

Tax Incentive Programmes Continental Europe

(without UK and Ireland)

1. **Introduction**
2. European Tax Shelter (incl. overview Canada)

- Europe-wide exist:

Tax shelters/tax incentives e. g. in Belgium, France (2x), Hungary, Ireland, Isle of Man, Luxembourg, [Netherlands], UK, Malta, etc. (and in Australia, Canada, etc.)

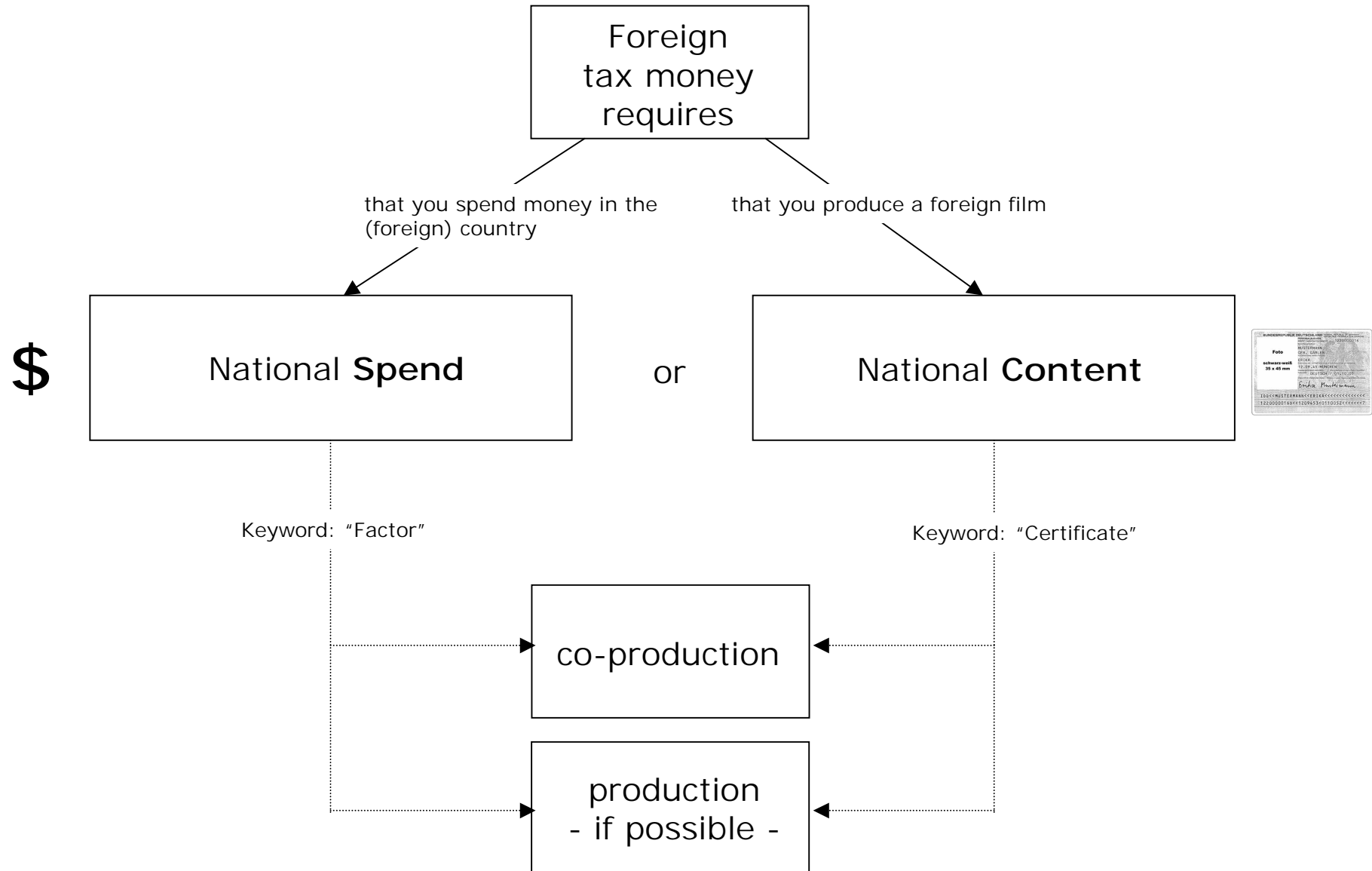


tax programmes explicitly designed/made to support national film industries

- Special situation Germany:

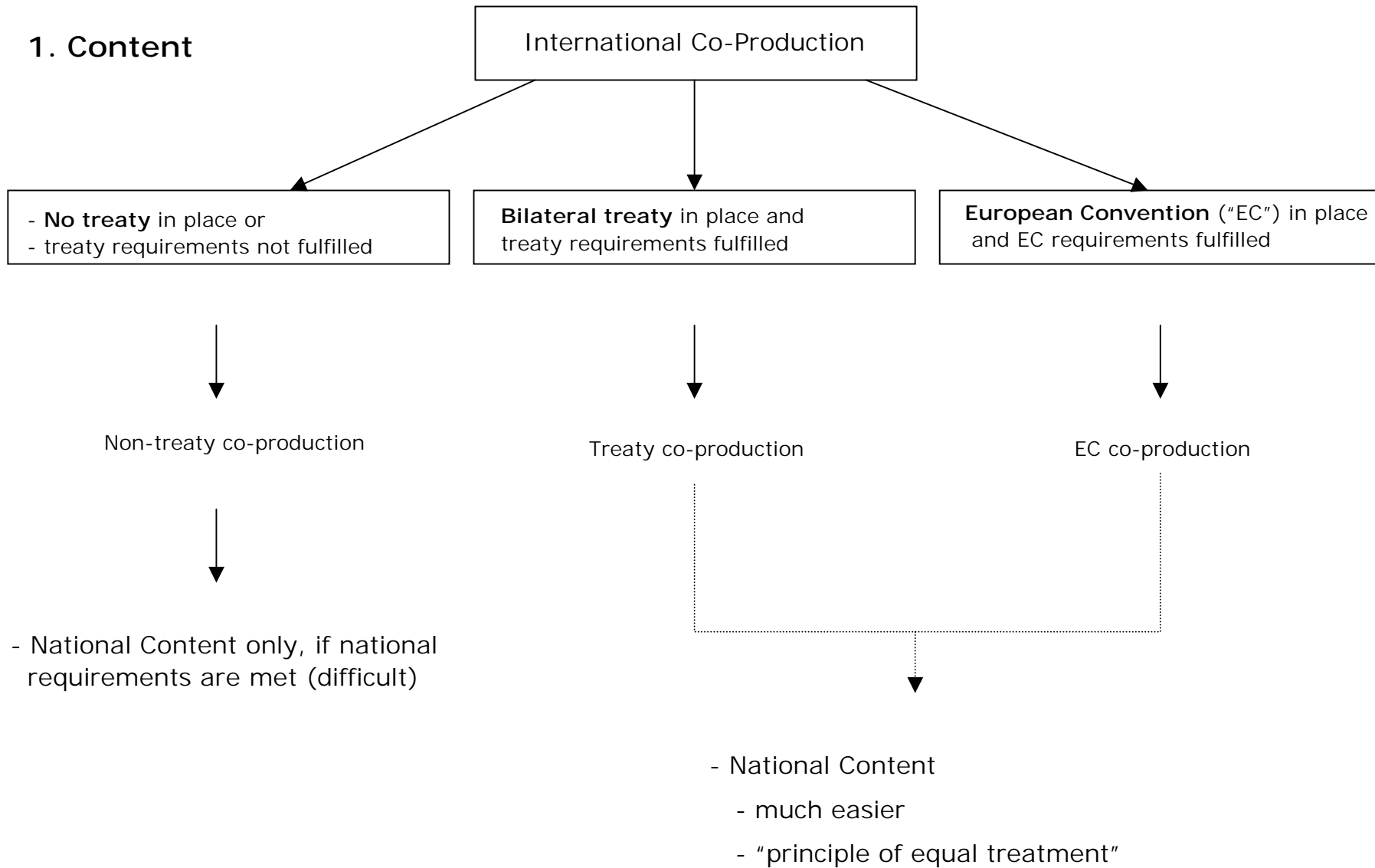
- no "film tax incentive programme" ⇒ result of "principle of caution" §§ 248 HGB, 5 EStG
- stopped by new government with effect November 11, 2005
- new incentive programme promised by new government until 2007

