



Federal
Public Service
FINANCE

Tax Shelter

Tax incentives
for audiovisual productions





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Introduction

Special attention is drawn to the fact that the aim of this brochure is to give general information on "tax shelter".

For more specific questions with regard to a concrete application of the measures concerning "tax shelter", you are advised to introduce a request for an advance decision at the Office for Advance Decisions in tax matters (OAD), in order to acquire legal security and thus avoiding any misunderstanding.

All advance decisions taken by the OAD can be consulted on www.ruling.be

Office for Advance Decisions in tax matters
Federal Public Service FINANCE
Rue Marie-Thérèse 1
B-1000 Brussels
Tel.: +32-(0)-257 938 00
Fax: + 32-(0)-257 951 01
E-mail: dvbsda@minfin.fed.be

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Foreword

“A lot of talent, but not much money”.

This was the comment on audiovisual and in particular film production in Belgium. Films and the actors, technicians... carry off all the awards in festivals but the sector is suffering from a structural lack of funding.

This is why, after decades of inaction, I wanted Parliament to pass a law aimed at supporting the production of audiovisual works. The purpose of this law is to create a federal mechanism of tax incentives to promote investment in the production of audiovisual works.

The proposed system takes account of the current realities and requirements in Belgium, the difficulties and general traits of investments in audiovisual and film production, and it aims to complement existing means of support both at a regional and community level.

These are the different features of this law and the tax shelter system described in this brochure.

I hope you enjoy reading it!

The Deputy Prime Minister and Minister of Finance

1. Principle

The background of the slide is a deep red gradient. On the right side, there are several overlapping, curved strips of film, likely from a movie camera, showing sprocket holes. The film strips are a lighter shade of red, creating a layered, textured effect. The overall aesthetic is cinematic and professional.

The tax shelter is a tax incentive meant to encourage the production of audiovisual works and films. This tax regime allows a company wishing to invest by providing financial backing for audiovisual productions to benefit from exemption of any retained taxable profits worth up to 150% of the sums actually paid.



2. Who can invest?



What companies can **invest**?

The following companies can benefit from this tax regime: all resident companies and Belgian establishments of non-resident companies with the exception of:

- companies whose main purpose is the development and the production of audiovisual works;
- television broadcasting companies.

What companies can **benefit from investments**?

Resident audiovisual production companies.

A television broadcasting company or a company linked to Belgian or foreign broadcasting companies is not regarded as a resident audiovisual production company.

At the moment of finalising the framework agreement, the resident audiovisual production company must not be in arrears with payments to the Social Security Department (ONSS/RSZ).



3. Applicable

audiovisual work

Audiovisual work is understood to mean:

- a full-length film, a documentary or an animated film intended to be shown in a cinema;
- an animated series for television;
- a documentary for television;
- a long film made for television.

The audiovisual work must be approved by the competent departments of the French, Flemish or German Community as a European work as defined by the Directive "Television without frontiers" of 3 October 1989 (89/552/EEC).

