other business because of a shareholder agreement.

Consideration must be given to whether or not (a) to (d) would apply if the relationship was traced through a natural person, or a group of natural persons acting jointly. Where a relationship is traced through a natural person, the businesses will only be linked where the two businesses are in the same or adjacent markets. Businesses operate in adjacent markets if they are operating in the market directly downstream or upstream of each other, e.g. in customer / supplier markets regardless of whether or not there is a customer / supplier relationship.

#### 4.4.3 Partner businesses

Two businesses are considered partner businesses where they are not linked businesses and where one business (either solely or along with linked businesses) holds 25% or more of the share capital or voting rights of another business. Where a relationship is traced through a natural person, the businesses will only be partner businesses where the two businesses are in the same or adjacent markets (that is, either operating in the market directly downstream or upstream of the producer company).

#### 4.5 Deggendorf rule [section 481(2A)(vi)]

The producer company cannot make a claim for the credit if any company in the film group is the subject of an outstanding recovery order. The Deggendorf rule provides that an applicant in respect of state aid in one Member State cannot be granted the aid applied for, where a declaration is made by the European Commission to the effect that an aid granted by another Member State is illegal and incompatible with the internal market. This remains in place until all amounts due to be repaid to the latter Member State have been returned.

#### 4.6 Certain financial arrangements [section 481(2C)(b)]

A company shall not, other than in certain specific circumstances, be a producer company if the financial arrangements that the company enters into, in relation to the qualifying film, are:

- (i) financial arrangements of any type with a person resident, registered or operating in a territory outside the EU or a territory with which Ireland does not have a Double Taxation Treaty (DTT); or
- (ii) financial arrangements under which funds are channelled, directly or indirectly, to, or through a territory outside the EU or a territory with which Ireland does not have a DTT.

A company may still be regarded as a producer company if the arrangements involving such a territory relate to an investment in a qualifying film and/or the filming of part of a film in the territory, provided sufficient records are in place.

#### 4.7 Withdrawal of the relief [section 481(3A)]

##### 4.7.1 Circumstances where relief may be withdrawn

The legislation provides that where the producer company or qualifying company:

- a) makes a claim contrary to section 481(2G);
- b) fails to comply with any of the provisions of section 481 or the Regulations;
- c) fails to comply with any of the conditions specified in a certificate;
- d) fails to comply with section 481(2A)(b)(ii) i.e. the producer company, qualifying company, any company controlled by the producer company, and each person who is either the beneficial owner of, or able directly or indirectly to control more than 15% of the ordinary share capital of the

producer company or the qualifying company is not fully tax compliant within the time referred to in section 481(2C)(e);

- e) there is a reduction in the budgeted expenditure so that the amount claimed is in excess of 90% of the revised budgeted film corporation tax credit;
- f) where the amount budgeted, upon which a claim was based, is not spent wholly and exclusively on the production of the qualifying film without unreasonable delay.

#### 4.7.2 Interest and penalties [section 481(3A)(e) and Revenue Code of Practice]

Interest will accrue from the date on which the amount was paid by Revenue.

Depending on the reason for the relief being withdrawn, and the manner in which the withdrawal happens, penalties, publication and prosecution may be applicable.

Regard should be had to the Code of Practice for Revenue Audits and other Compliance Interventions to determine whether or not a penalty or publication may arise. A penalty may be avoided, for example, where the amendment is a “self-correction”, an “innocent error” or a “technical adjustment”.

#### 4.7.3 Recovery of funds [section 481(3A)(c)]

Where a credit has been paid to a producer company by Revenue and it is subsequently found that all or part of the amount is not in accordance with section 481, then the overpaid amount may be recovered from the company, any director of the company, or any person who is the beneficial owner or able to control more than 15% of the ordinary share capital of the producer company or qualifying company.

#### 4.7.4 Reduction of claim based on budgeted expenditure

As outlined above, if a claim under section 481(2G)(b)(i) has been made, but there is a material change to the expenditure the producer company should revise the claim and repay any amount in excess of the revised 90%.

**Example 11**

Producer Company A has made a claim for credit relief for 90% based on the expected budgeted amount of eligible expenditure. Producer Company A completes the film and is now in a position to claim the balance of the credit relief.

Producer Company A identifies that they did not in fact spend as much as they had anticipated when they originally made the claim for 90% and they have claimed relief in excess of what they are actually due.

Producer Company A reviewed their tax affairs throughout the process. They monitored the budget and took all reasonable steps to ensure they complied with their tax obligations. On discovery of the mistake, Producer Company A immediately amended their return and repaid the amount that was not actually due.