2. Foreign tax money - how to get access?



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1. Content



2. Spend Often: International Co-Production required

2. Foreign tax money - how to get access?

Parties to the European Treaty:

Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, former Yugoslavian Republic of Macedonia, France, Georgia, Germany, Greece, Great Britain, Hungary, Ireland, Iceland, Italy, Croatia, Latvia, Litauen, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Russia, Sweden, Switzerland, Serbia and Montenegro, Slovak Republic, Slovenia, Spain

2. Foreign tax money - how to get access?

Conclusion:

You can get access to foreign tax moneis, if your project

- spends money ("Spend") in the foreign territory; or
- has (also) the nationality ("Content") of the foreign territory
 - either by reason of a bilateral treaty; or
 - by reason of a multilateral treaty; or
 - by the foreign national requirements
- Independent from "Spend" or "Content", some tax programmes require the involvement of a "domestic" partner


Problem in Germany:

Permanent Establishment Issue ("Betriebsstättenproblematik")

1. Introduction
2. European Tax Shelter (incl. overview Canada)

2. European Tax Shelter Programmes

I. Competition




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FOR FILM PRODUCTION IN NYC**

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OFFICE OF THE MAYOR'S OFFICE
OF FILM, THEATER AND BROADCASTING

2. European Tax Shelter Programmes

II. Spend and/or Content

Spend	and/or	Content	None
<ul style="list-style-type: none"> - Luxembourg - Hungary - France (direct) - Netherlands - Belgium - Ireland - Canada - Germany (start 2007) 		<ul style="list-style-type: none"> - UK - France (SOFICA) - Belgium 	<ul style="list-style-type: none"> - [Germany]

2. European Tax Shelter Programmes

III. Partnership or Direct

Partnership

or

Direct

- Netherlands (tbc)
- Belgium
- Ireland
- UK (until 04/2006)
- France (SOFICAs)