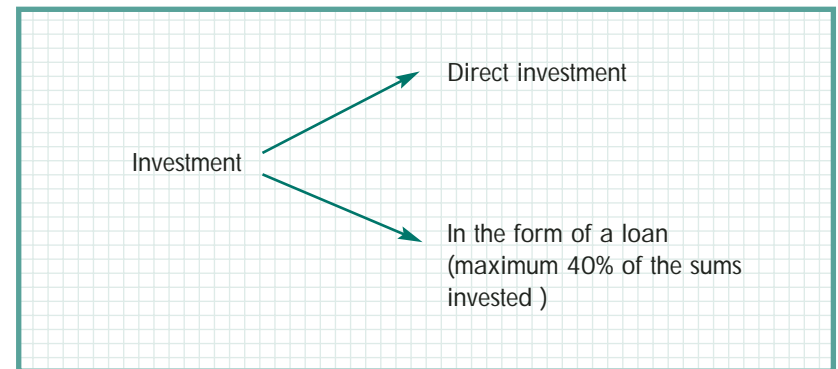


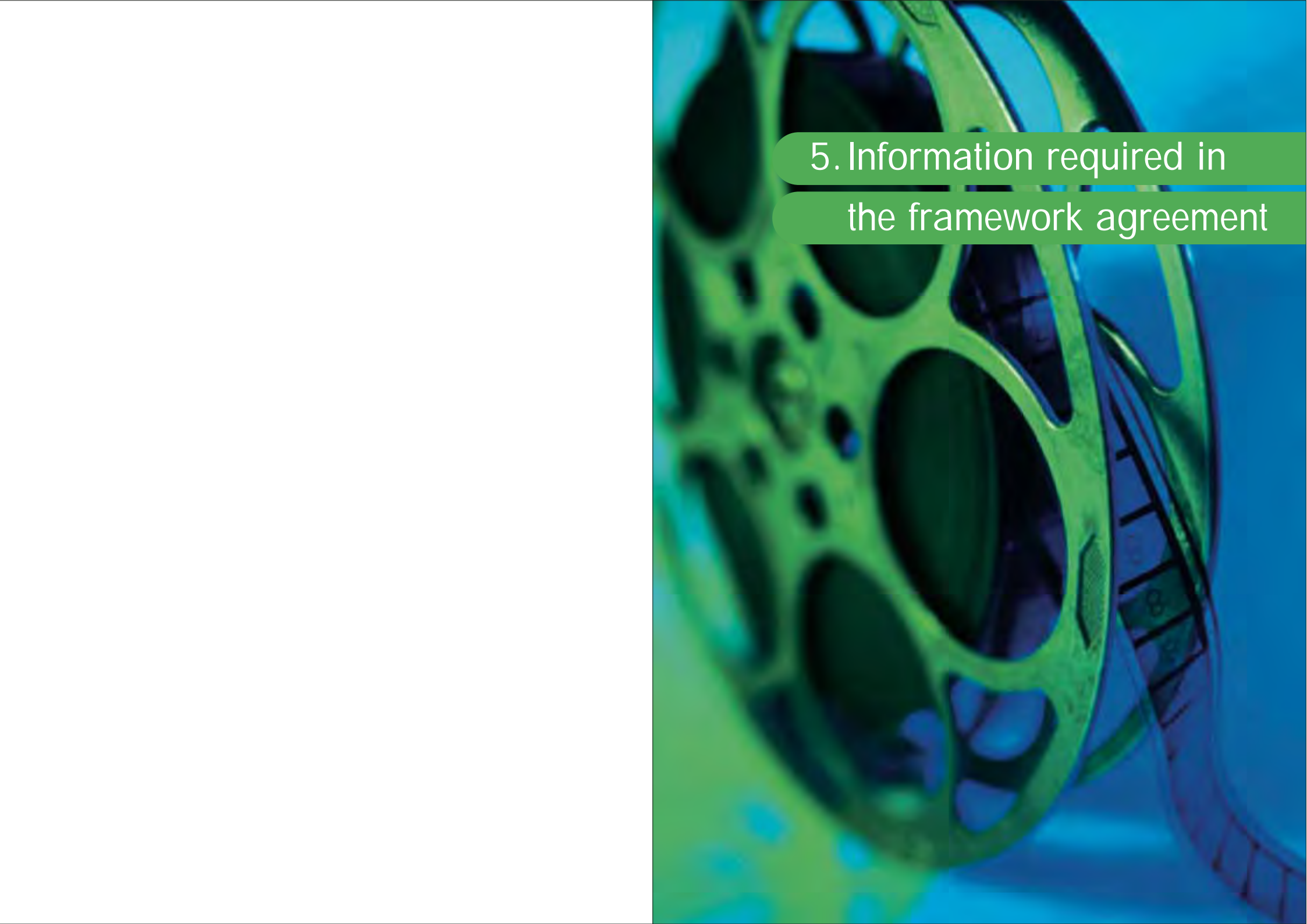
4. How to invest?



Companies wishing to invest in an audiovisual production under the tax exemption regime have to draw up a framework agreement with a resident audiovisual production company, i.e. a company whose main business purpose is the development and the production of audiovisual works.

The investment can be made either directly, by acquiring the rights for the production and performance of the audiovisual work, or by granting loans, providing that the company which is investing is not a credit institution.





5. Information required in
the framework agreement

If the company making the investment wants to benefit from the tax exemption, the framework agreement must contain the following information:

- the name and business purpose of the company making the investment;
- the name and business purpose of the beneficiary audiovisual production company;
- the overall sums involved as well as the legal form, specified for each sum, of allocations in favour of each participant;
- the identification and description of the approved audiovisual work for which the framework agreement was concluded;
- the budget of expenses required for the audiovisual work in question, drawing a distinction between those to be incurred by the resident audiovisual production company and the portion of the loan assumed by each resident company or Belgian establishment claiming the exemption;
- the agreed method of repaying the sums allocated, depending on their nature, on execution of the framework agreement;
- the guarantee that none of the participants is a resident audiovisual production company or a Belgian or foreign television company, and that the investors are not credit institutions;



- the audiovisual production company must undertake that:
 - the production and operating costs for the audiovisual work incurred in Belgium amount to at least 150% of the sums allocated, not including loans – in compliance with the framework agreement;
 - the total sums actually paid in order to execute the framework agreement do not exceed 50% of the total budget of the costs for the audiovisual work;
 - the total sums invested as loans do not exceed 40% of the sums allocated in compliance with the framework agreement.

6. Conditions for financing audiovisual work

The exemption is only granted and maintained if the resident audiovisual production company fulfils the following conditions:

1. The production and operating costs for the audiovisual work incurred in Belgium must amount to at least 150% of the sums allocated – except for loans – in compliance with the framework agreement.

Example:


A company invests 100.000,00 EUR in a film (60.000,00 EUR in the form of a co-production and 40.000,00 EUR in the form of loans).

It can be granted an exemption of 150.000,00 EUR, if the expenses incurred in Belgium amount to 150% of 60.000,00 EUR; i.e. 90.000,00 EUR for the production and operating costs.

2. The production and operating costs for the audiovisual work must be incurred within a maximum of 18 months after signing the framework agreement.
3. The total sum actually paid in compliance with the framework agreement must not exceed 50% of the total budget for the costs of the audiovisual work.
4. The total sums invested as loans must not exceed 40% of the sums allocated in compliance with the framework agreement.