There is an advantage in Producer Company A reviewing their tax affairs regularly. Revenue will facilitate taxpayers who discover errors after submission of their returns and who wish to rectify the position. To encourage this, Revenue have options outlined in the Revenue's Code of Practice, which will allow taxpayers, on their own initiative, to rectify mistakes without facing penalties. It should be noted however, that statutory interest still applies in these instances.

Not all instances of an overclaim will meet the criteria attaching to these options and it is suggested that, if there is the possibility that the budget of a production may fall short of what is anticipated, a conservative approach when claiming the initial payment would be appropriate. This can always be corrected on completion and will avoid the additional interest and penalties that may occur due to an unintentional overclaim.

#### 4.8 Maintaining books of accounts and other records [section 481(2C)(c)]

A company will not be regarded as a producer company if it does not provide the records necessary for Revenue to verify compliance with section 481 when requested to do so.

The producer company is required to have all relevant documentation prepared before making a claim for the credit (Part 4, Regulations), whether it is based on budgeted expenditure (section 481(2G)(b)(i)) or actual expenditure on completion (section 481(2G)(b)(ii)).

In order to minimise delays or queries, information, records and documentation should be maintained to a standard that ensures that entitlement to the relief is clear to both the taxpayer and Revenue. For example, the amount under a particular heading on the budget may be out of line with the industry norm for a particular reason. In the event of a Revenue intervention, any claim for relief must be substantiated and evidenced to otherwise any claim to relief may be subject to a withdrawal.

Books and records should be used to support a claim for film credit relief and so they should clearly show the accounting process. For example, costs of payments to service providers, that are to be included in any claim for relief, should be evidenced by:

- a) being recorded in books of account in a manner that clearly shows the amounts involved and matters to which each amount relates, and
- b) supported by receipts and invoices.

Such payments being recorded as, for example, “petty cash” would not be appropriate.

**Regulations 2-5, 7 and 8** set out certain books and records which must be kept by a producer company and a qualifying company, over and above the normal requirement to keep books and records as set out in the Tax Acts. The companies are required to keep these records for a period of 6 years from the completion of the qualifying film.

The records which must be kept include but are not limited to the following:

- books of first entry;
- trial balances;
- all linking documents to the financial statements i.e. petty cash documents, receipts etc;
- invoices;
- credit notes;
- bank statements;
- all ledgers coded as per the original budget.

Records which show qualifying expenditure, the total cost of production and the eligible expenditure must also be kept. Details of any transaction with a member of the film group must also be kept. In preparing the material to support a claim, the budget for the film should be in “Universal” format or similar (see Schedule 2 of the Regulations). In the case of a co-production, details should be given of the particular items of expenditure to be funded by each co-producer.



These records should be available to Revenue on a compliance review. If during compliance Revenue raises questions on the make-up of a figure included in the top sheet production expenditure summary, the company is required to have this back-up documentation ready.

Separately, as the method upon which relief is claimed is transitioning to self-assessment, it is important to have regard to the rules elsewhere in the TCA with regard to maintaining books and records. Helpful information regarding the maintenance of books and records can be found in Revenue's Books and Records [TDM Part 38-03-17](#).

#### 4.9 Obligation to produce the books and records of certain persons

Revenue may require the producer company or qualifying company to produce sufficient appropriate evidence to vouch each item of expenditure by third parties engaged, directly or indirectly, to provide goods, services or facilities in relation to the production or distribution of the film. The records may be required in respect of expenditure in the State or elsewhere. Producer companies and qualifying companies should ensure that procedures are in place, to ensure that such evidence is available, if so required by Revenue.

#### 4.10 Compliance report

Prior to making a claim under s.481(2G)(b)(ii), the producer company must prepare a compliance report. This includes the declaration set out in Schedule 4 to the Regulations and the documents listed in Schedule 5.

## 5 Definitions and explanations

Reference is made throughout this manual to various definitions contained in section 481 or in the Regulations. Some of these are gathered and explained in this section.

### 5.1 Qualifying expenditure [Regulations, Part 7]

Expenditure cannot be qualifying expenditure unless it is incurred on the production of the film, which runs from the development phase up to and including post-production including the cost of providing an archive print (Regulation 11). The following amounts are specifically not included in qualifying expenditure (Regulation 12):

- costs associated with the distribution or promotion of the film. Electronic Press Kit (EPK) and website costs are not considered to be qualifying expenditure;
- costs arising after delivery of the materials contracted for with the relevant distributor or broadcaster;
- costs of organising or providing pre-sales monies;
- costs of acquiring rights other than those necessary for the production of the film (including relevant legal fees);
- expenditure on capital assets used in the production of a film which are not used up in that process;
- amounts that are paid out of, are dependent on, or arise from rights in the receipts, earnings or profits of the film; or
- fees or other payments deferred unless the payment of such sums is made no later than four months after completion;
- professional fees associated with claiming 'tax shelters' or the film corporation tax credit including opining on the eligibility for a 'shelter' or the credit.