- Luxembourg
- Hungary
- France
- UK (start 04/2006)
- Canada

2. European Tax Shelter Programmes

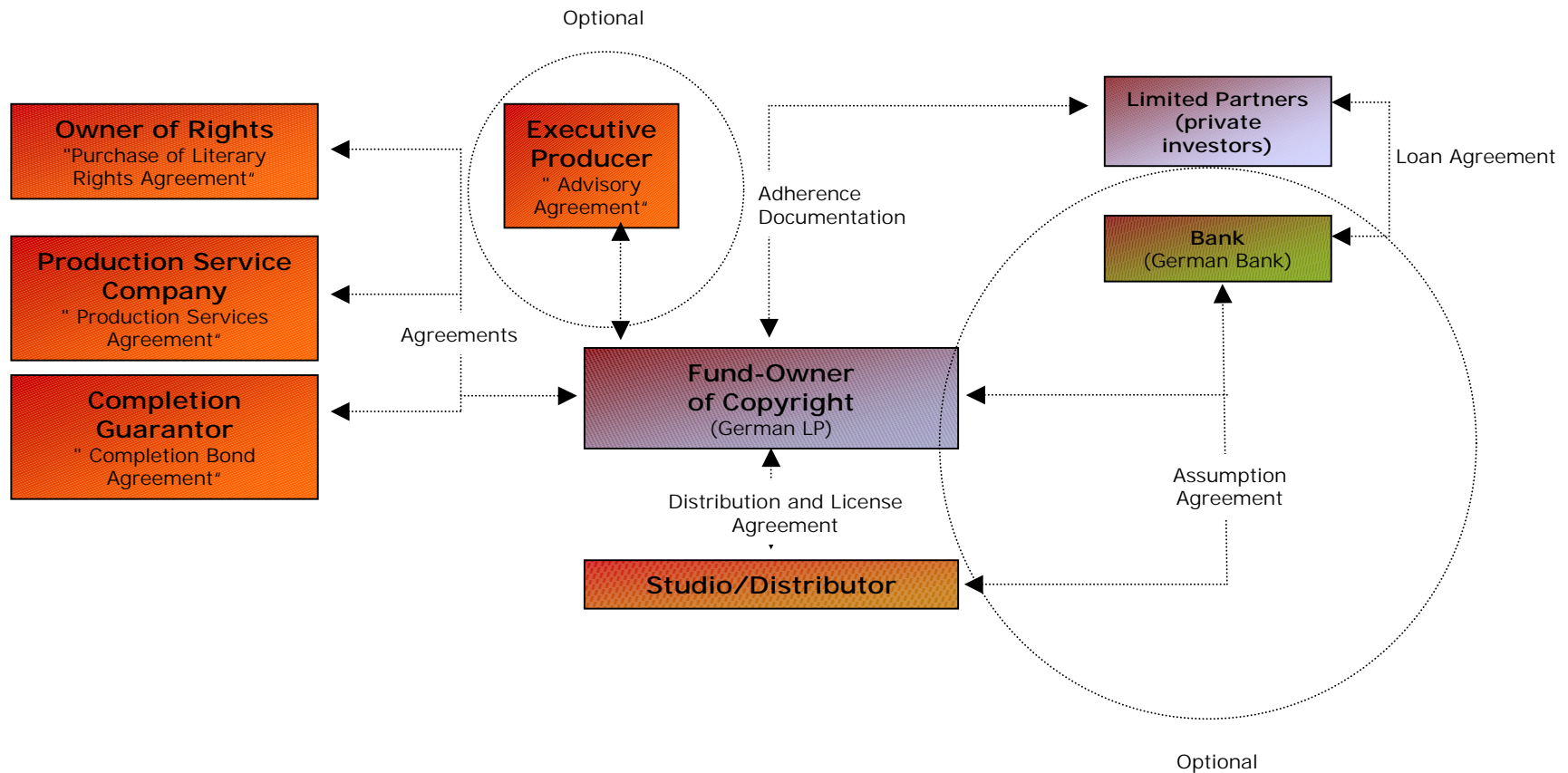
A. Partnership-Structures

- Germany (until end of 2005)
- UK (until 04/2006)
- Belgium (start 2004)
- Ireland
- France (SOFICAs)
- Netherlands (tbc)

2. European Tax Shelter Programmes

GERMANY

a) Structure



2. European Tax Shelter Programmes

b) Requirements:

- Funding through German Partnership (KG)
- KG becomes producer and copyright owner of the film and acquires the rights in underlying material
- Principal Photography must not have started
- **no German Spend or German Content necessary**

c) Benefit:

- Theoretically, up to 100 % of the budget. However, economically the benefit seldom is higher than 20-30 % (sometimes below 10 %), due to MG-requirements etc.

d) Other:

- Some Partnerships only provide "best effort" clauses for funding, others provide "placement guarantees"
- Selection of projects by the Partnership regularly in mid December
- Different recoupment scenarios (varies from Partnership to Partnership) in the market
- **Stopped end 2005**

2. New German tax incentive (starting January 2007)

- Volume: max. € 60m p.a. until 31.12.2009
- Benefit: 16-20% of German Spend; max. amount (cap) € 4m (up to € 10m if min. 35% of budget is spent in Germany or if 2/3 of max. points of "cultural test" achieved) not considered as German Spend: costs for preproduction rights acquisition, legal, insurance, bank, transportation for talent crew; talent max. up to 15% of budget
- Applicant:
 - (Co-)Producer with seat/subsidiary in Germany, having produced at least one feature film in Germany or EU in the last 5 years prior to application
 - In case of co-production: Applicant's minimum financial contribution: 20% of total budget or bilateral treaties/EC-Convention; a new "Cultural Test" will be established for all non-EC-Convention films
 - Producer has to provide 15% to the budget in finance (equity, loan or distribution guarantee) or services
- Only feature films (minimum budget € 1m), documentaries (min. € 200.000,00) and animations (min. € 3m), all intended for theatrical release, min. 30 screens (15 screens if Benefit is < € 250.000,00 and documentaries: 4 screens)
- German Spend at least 25% of total budget (20% if budget is > € 20m; not required if German Spend is > € 15m)
- Application:
 - 75% of finance has to be in place
 - FFA will issue a preliminary certificate with the amount of likely Benefit
 - In case of Guarantee or Completion Bond: FFA will cash flow Benefit (1/3 start of principle photography, 1/3 rough cut, 1/3 final cost report) if Benefit > € 2m
 - If no Guarantee or Completion Bond: payment with completion of production
- **Tax Shelter and Cultural Test is still subject to approval of European Commission**

