

December 2004

## NEWS & FEATURES

Netherlands  
Spain  
United Kingdom  
Luxembourg  
Ireland

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## Netherlands – Tax Rules for Films

In the Netherlands there are special tax rules for limited film partnerships (the film-CV). It is a so-called private limited partnership that is transparent for income tax and corporation tax. Profits and losses are apportioned to each of the participants in proportion to the amount of capital they contributed to the partnership. Capital raised in a limited partnership is not subject to capital tax.

The advantages are a specific film investment allowance (FIA) and the possibility of discretionary depreciation (WA Film), but these only apply if Senter (an agency of the Dutch Ministry of Economic Affairs) has issued a certificate of approval for the film based on an extensive assessment. To obtain a certificate of approval, among other things the film will need to meet the following criteria:

- ◆ the film must help to strengthen the film infrastructure in the Netherlands;
- ◆ the film must be primarily intended for screening in cinemas;
- ◆ the production budget of the film must not exceed €15m;
- ◆ at least half of the production costs of the film must relate to production in the Netherlands.

### *Film Investment Allowance (FIA)*

Co-participants in a limited film partnership who invest in a film obtaining a certificate from Senter can charge 47% of their investment to the profit in the year in which the investment was made, subject to a maximum FIA of €25,000 per calendar year for all of the limited film partnerships in which a taxpayer participates.

## Spain – Gains on Real Estate

Capital gains on the sale of property are taxable income chargeable when the capital gain takes place. The gain is generally taxed at 35% on the difference between the sale and acquisition values.

The acquisition value is the total of the transferors acquisition cost plus the expenses and taxes associated with its purchase (excluding interest), and, depending on the year of acquisition, an increase in line with the update coefficients established each year in the State General Budget Law.

The transfer value is the actual amount for which the transfer is made, less the sellers expenses and taxes relating to the transfer.

The person acquiring the property, even if not resident in Spain, must withhold 5% of the agreed consideration and pay it to the Treasury. This withholding is treated as a payment on account of the seller's tax due on the sale, which the seller deducts from the total tax due in his final return. If the tax withheld is not paid the liability for the tax transfers to the property's new owner.

## UK – VAT on Residential Property & Construction

The VAT rules applicable to residential property and construction are extremely complex, and, as Customs & Excise are generally quick to penalise those who apply them incorrectly, builders and other contractors tend to apply VAT at the usual 17½% in every case, rather than applying a lower rate and risk attracting a penalty.

The main reliefs are outlined below:

Exemption – applies to the sale, leasing or letting of residential property other than new dwellings (see below). VAT is not therefore payable when you buy a house or flat from the previous occupier, or rent a place that has been previously occupied. However, you will probably be paying some 'hidden' VAT costs; for example, a landlord cannot recover VAT on repairs to a property, and so will calculate the rent accordingly.

Zero rating – this is a more valuable relief than exemption, because the qualifying supplies of goods and services do not attract VAT at the point of consumption (as in the Exemption category above) and the developer or builder will also have been able to recover VAT expended during the construction work, so there are no ‘hidden’ VAT costs. The main items which attract zero rating are:

- ◆ construction of new houses and flats
- ◆ the first sale, or long lease, of newly constructed houses and flats, and of previously non-residential buildings, such as barns, converted into dwellings
- ◆ approved alterations to residential property that has listed building status (excludes outbuildings)
- ◆ the first sale, or long lease, of a substantially reconstructed residential property with listed building status
- ◆ the supply to a disabled person of such services as the construction of ramps, widening of doorways, and providing, extending or adapting bathrooms.

The reduced rate of 5% applies to:

- ◆ installation of energy saving materials, such as loft insulation
- ◆ major alteration work converting houses to flats or bedsits and vice versa, and conversion of non-residential buildings to residential use
- ◆ renovation or alteration of residential property not lived in for at least three years.

There is also a refund scheme for anyone who builds their own house, or converts a non-residential building into a house. This scheme, commonly known as the DIY Builders and Converters Refund Scheme, has strict rules and deadlines and is designed to put the DIY builder into the same VAT position as someone buying a new house from a developer.

### **Electronically Supplied Services (Downloads)**

An EU Directive effective in July 2003 introduced a special scheme for “electronically supplied services” such as accessing or downloading software,

images, text or information, music, games or films.

Non-EU suppliers supplying “electronically supplied services” to private individuals in the EU are required to register electronically in a Member State of their choice and charge VAT at the rate applicable in the customer’s country of residence.

International Companies including Amazon, AOL, Microsoft and Apple have established Luxembourg companies to provide their download service. The single rate of 15% (one of the lower EU VAT rates) applies to all supplies to EU private individuals. Supplies to EU businesses are exempt and input VAT on purchases can be recovered

### **Ireland - Holding Companies:**

*Subsidiaries-to-Parent Dividends:* Ireland has given effect to the EU Council Directive 2003/123/EC to eliminate double taxation on cross-EU border dividends from subsidiaries to their parent.

The shareholding required for a company to be considered a parent has been reduced from 25% to 5%. Irish branches of EU resident companies are brought into the relief. Credit can now be taken for the underlying tax suffered in lower tier subsidiaries – there must be at least a 5% relationship between each tier.

*“Pooling” of Tax Credits:* Tax credits of foreign dividends received can be ‘pooled’. This enables high tax credits arising on a dividend from one jurisdiction to shelter the tax liability on other dividends received from a lower tax jurisdiction. An overall excess of credits can be carried forward.

*Capital Gains Tax:* A gain made by an Irish based holding company on the disposal of shares or related assets in qualifying trading subsidiaries is exempt from Capital Gains Tax, where the subsidiary is resident, for tax purposes, in the EU or in a tax treaty country.

Conditions include a holding period of at least 12 of the previous 24 months, and 5% of the overall shareholding.

Further details of all these items are available at [www.agn-europe.org](http://www.agn-europe.org)



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