### 5.2 Total Cost of Production [section 481(1)]

A claim cannot be made, in respect of section 481, where the total cost of the production of the film is less than €250,000. The total cost of production is the portion of the qualifying expenditure, that is wholly, exclusively and necessarily incurred to produce the film.

The test of whether or not an expense is wholly, exclusively and necessarily incurred for a specific purpose are tax concepts determined on a case by case basis in accordance with a well-developed, principle-based understandings. It has been the subject of much case law over the years. Revenue has published a number of TDMs which look at this test:

- [TDM Part 04-10-01](#) (on travel expenses)
- [TDM Part 04-06-17](#) (on food and accommodation)
- [TDM Part 04-06-23](#) (on family wages )

The principles set out in those guidance notes will be applicable in determining the total cost of production for section 481 claims.

Given the nature of large parts of the expenditure in certain parts of the film industry, Revenue's [TDM Part 05-01-06](#) on expense payments paid to employees should also be consulted.

### 5.3 Eligible expenditure [section 481(1) and Regulations, Part 8]

A claim cannot be made, in respect of section 481, where the eligible expenditure amount is less than €125,000. "Eligible expenditure" is the portion of the total cost of production of a qualifying film that is expended on the production of the film in the State.

This expenditure must be incurred:

- (a) directly by the qualifying company on the employment of eligible individuals on the production of the film;
- (b) directly by the qualifying company on the provision of labour only services by individuals on the production of the film. The qualifying company can make these payments to the individual providing the labour only services or to a company, agent, manager or other 3<sup>rd</sup> party on behalf of the individual providing labour only services; or
- (c) directly or indirectly by the qualifying company on the provision of certain goods, services and facilities (which may therefore include an expense not directly incurred by the qualifying company but charged to it).

Eligible individuals are individuals employed by the qualifying company for the purposes of producing a qualifying film (section 481(1)).

In order for goods, services and facilities to be categorised as qualifying expenditure they must:

- a) be used or consumed within Ireland in the production of the qualifying film (Regulation 14); and

- b) be provided by a person who is carrying out their business from a fixed place of business in Ireland (Regulation 15 and the definition of ‘relevant person’ in Regulation 13).

Payments made to artists who are not tax resident in the European Economic Area (EEA) are subject to withholding tax<sup>9</sup>.

## 5.4 Producer Company [section 481(1)]

### 5.4.1 Qualifying as a “producer company”

The film corporation tax credit can only be claimed by a producer company. To be a producer company, a company must comply with all of the following requirements:

- a) it is resident in the State or an EEA State other than the State and carries on a business in the State through a branch or agency;
- b) it carries on a trade of producing films on a commercial basis with a view to the realisation of profit that are made for exhibition to the public in cinemas or by means of broadcast;
- c) it cannot be a broadcaster or a company whose business consists wholly or mainly of transmitting films on the internet, nor can it be connected<sup>10</sup> to a broadcaster or to a company whose business, taken together with all companies to which it is connected, consist wholly or mainly of transmitting films on the internet;
- d) it must hold all of the shares in the qualifying company (see paragraph 5.5 below); and
- e) it has filed the required CT1 return with the Collector-General in Revenue within 21 months of trading as a producer company; and
- f) it is not part of an undertaking which would be regarded as an undertaking in difficulty.

A producer company is required to be operating the trade of producing films on a commercial basis in order to qualify for the credit. This is not the same as a general trading test. A further requirement of the legislation is for that producer company to continue in that trade of producing films for a period of 12 months after the date of completion.

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<sup>9</sup> [Film Withholding tax](#)

<sup>10</sup> Connected companies are parent/subsidiary companies or those that are controlled by the same persons or their relatives (the term relatives generally includes spouses, brothers, sisters, ancestors and lineal descendants – for full details see Section 10 of the TCA)

A producer company must at the time of application to the Minister for a culture certificate be carrying on the trade of producing films. The requirement to have filed a CT1 return with the Collector General following 21 months trading as a producer company is a condition which must be met before making a claim for the credit. This requirement does not apply to prohibit the producer company making an application for a culture certificate before the 21 months period has elapsed.