2. European Tax Shelter Programmes

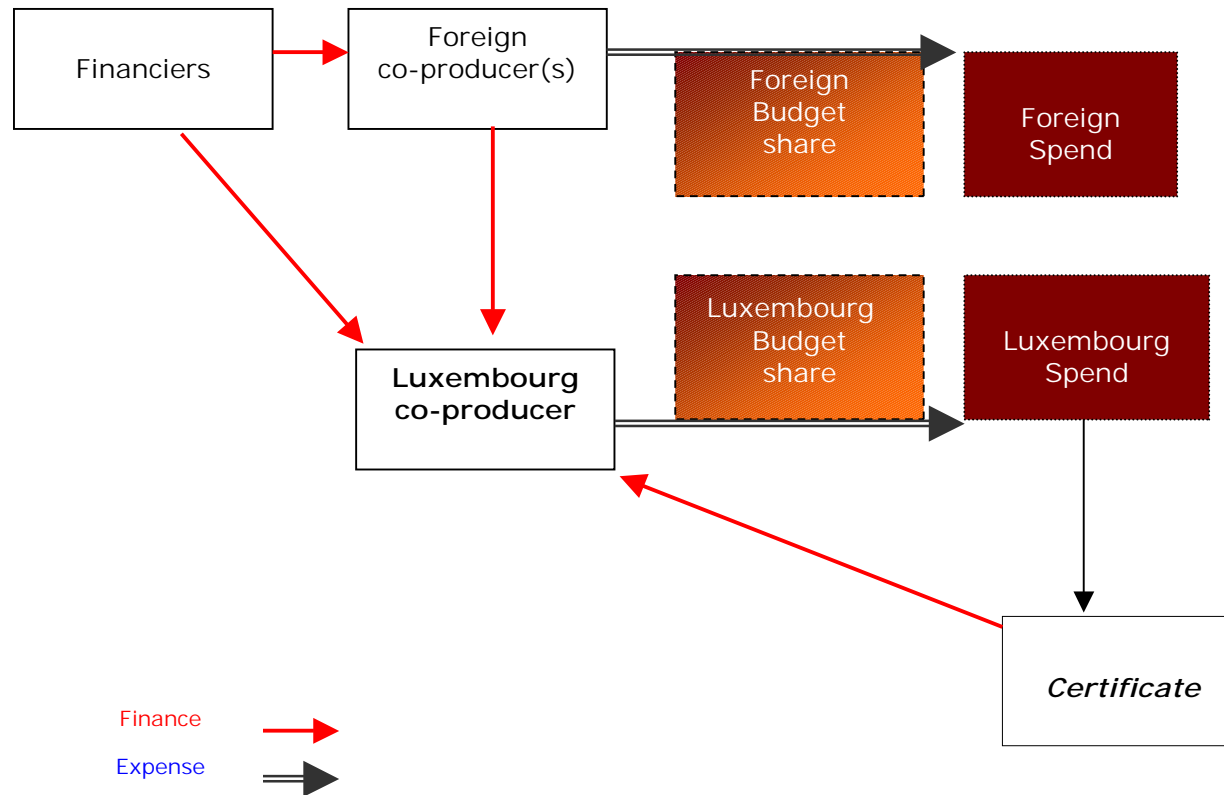
B. Direct Tax Structures

- Luxembourg (Luxembourg Spend)
- Canada (Canadian Labor Cost) - see below and hand out
- France (since 2004: French Spend)
- Hungary (since 2004: Hungarian Spend) - see hand out
- UK (since 04/2006)

