

NEW BELGIAN TAX SHELTER

Following the Ireland and Luxembourg examples, the Belgian government has adapted a tax system according to which Belgian companies may have a tax benefit if the companies invest parts of their taxable profits in the Belgium movie industry ("Tax Shelter"). Herewith, the production of audiovisual - and especially movie - productions shall be stimulated. The Tax Shelter system has come into effect in 2004.

How does the Tax Shelter work?

The Tax Shelter is a new tax regulation based on Article 194 of the Belgium Tax Code ("Code des Impôts sur les Revenus" (CIR)). This tax law allows all companies being taxable in Belgium to set off 150 % of the amounts which they have invested in certain audiovisual projects in Belgium. The yearly investment may not exceed € 500.000,00 for each company. A substantial part of the investment may be invested as a loan (up to 40 %). The tax advantages will apply in the year when the investment agreement ("convention cadre") has been signed, independently from the actual payment of the investment. The re-payment of the loan may be freely negotiated between the parties.

The biggest part of the investment (minimum of 60 %) will be equity at risk and repayment will depend on the results of exploitation of the film in which the money has been invested (profit participation).

The tax law also authorises the investor to assign his profit participation to third parties. If doing so, the investor may realise a higher level of security, on the other side he will give up the chance of higher receipts from the film.

In order that the tax advantage will have immediate effect for the investor, the producer of the film has to fulfil certain requirements, especially at least 90 % of the investment has to be spent in Belgium. Various companies, like Moviestream, Mig, Banana Films or Marmont offer investment models which include authorisations from the respective Belgian authorities, audits of the whole film documentation, hands-on control of completion of the film, control of the Belgium (90 %) spent criteria, the repayment of the loan to the investor, the delivery of the necessary tax applications to the investor as well as follow up of the marketing and exploitation of the film.

The investor

In principal the investor has to be a company with its seat in Belgium (with certain exception for non-Belgium companies). They must have realised a taxable income which they want to minimize through the Tax Shelter system, with a rather comfortable risk scenario.

The producer

The producer has to be a film production company with its seat in Belgium and the main objective to develop and produce audiovisual products. The company may not be a broadcaster or may not be linked to Belgium or foreign broadcasters.

The production company may not have open liabilities at the National Social Security Office (ONSS) when the investment agreement (convention cadre) will be signed.

Assignment of rights

The Tax Shelter allows the investor to assign his rights (equity or loan) to a third party, if, in principle, the film has been completed.

Example:

An investor invests € 500.000,00 (equity) and receives herefore a profit participation of 10 %. Later, he assigns his rights for the price of € 300.000,00. The buyer of the rights will receive the total profit participation of 10 %.

The audiovisual work

According to the Tax Shelter, an "audiovisual work" can be a fiction, documentary or animation production, which should target a theatrical release or shall be a TV movie, an animation series or a documentary for television and which has to fulfil the requirements of the "television without frontiers directive" of October 3rd, 1998 (89/552/EC). The respective French or Flemish authorities will approve the fulfilment of these conditions. The work must in principal have a minimum running time of 30 minutes (documentary) and 50 minutes with regard to all other audiovisual productions.

The investment

The investment may be rendered in the form of a loan or in equity and will entitle the investor to a profit participation in the picture. In no case may the loan part exceed 40 % of the total amount invested from the investor.

Certain conditions

For the producer:

The production company has to make sure that 150 % of the amount invested (but not including the amount invested as loan) have to be spent in Belgium within 18 month after execution the "convention cadre".

For the investor:

First of all, the investor has to inform his personal tax office that he has invested in the Tax Shelter System. Following this notice, he will have to send to his tax office a copy of his "convention cadre" and an official approval hereof from the respective authority (French or Flemish), confirming the production as being qualifying for the Tax Shelter.