**Example 12**

Avocado Films, a producer company, was incorporated during 2018 but only commences to trade as a production company on 1 January 2019, when it begins development work on a feature film. Avocado Films establishes a qualifying company to incur the production expenditure, secures all finance to make the film and enters into the appropriate production contract with the qualifying company.

Avocado Films applies to the Minister for its cultural certificate for the feature film on 1 July 2019 and receives approval on 31 August 2019. The qualifying film begins to shoot on 1 September 2019 and satisfies the 68% of eligible expenditure lodgement requirement by 30 November 2019.

As Avocado Films began to trade on 1 January 2019, it prepares its first set of 12 months accounts to 31 December 2019 and files a corporation tax return by 21 September 2020.

Although Avocado Films satisfies all other conditions to be in a position to make a claim for payment of the first instalment of the film tax credit on 30 November 2019, it cannot make a claim for payment until the company's corporation tax return is filed on 21 September 2020 in line with legislative requirements.

#### 5.4.2 Ceasing to be regarded as a producer company

A company may cease to be regarded as a producer company for the purposes of a qualifying film if it does not continue to meet certain requirements under section 481(2C):

- a) providing any records when requested by Revenue in accordance with section 481(2C)(c);
- b) failing to meet the conditions of the Minister's certificate;
- c) failing to notify the Minister of completion, in writing, of the date of completion of the film and providing copies of the film to the Minister within 6 months of that completion date;

- d) making a claim under 481(2G)(b)(ii) without having a compliance report prepared to submit should it be requested by Revenue;
- e) ceasing the trade of producing films on a commercial basis on a date earlier than 12 months after completion of the film;
- f) if the producer company disposes of shares in the qualifying company on a date earlier than 12 months following completion of the film;
- g) failing to enter into a contract with the qualifying company in relation to the production of the qualifying film or providing an amount less than the specified amount to the qualifying company for the production of the film.

Where a company ceases to be regarded as a producer company, any claim for credit relief will be invalidated and result in the withdrawal of any credit already claimed in relation to that qualifying film.

### 5.5 Qualifying Company [section 481(1)]

It is a requirement of section 481 that a special purpose production company, referred to as the qualifying company, is set up for each film. To be a qualifying company, a company must meet certain requirements:

- a) it is incorporated and resident in the State or is carrying on a trade in the State through a branch or agency;
- b) it exists solely for the purposes of the production of only one qualifying film; and
- c) it does not contain in its name the words "Ireland", "Irish", "Éireann", "Éire" or "National", where the company name in question is either registered under either or both the Companies Act 2014, and the Registration of Business Names Act, 1963, or registered under the law of the territory in which it is incorporated.

### 5.6 Qualifying Film

A qualifying film is a film for which the Minister has issued a cultural certificate under section 481(2).

## 5.7 Completion [Regulation 2]

Completion is defined in the Regulations as the point at which:

- a) any commissioning party confirms delivery and acceptance of the qualifying film in accordance with written agreements; or
- b) the date upon which the film has been screened or broadcast in a public viewing.

This means that the screening of the film at a festival would trigger the commencement of the six-month completion period. However, a festival screening or a limited test screening may be followed by additional reshoots or editing, which can be evidenced in expenditure, and in these cases a subsequent full commercial release of a film may constitute delivery and acceptance for the purpose of triggering completion.

Delivery and acceptance in this definition relates to the delivery of a film of broadcast quality and is not dependent on the delivery of supplementary peripherals such as publicity materials or alternative versions of the film for different formats of broadcast e.g. streaming. The definition also clarifies that, for the purposes of a series, completion relates to the entire series.

## 5.8 When can you not make a claim: summary [section 481(2A)(b)]

A producer company cannot make a claim for the credit if:

- it has not received a cultural certificate for the film;
- the producer company, qualifying company, any company controlled by the producer company, and each person who is either the beneficial owner of, or able directly or indirectly to control more than 15% of the ordinary share capital of the producer company or the qualifying company is not fully tax compliant;
- the eligible expenditure amount is less than €125,000;
- the total cost of the production of the film is less than €250,000;
- the film group is an undertaking in difficulty;
- any company in the film group is subject of outstanding recovery proceedings by the European Commission; or
- for claims based on budgeted expenditure:

- b. there are not fully executed finance agreements to support the making of the film, or, if the relevant financing agreements are subject to conditions precedent to release of funding that have not been fulfilled at the time of making the claim. For example, the signature payments under a contract may have been paid but further payments may be subject to conditions including last day of shoot, receipt of first instalment of tax credit, rough cut, etc., or
- c. an amount not less than 68% of the eligible expenditure amount has not been lodged to the account of the qualifying company for the purposes of making the film.