2. European Tax Shelter Programmes

LUXEMBOURG

a) CIAV-Programm



2. European Tax Shelter Programmes

b) Requirements:

- application only from registered Luxembourg producer
- theatrical and TV movies
- max. "Luxembourg spend": € 6.250.000,00
- the Luxembourg producer has to receive a recoupment participation equal to the amount of the benefit (see below)

c) Benefit:

- approx. 25 % of the certified "Luxembourg Spend"

d) Other:

- the Certificate (Luxembourg Spend) requires completion of the film; therefore Luxembourg co-production partner should provide a financing/cashflowing bank

2. European Tax Shelter Programmes

CANADA

- ❖ Since 2002 the government has stopped partnership-investments; earlier
 - Certified Production Transactions; requirement: "Canada Content"
 - Production Services Transactions; requirement: 75 % "Canada Spend"
- ❖ Currently in force:

LABOUR COST INCENTIVES



- „Canada Content“ (point system and 75 % „Canada Spent“)
or co-production treaty in place
- For theatrical and TV-movies



tax relief of 25 % on all salaries paid to Canadian cast and crew, up to 12 % of the budget (additionally up to 20 % tax relief from regional incentives, e. g. British Columbia, Ontario or Quebec are available)



- **no „Canada Content“** or **no** co-production treaty in place
- for theatrical and TV movies
- budgets: more than CAN-\$ 1m



tax relief of 11-16 % on all salaries paid to Canadian cast and crew (additionally further regional tax relief is available, e. g. British Columbia, Ontario and Quebec).

2. European Tax Shelter Programmes

Other tax programmes (overview):

- ❖ **France:** "SOFICA" can provide up to 50 % to each budget, however, in average provide between 8,5 and 13 %

Requirements:

- theatrical and TV movies;
- French language films (in principle);
- French films or international co-productions with a minimum of 20 % EU/French co-production share (to be approved by CNC)

Additionally since 2004: **20 % direct cash payment** or tax relief on all "technical" costs (technicians, laboratory, postproduction, some "shooting" expenses) of the **French Spend**, if the film preliminary is shot/is using postproduction facilities in France (point system).

- ❖ **Hungary:** **cash contribution of max. 20 %** of the **Hungarian Spend** of the budget, if the production is a Hungarian co-production or if the production is an non Hungarian co-production but shot in Hungary (additionally: interesting co-production subsidies between € 200.000,00 and max. € 1,2m).

