

Hollywood in Belgium

>> Belgian Tax Shelter attracts Co-Productions



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On February 9, 2012, the 62nd Berlin International Film Festival will open its doors for the international audience.

The opening movie of the Festival will be the French title “Les adieux à la reine” by Benoît Jacquot, prominently cast with Diane Kruger, Lea Seydoux, and Virginie Ledoyen. While the industry perceives France as particularly interesting cinematographically, its neighbor, Belgium, has become France’s first pick for co-productions. It is no wonder that the movie will officially premiere in Belgium mere weeks after the festival.

INTRODUCTION – SMALL COUNTRY, BIG INVESTMENT

Recently, Belgium garnered attention through Steven Spielberg’s screen adaptation of the Belgian Comic “Tintin” and the successful Belgian-French 2010 co-production “Nothing to Declare”, which to date has made more than USD 90 million at the box office, many times its budget. Focus has also been on Belgium for many other productions, as well as its constantly rising number of international co-productions. The reason is the Belgian so-called tax shelter model, introduced in 2003, which provides incentives for investment in movie productions in Belgium.

The tax shelter model has truly boosted production and since its launch provided for a production volume of EUR 700 million of films using the shelter. In 2006, three years after its introduction, 46 feature-length movies were produced in Belgium. In 2009, that number had almost doubled to 87 – with an upward trend. Each year, over 1,000 Belgian companies make available money for movie production.

The tax shelter model is mostly used for co-productions with neighbor France. Movies such as “My Worst Nightmare” starring Benoît Poelvoorde, which premiered in Germany on January 19th, or “Les enfants de Timpelbach”, produced in the German speaking part of Belgium with a budget of EUR 13.7 million, are merely a few examples for the active Belgian-French co-production industry.

Only a handful of German co-productions have so far made use of the tax shelter model. German-Belgian co-productions such as “Goodbye Bafana”, “Joeyeux Noël”, or “Heute bin ich blond” (original title: “La fille aux neuf perruques”), shot recently by Marc Rothmund in Belgium and Germany, are exceptions. This is surprising since the model is just as applicable to German co-productions. Also, a German-Belgian co-production treaty – in place since 1964 – has become newly relevant under the tax shelter model. Lastly, with one of Belgium’s official languages being German, there is no language barrier. It is high time for a brief look at Belgium as a production location and its movie funding opportunities.

PRODUCTION AND FUNDING

As a federal state, Belgium has several public film funds supporting movie production in the Flemish, the francophone, and German speaking parts of the country. The tax shelter model

exists in addition to, and can be combined with, these regional programs. It serves as the main motor for the increasing number of international co-productions.

1.1 **Tax Shelter: Funding for all of Belgium**

In contrast to the existing regional funds, the tax shelter model is financed exclusively from private investments. Working as a tax relief, the model allows tax paying investors to offset up to 150 per cent of their investment in movie production. Since investors also enjoy the other benefits of investment, like interest and profit sharing, companies are increasingly interested to participate and, in 2009, contributed more than EUR 100 million to movie production.

Unlike some German film funds, which were made possible in early 2000 by a tax law loophole (resulting in many investors not receiving, or still suing to receive, the tax break), the tax shelter model was specifically codified in the Belgian income tax law. Art. 194 of the income tax law expressly provides for the shelter and its rules, assuring reliable implementation by the involved parties.

(a) **How does the producer benefit?**

The introduction of the tax shelter aimed at strengthening Belgium's movie industry and supplementing the existing regional funding programs.

In accordance with the tax shelter model, the producer receives co-financing by an investor (or a group of investors), mostly bundled by an investment company and involving the Belgian co-production partner. The producer is free to win over an unlimited number of investors, as long as the combined tax shelter amount does not exceed 50 per cent of the production budget.

The investor's contribution is in practice split into a loan and a direct investment by way of participation in the co-production. The tax shelter model requires that the loan only amounts to 40 per cent of the investment; the remaining 60 per cent have to be co-production participation.