## 5.9 Former film relief claim procedure

The former film relief procedure was a DCHG scheme, whereby the applicant made a single application to Revenue. Revenue liaised with the DCHG and forwarded the relevant parts of the application to DCHG for their approval. This was known as “culture authorisation”.

Following receipt of a letter of authorisation from the DCHG the application was then subject to processing by Revenue. Revenue issued one of the following (at the request of the applicant):

- Approval in Principle (AIP) which was issued in advance of formal certification and was based on letters of commitment, draft-funding documents and on the understanding that the final documents i.e. executed funding documents, would not differ significantly;
- non-payment certificates on the basis of executed documents. These certificates specified a corporation tax credit amount but did not allow for the release of funding; or
- payment certificates were issued following the receipt of:
  - confirmation from the company’s auditor that 68% of the Film Credit amount, as specified on the certificate, had been advanced to the qualifying company; or
  - written confirmation from BAI (Broadcasting Authority of Ireland), The Irish Film Board (now Fis Eireann/Screen Ireland) or equivalent bodies that they have agreed to release their production funding.

An individual claim may have some or all of these components, it is dependent on the applicant and their application and the transitional arrangements as outlined above at 2.2 apply accordingly.



## 5.10 Conditions attaching to the cultural certificate

- Any change of substance in the information supplied in the application form and on which the issue of the certificate is based, that may arise as the project progresses must be notified in writing to the DCHG in advance of the proposed change being effected, or as soon as the change comes to notice. Failure to do so may be regarded as a breach of the conditions of the certificate.
- Information, on any aspects of the film that the DCHG may at any time require, must be submitted within such period as the DCHG may specify.
- The producer company shall provide two copies of the film to the DCHG within six months from the date of the completion of the production of the film in DVD format.
- The senior positions on the production shall be held by those persons as set out on the Heads of Department list.
- The enclosed undertaking "Tab M" must be signed and returned to the DCHG within 14 days of the date of the certificate and the producer company and qualifying company must both continue to comply with the undertaking.
- The TAB Z table sets out the number of trainee participants to which the project has committed.
- Each of the trainee participants shall be engaged for a minimum number of days as indicated in TAB Z. Part B should be completed within 6 months of completion of the project and returned to The Film Unit, Department of Culture, Heritage and the Gaeltacht, New Road, Killarney, County Kerry. Trainee participants should be paid at a rate which is in keeping with their role, pre-existing qualifications and experience and the names must be included in the credits.
- The credits to the film shall include the following: "Produced with the support of incentives for the Irish Film Industry provided by the Government of Ireland". The Government of Ireland mark must also be included. Please contact the Arts, Film & Investment Unit for the Government of Ireland mark when the project is nearing completion.

These credits must be located in a prominent position in the closing credits immediately after the cast and crew credits.

- The Irish Producer's name shall appear in the opening credits reflecting accurately the producer's role, or exceptionally, in the main titles, as dictated by the dramatic requirements of the film.
- All provisions of section 481 and Film Regulations 2019 must be adhered to and nothing in the certificate invalidates any requirement imposed by statute.
- Section 481(3A)(d)(ii) provides that that where a producer company or qualifying company fails to comply with any provision governing the relief or fails to fulfil any of the conditions to which a certificate is subject, then relief may be withdrawn.
- The total net contribution of State Aid for the project from different sources, including section 481 relief, may not exceed 50% of the production budget.

## 5.11 Producers Unit

### 5.11.1 Executive Producer

Executive Producers are common on larger projects and are likely to be instrumental in arranging the financing on a project. An Executive Producer will have built a reputation as well as fostering relationships to allow them to successfully source such financing. They may be involved in acquiring and, in some instances, developing a script on a project.

### 5.11.2 Producer

A Producer will more often be involved in the day to day running of the project. They will ultimately be responsible for the entire project, working on it from beginning to end. A Producer will be responsible for each element including budgets, scripts and the hiring of personnel. Such a person can often be involved in directing and producing.

On smaller projects the Producer may also take on some of the responsibilities usually associated with the Executive Producer, such a sourcing of finance.

### 5.11.3 Director

The Director will have the artistic vision to bring the project to fruition. They will be tasked with making the script a reality, while delivering this vision in budget, on time and from start to finish. They will be heavily involved in all aspects of the project, including casting, photography, edit and post-production. The Director may have additional responsibilities such as the Writer or even a Producer.

A more recent version of this manual is available.