If one of the conditions for granting and maintaining the exemption is no longer observed in any taxable period, any profits exempted earlier will be regarded as profits made during the course of that taxable period.



7. What is meant
by expenses incurred
in Belgium?

Production and operating costs incurred in Belgium are understood as being: the operating costs and financial costs constituting professional income which are subject, in the name of the beneficiary, to personal income tax, corporation tax or non-resident income tax, except for:

- the costs mentioned in Article 57 which are not justified by individual records and by a summarized report;
- the costs mentioned in Article 53, paragraph 9 and 10;
- all other costs that do not relate to the production and performance of the approved work.

Accordingly, the following are considered as production and operating costs incurred in Belgium:

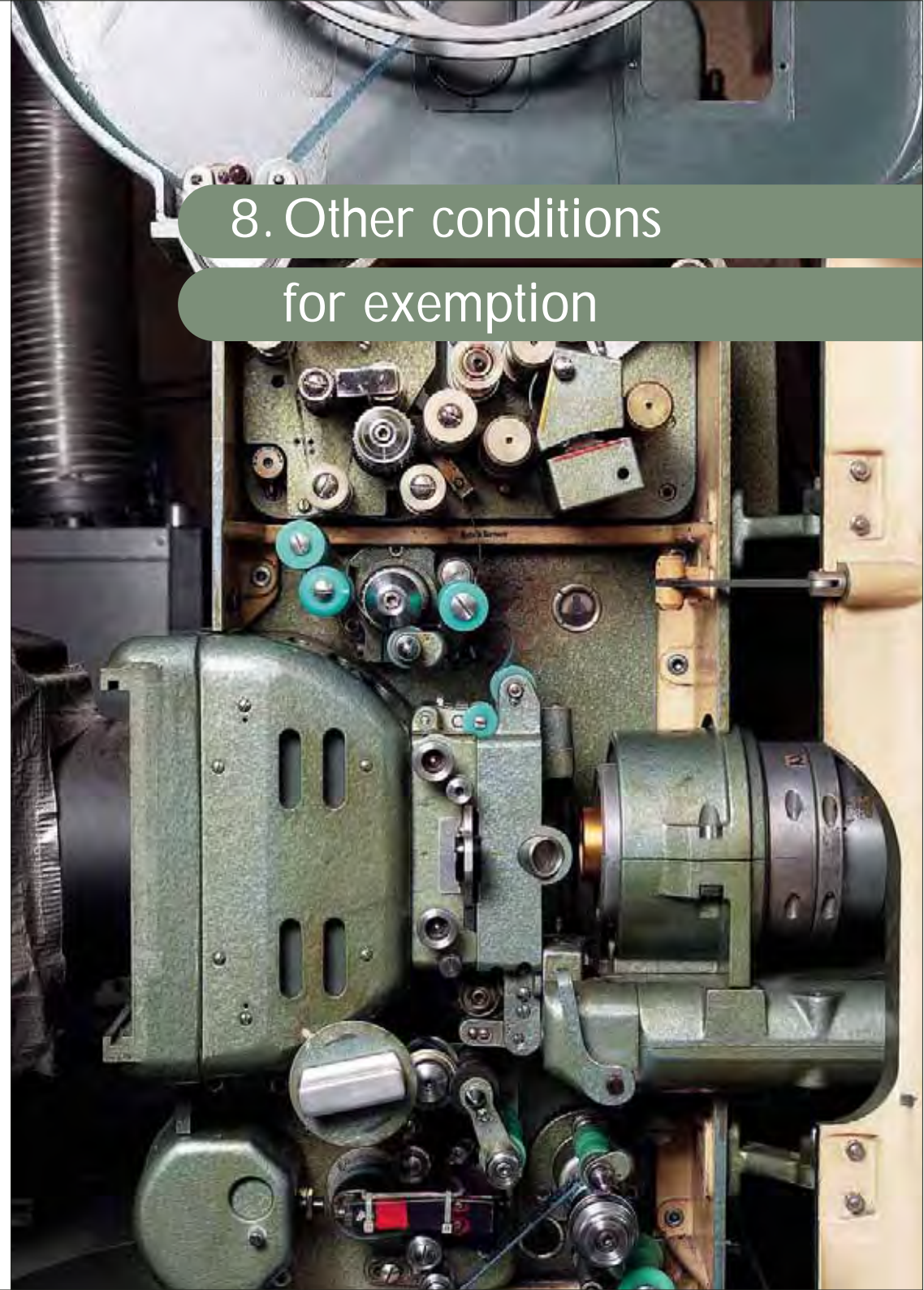
- the fee subject to non-resident tax or to personal income tax for a non-resident actor shooting a film in Belgium;
- the sum paid for services to a Belgian office of a foreign company.

When the cost represents payment for the services of the beneficiary, and when the beneficiary calls on one or more subcontractors to provide these services, this cost can only be considered as being incurred in Belgium if payment for the subcontractor's or subcontractors' services does not exceed 10% of the overall cost.

The purpose of this provision is to prevent a resident production company commissioning the production of an audiovisual work to an executive producer established in Belgium, who, in turn, might subcontract most of the production of the audiovisual work to another company based abroad.