As compensation for the participation in the co-production, the investor is granted pro rata rights in the commercial exploitation of the movie. Many times, the investor is granted territorial exploitation rights for Belgium. Usually, the head producer has the option to buy these rights back before exploitation. Thus, all rights can stay with one producer, if this is desired.

The producer has to ratably spend at least 1.5 times of the investor's financial participation for the production in Belgium. However, the law provides for some flexibility. For example, the production costs do not necessarily have to be spent in Belgium, as long as they are subject to Belgian tax law. Thus, a service provider established in Belgium can provide his services to the production in other countries, as long as the payments he receives are taxable in Belgium. The same applies to actors' salaries.

(b) **Co-production is key**

Shortly after introduction of the tax shelter model, companies formed to support foreign producers who wanted to benefit from the Belgian funding programs. They look for investors and internally enter into contracts with them, so the producer does not have to.

Such a partner is of great value to foreign producers and necessary to fully and easily take advantage of the tax shelter model.

As the tax shelter's most important requirement, a Belgian company (or a foreign company established in Belgium) has to be involved in the project as a co-producer. Fortunately, the number of contracts that must be entered into is small, and usually merely includes a co-production agreement and a loan agreement (if desired).

Fund initiators Scope Invest, uMedia and Dexia Bank are constants in the Belgian co-production industry. Scope co-produces 8 to 12 movies per year and was involved in "Nothing to Declare" and "Mr. Nobody", to date the most expensive Belgian co-production with a budget of EUR 35 million. uMedia has co-produced or financed more than 100 movies over the years, among them prominent titles such as Paul Verhoeven's "Black Book" and "Sammy's Adventures".

(c) **Combination with other funding programs**

It is not merely the big funding amounts that make the tax shelter model interesting, but also the possibility to combine it with numerous other programs in Belgium and other countries. In contrast to other tax incentives and funds, it does not require the movie to be shot in Belgium or exclusively cast Belgian actors. Rather, the production costs have to be mainly taxable in Belgium. This makes it possible to involve a foreign actor via a Belgian agency or a Belgian co-producer working not only in Belgium, but also in other countries.

A current example for German-Belgian co-productions combining the benefits of German funding and the Belgian model is the movie "Mr. Morgan's Last Love", shot presently with Academy and Golden Globe Award winner Sir Michael Caine. The production combines the Belgian tax shelter with German production funding by Film Foundation of North Rhine-Westphalia (Film- und Medienstiftung NRW), Medienboard Berlin-Brandenburg, German Federal Film Board (FFA) and French Tax Rebate for International Production (T.R.I.P.).

Likewise, it is possible to combine the tax shelter model with the regional Belgian programs.

1.2 **Regional Funding Programs**

Since 1995, the CCAV (Centre du Cinéma et de l'Audiovisuel) funds the movie industry in the Walloon part of the country (southern Belgium) with roughly 3 million inhabitants. VAF (Vlaams Audiovisueel Fonds) offers funding for the bigger Flemish part of the country (Northern Belgium) with approximately 6 million inhabitants. CCAV has an annual budget of roughly EUR 14 million, VAF of EUR 12 million. In addition, the fund Wallimage disposes of EUR 2.5 million per year. Most recent Wallimage subsidiary is the fund Bruxellimage, which provides EUR 2 million for shooting in Brussels.

On the occasion of the Berlin International Film Festival, law firm Hogan Lovells, in co-operation with the German-speaking Community of Belgium, will host a panel on the topic "Movie goes Belgium" on February 10th, 2012 from 4.30-6 pm. The panel takes place in the law firm's Berlin offices, Potsdamer Platz 1, 13th floor. The event welcomes high-ranking representatives of Belgian movie institutions, producers and fund initiators and will provide extensive information on co-productions in Belgium.

Panelists will be: Philippe Reynaert, Director Wallimage; Michela Ritondo, Manager Fiscal Department for Foreign Investments; Pierette Baillot, Director Brussels Film Office; Sebastien Delloye, Producer Entre chien et loup; Bastien Sirodot, Manager uMedia; Fabrice Delville, Managing Director Scope Invest; Franz Esterhàzy, Esterhàzy&Dienst Productions. Presenter: Christiane Stütze, Hogan Lovells.