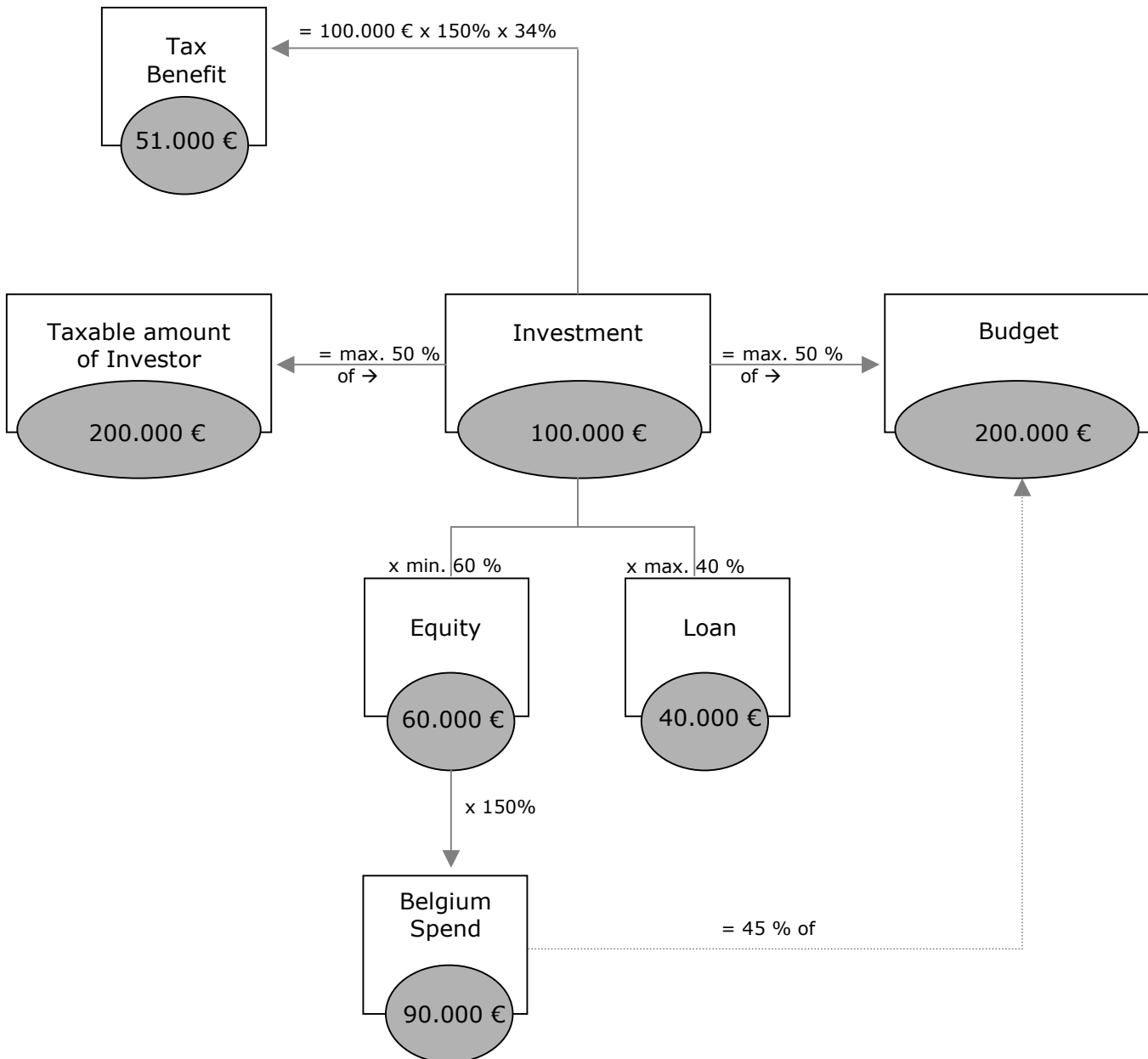
Later, the investor will receive a confirmation from the tax office of the producer and from the respective (French or Flemish) authority that the conditions of the tax scheme have been fulfilled.

La convention cadre

The "convention cadre" is the investment contract which will be concluded between investor and producer and which will contain various obligations. It will allow the tax administration to verify if all the conditions of the tax shelter have been met.

Overview

Belgium Tax Shelter (since 2004)



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.

Benefit

- max. 50 % of the total budget.