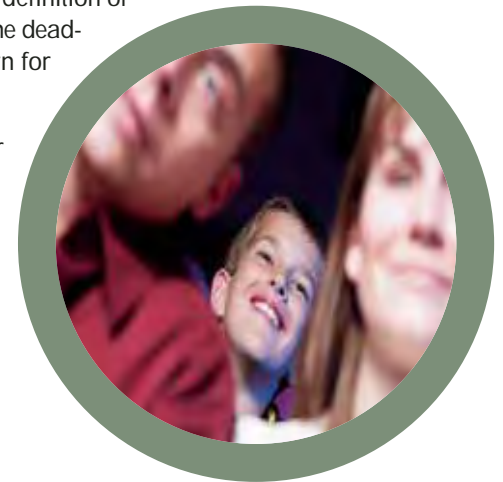
By contrast, this provision does not preclude all subcontracting and allows foreign subcontractors to be used to a certain extent. However, the bulk of the services provided (at least 90%) will only be deemed as being incurred in Belgium if they are directly or indirectly delivered by service providers subject to Belgian taxes.

8. Other conditions
for exemption



The company claiming exemption must:

- comply with the intangibility condition (viz. that the exempted profit must be booked in a special account on the liabilities side of the balance sheet and cannot be used as the basis for calculating any payment or allowance) until the date on which the last certificate is received;
- assign¹ the personal right and right of property obtained at the time of signing or executing the framework agreement to the exercise of professional activity in Belgium and retain them, in full ownership, until such time as the work is completed. However, this period during which the personal right and the right of property for the work are non-transferable is limited to an uninterrupted period of 18 months after the date on which the framework agreement is signed. Consequently, the said period does not hinder the free circulation of capital, goods and services;
- present a copy of the framework agreement, within the period prescribed for filing the income tax return for the taxable period;
- present a document in which the competent Community certifies that the work complies with the definition of a Belgian audiovisual work, prior to the deadline set for filing an income tax return for the taxable period;
- present, no later than 4 years after signing the framework agreement, a document in which the Audit office responsible for the resident audiovisual production company certifies that:
 - the condition regarding costs incurred in Belgium has indeed been met;



¹ The term “assignment to the exercise of professional activity” is no longer included in the text of Article 194 ter, § 4, point 1.3 of CIR, as amended by the Programme Law of 22 December 2003. But it certainly refers to rights that must be assigned as such given that they are undertaken by a resident company.

9. Calculating the total exemption

- the total amount of the sums actually paid in compliance with the framework agreement does not exceed 50% of the total budget for the costs of audiovisual work;
- the total amount of the sums invested as loans does not exceed 40% of the sums allocated in compliance with the framework agreement;
- the sums which the company has undertaken to pay have really been paid to the resident audiovisual production company within an 18-month period after signing the framework agreement;
- present, no later than 4 years after signing the framework agreement, a document in which the Community confirms that the production of the work is finished and that the financing does not exceed the limit of 50% of the total budget for the costs of audiovisual work.

If one of the conditions for granting and maintaining the exemption is no longer observed in any taxable period, any profits exempted earlier will be regarded as profits made during the course of that taxable period.

This system provides for the exemption of the taxable profit of resident companies and of the Belgian offices of non-resident companies, barring audiovisual production companies or establishments, up to 150% of the sums paid in compliance with a framework agreement for the production of an approved Belgian audiovisual work.

However, this amount can only be exempted within the following applicable limits for each taxable period:

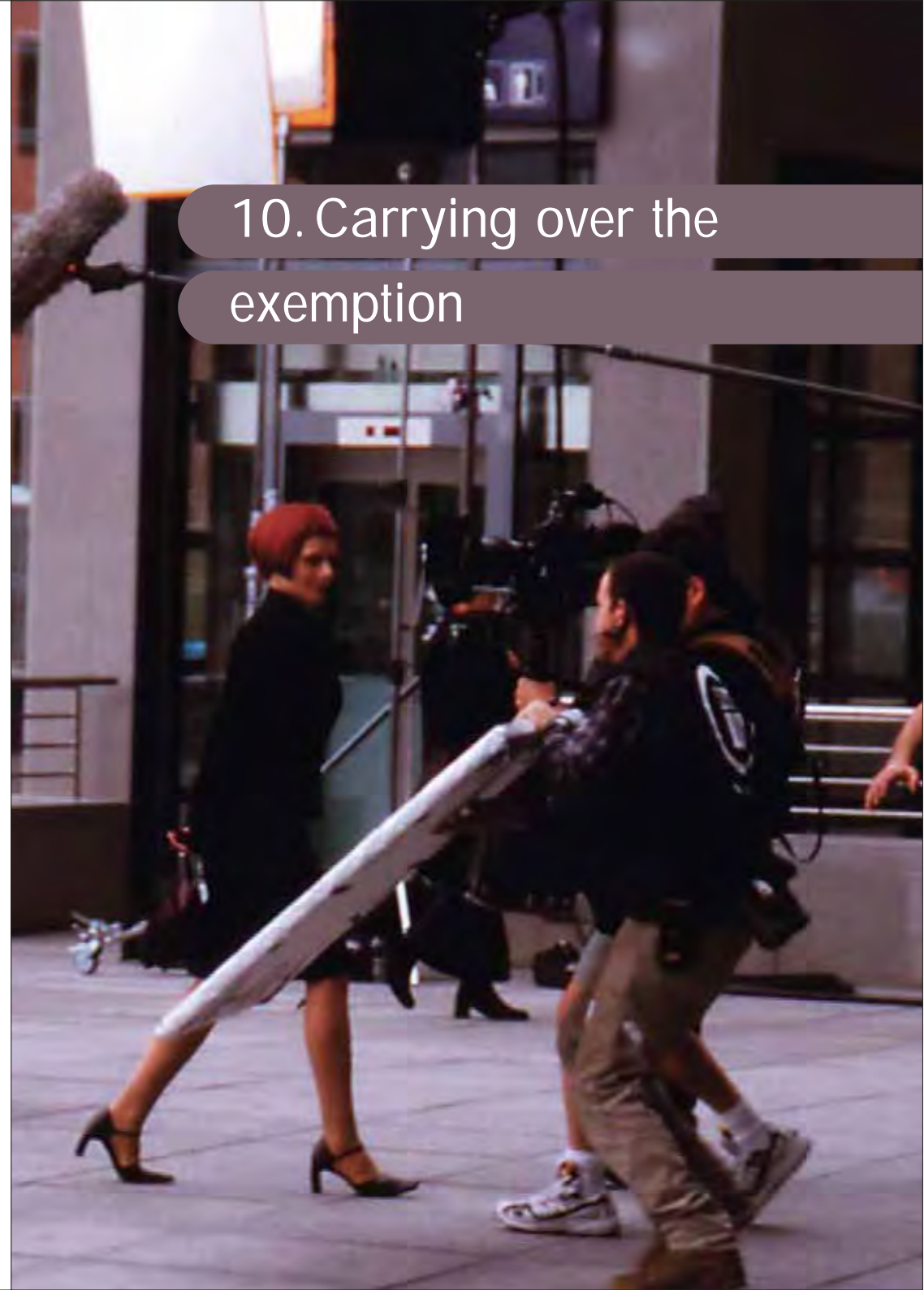
- on the one hand, a limit of up to 50% of taxable retained profit for the taxable period;
- on the other, a maximum sum of 750.000,00 EUR.

The notion "taxable retained profits" is deemed to mean the total increase, for the taxable period, of all taxable reserves (disclosed reserves and hidden reserves). Therefore it can be calculated as the positive difference between the total taxable reserves at the end of the taxable period before application of Article 194ter and the total taxable reserves at the end of the previous taxable period.

An absolute ceiling of 750.000,00 EUR has been established for each taxable period if the amount calculated on the basis of 50% of the taxable retained profit exceeds this threshold.

The calculation of this limit causes application problems because the calculation of the retained taxable profit depends on the "exempted tax shelter reserve" which in turn influences the amount of the estimated tax debt. The amount of this debt must in theory be shown in a special entry, must be deducted from the operating profit and must be added to the DE (disallowed expenses). After successive adjustments, the "maximum exempted tax shelter reserve" must correspond to 50% of the adjusted taxable retained profit, unless it reaches the ceiling of 750.000,00 EUR.