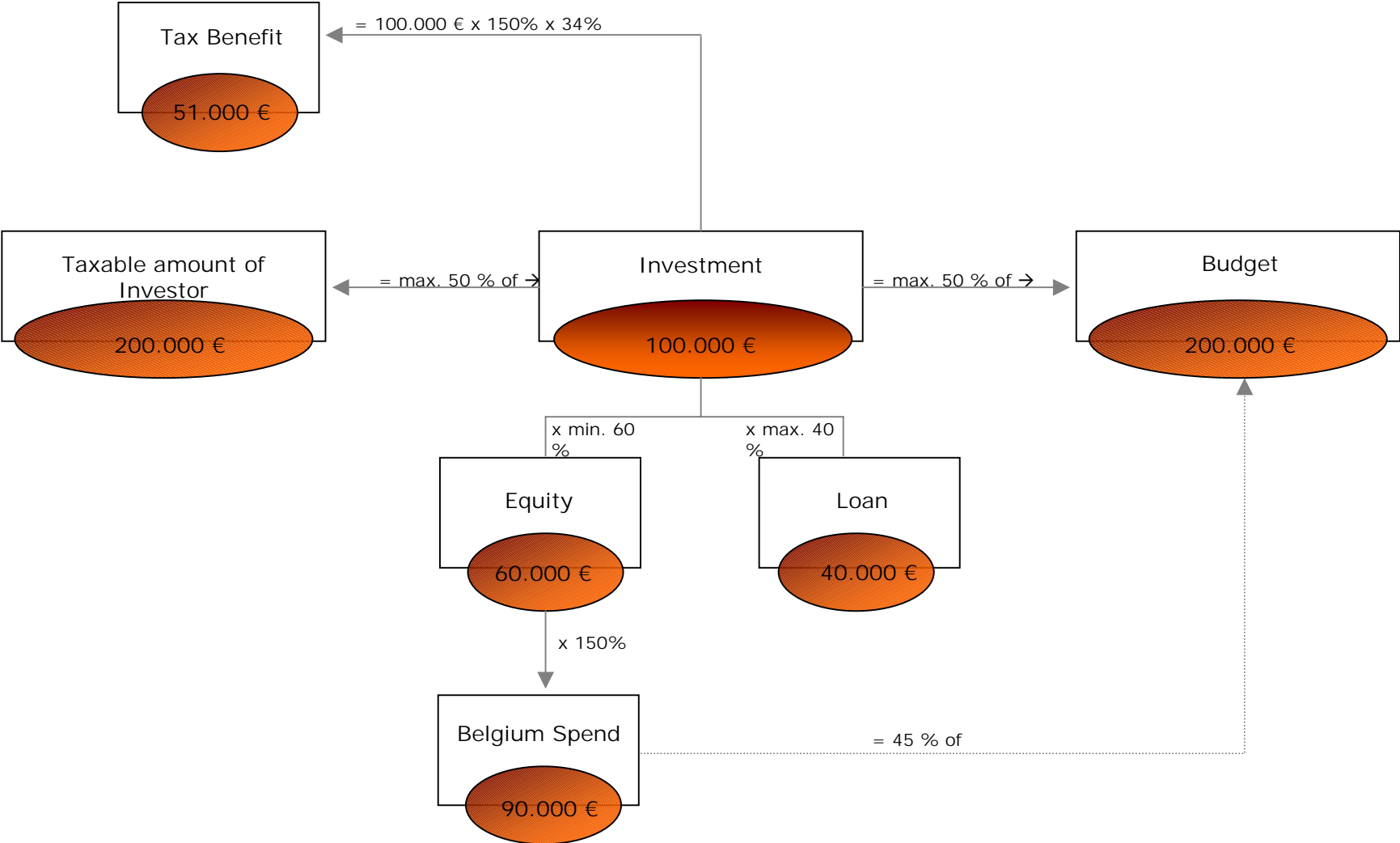
2. European Tax Shelter Programmes

- ❖ **Italy:** new incentive programme announced/tbc.
- ❖ **The Netherlands:** New tax programme discussed to be put in effect in 2006
- ❖ **Australia:** Four different programmes in place:
 - three programmes require Australian Content or a co-production treaty: financing of up to 100 % in principle possible
 - one programme requires Australian Spend of min. AUS-\$ 15m, if the AUS-\$ 15 m represents at least 70 % of the budget

3. Appendix-European Tax Shelter Programmes

BELGIUM:

a) Belgium Tax Shelter (since 2004)



3. Appendix-European Tax Shelter Programmes

b) Requirements:

- Belgian production company (no subsidiary of broadcaster)
- for European theatrical films, animation series and TV documentaries fulfilling the European "television without frontiers directive" (from 2006 also available for TV feature films)
- Belgium Spend approx. 45 % (= 150 % of the invested equity; the invested equity has to be min. 60 % of the total investment).
- max. investment: 50 % of the total budget

c) Benefit:

- max. 50 % of the total budget

3. Appendix-European Tax Shelter Programmes

b) Requirements:

- needs involvement of a registered Irish special purpose company (S481 Company)
- applies for theatrical TV and movies
- a film requires an „Irish Certificate“ in which the max. amount of the „Irish Spend“ is determined
- in principal 82 % of finance (MG's, pre-sales, UK Sale & Leaseback, etc.) have to be in place
- S481 Company has to invest prior to principal photography

c) Benefit:

- 18 % of Irish Spend, equal to approx. 10 - 12 % of the budget

d) Other:

- direct cash payments
- tax programme was about to be terminated end of 2004, however, intense lobbying has provided extension of the programme

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