10. Carrying over the exemption



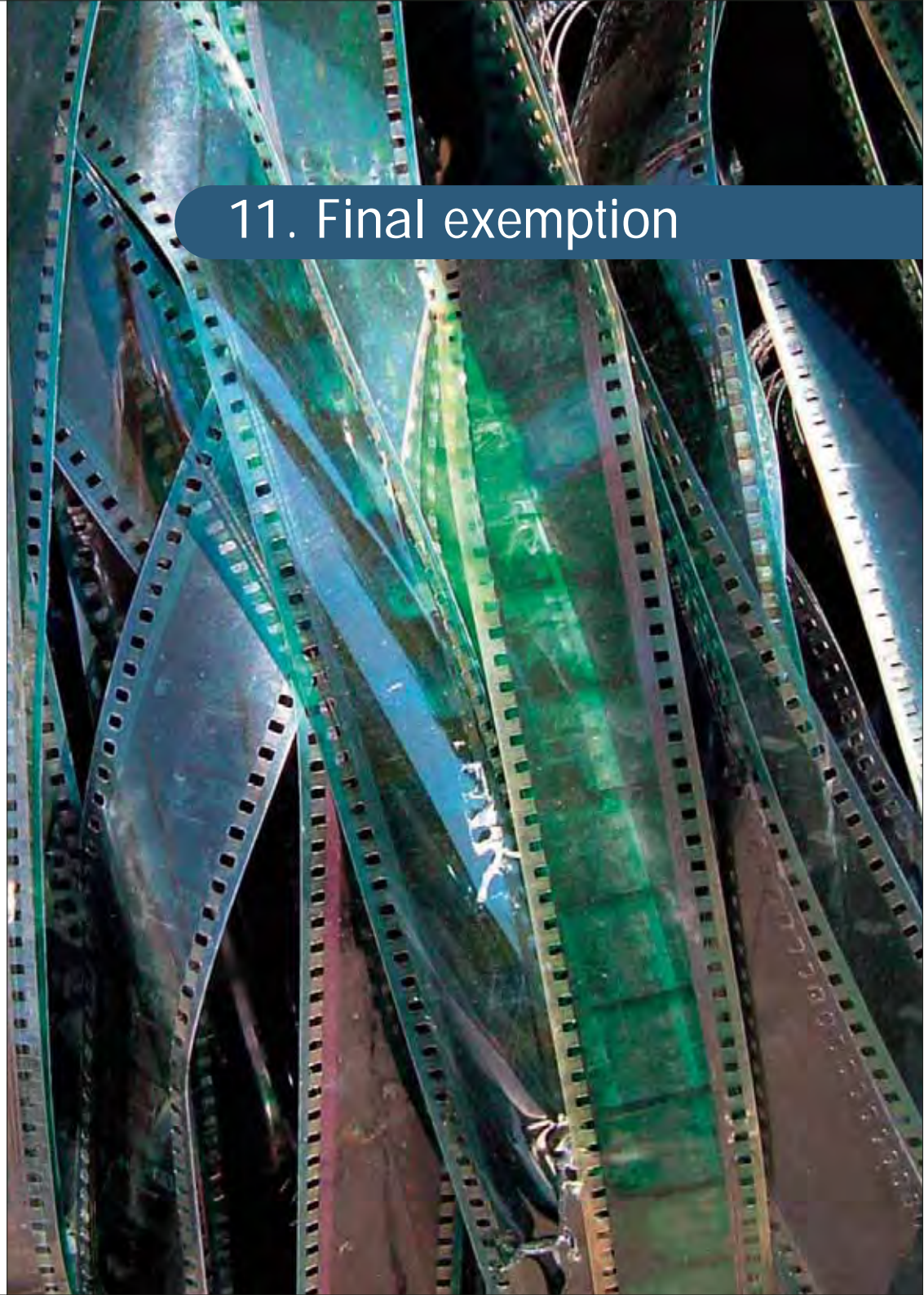
If the total sum allocated in compliance with the framework agreement cannot be exempted because there is no profit or insufficient profit (taxable reserves for a taxable period), it may be carried over to subsequent taxable periods. However, this carry-over is subject to a time limit, viz. at the latest until the assessment year for the taxable period preceding the one in which the last certificate referred to in §4, first paragraph, point 7 and 7bis, is received.

This carry-over is subject to the same limits as mentioned above, i.e.:

- on the one hand, a limit of up to 50% of the taxable retained profit for the taxable period;
- on the other, a maximum sum of 750.000,00 EUR.



11. Final exemption



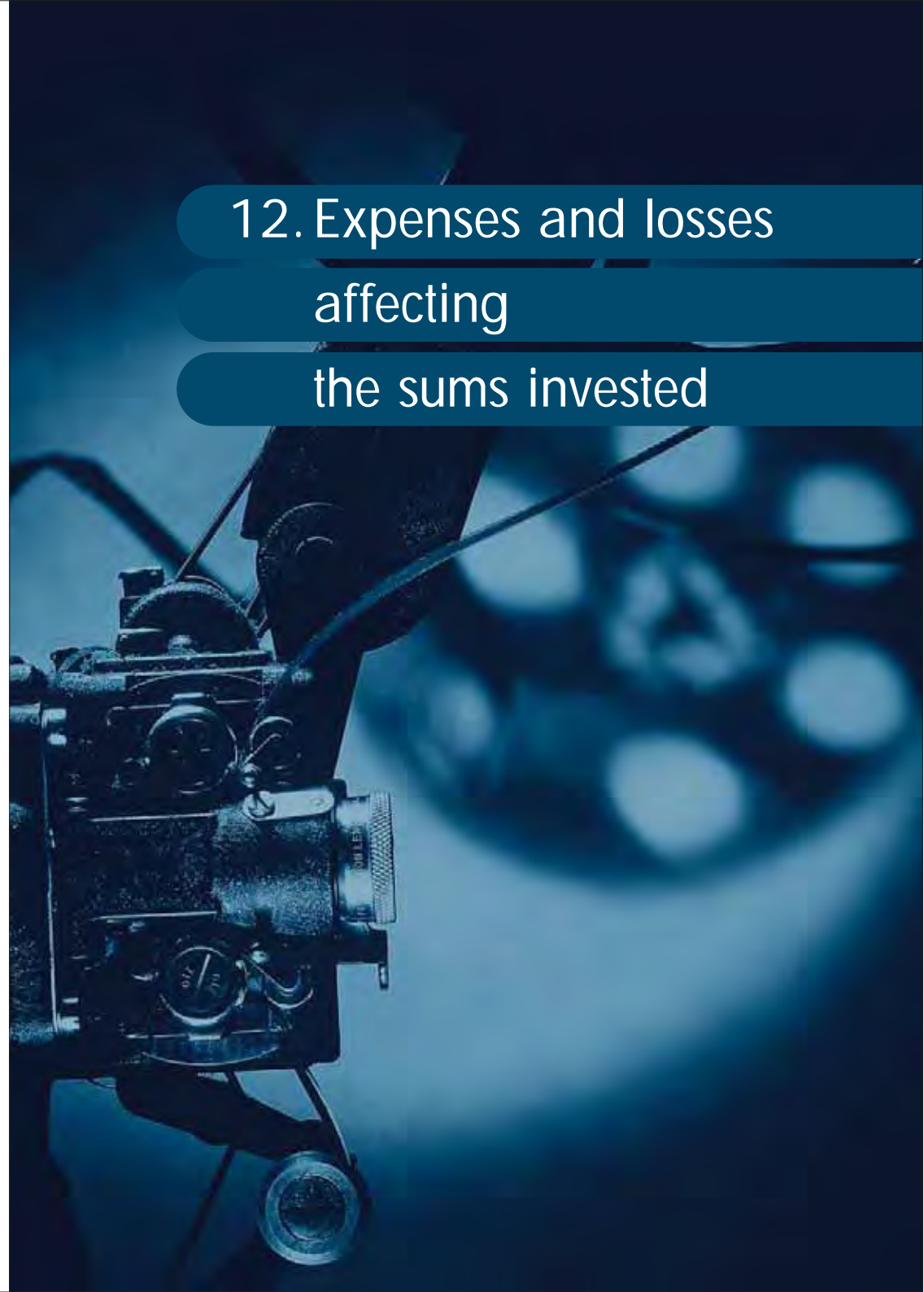
The “exonerated tax shelter reserve” is granted unconditionally and definitively, at the latest for the tax year relating to the taxable period preceding the one during which the last of the following certificates was received:

- the document in which the Audit office, which is responsible for the resident audiovisual production company, states the one:
 - the condition concerning the costs incurred in Belgium, has indeed been fulfilled;
 - the total amount of this sums actually paid in compliance with the framework agreement does not exceed 50% of the total budget for the costs of the audiovisual work;
 - the total amount of the sums invested as loans does not exceed 40% of the sums allocated for the execution of the framework agreement;
 - the sums which the company had committed itself to paying were actually paid to the resident audiovisual production company within an 18-month period after signing the framework agreement;
- the document in which the Community certifies that the production of the work is finished and that its financing does not exceed the limit of 50% of the total budget for the costs of the audiovisual work.

These documents must be handed in within 4 years of signing the framework agreement (i.e. issued by the Community concerned and by the Audit office responsible for the resident audiovisual production company). Subsequently, the company claiming the exemption must hand in these documents as documentary evidence for final exemption to the Audit office responsible for the said company (the legal text does not state any deadline for this).

If the company does not receive the certificates within 4 years of signing the framework agreement or if the Audit office does not receive the certificates in time, the provisionally exempted profit shall be taken as a profit for the taxable period during which the 4-year deadline expires.

12. Expenses and losses
affecting
the sums invested



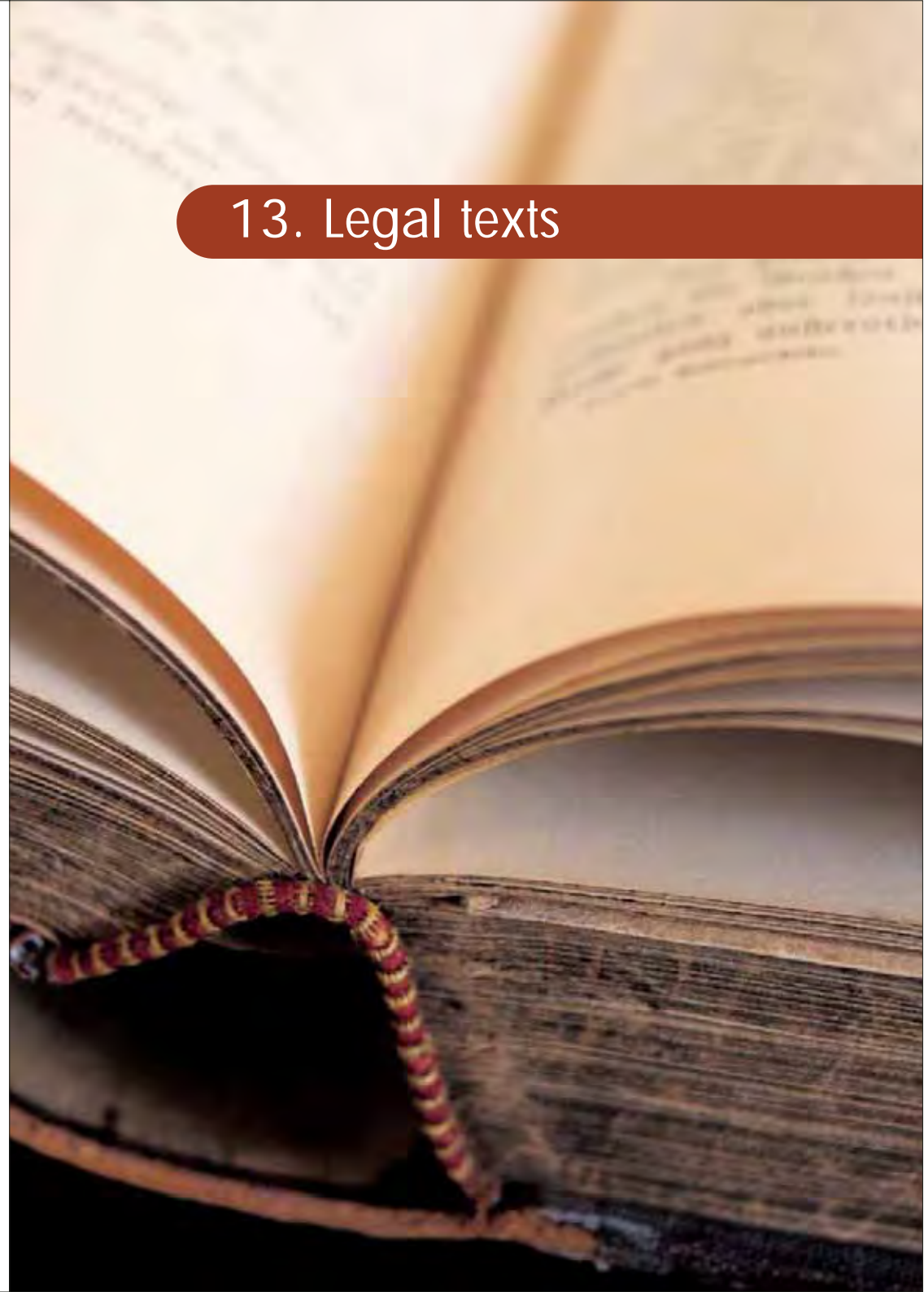
The beneficiary company cannot be granted exemption for nor can it deduct the following as professional expenses:

- costs,
- losses (capital losses),
- depreciation,
- provisions,
- amortization

in relation to the personal rights and production and performance rights for the audiovisual work.



13. Legal texts



Companies investing in a framework agreement for the production of an audiovisual work

§ 1. For the application of this Article, the terms and phrases set out below shall be deemed to have the following meanings:

1° Resident audiovisual production company:

- the company whose main purpose is the development and production of audiovisual work;
- with the exception of a television broadcasting company or a company linked to Belgian or foreign television broadcasting companies;

2° Framework agreement for the production of audiovisual work:

The basic agreement signed, depending on the circumstances, between a resident audiovisual production company, on the one hand, and on the other, one or more resident companies and/or one or more taxpayers as referred to in Article 227, 2°, for the purpose of financing the production of an approved Belgian audiovisual work with tax exemption for the taxable profit;

3° An approved Belgian audiovisual work:

- a full-length film, a documentary or an animated film intended to be shown in a cinema, an animated series or a documentary for television, which have been approved by the competent departments of the Community concerned as European works as defined in the Directive "Television without frontiers" of 3 October 1989 (89/552/EEC), amended by Directive 97/36/EC of 30 June 1997 and ratified by the French-speaking Community on 4 January 1999, by the Flemish Community on 25 January 1995 and by the Region of Brussels-Capital on 30 March 1995;
- for which the production and operating costs incurred in Belgium within an 18-month period after signing the framework agreement for the production of an audiovisual work amount to at least 150% of the total sums which, not including loans, are allocated in principle for the execution of the framework agreement with tax exemption from profits pursuant to (2);

4° Production and operating costs incurred in Belgium:

the operating costs and financial costs constituting professional income, in favour of the beneficiary, and which are subject to personal income tax, corporation tax or non-resident income tax, barring those costs mentioned in Article 57

which are not justified by the production of individual records and by a summary of costs, the costs mentioned in Article 53 (9) and (10), as well as all other costs not directly relating to the production or performance of the approved work.

Contrary to the previous paragraph, when the costs take the form, as far as the beneficiary is concerned, of payment for services and when the beneficiary uses one or more subcontractors to carry out these services, the said costs can only be considered as being incurred in Belgium if payment for the subcontractor's or subcontractors' services does not exceed 10% of the overall costs.

This condition is considered to be fulfilled if the beneficiary has undertaken to do so in writing, both to the production company as well as to the federal government.

Payments to subcontractors that might be regarded as costs incurred in Belgium shall not be taken into account when calculating the percentage specified in the previous paragraph if these subcontractors have entered directly into a contract with the production company.

§ 2. In the name of the company, other than a resident audiovisual production company or a television broadcasting company, which has entered into a framework agreement for the production of an approved audiovisual work, subject to the limits and under the conditions mentioned hereunder, the taxable profit is exempted up to the limit of 150% either of the sums actually paid by this company in compliance with the framework agreement, or of the sums which the company has committed itself to paying in compliance with the framework agreement.

The sums referred to in the first paragraph can be allocated for the execution of the framework agreement, either by granting loans, if the company is not a credit institution, or by acquiring rights related to the production and performance of the audiovisual work.

§ 3. The exemption, as referred to in (2), is granted per taxable period and amounts to a limit of 50%, with a maximum of 750.000,00 EUR, of the taxable retained profit for the taxable period, determined before allocation to the exempted reserve referred to in (4).

If a taxable period for which sums have been allocated in compliance with the framework agreement does not yield any profit or insufficient profit, the exemption which has not been granted with respect to that taxable period is subsequently transferred to the profit for subsequent taxable periods, provided that the exemption per taxable period does not exceed the limits established in the previous paragraph.

The exemption claimed for the sums which are actually paid pursuant to (2), first paragraph, and on account of the carry-over mentioned in the second paragraph, shall be granted at the latest before the assessment year relating to the taxable period preceding that in which the last certificate of those mentioned in (4), first paragraph, 7° and 7°bis, was received.

§ 4. The exemption is only granted and maintained if:

1° the exempted profits are entered under a special heading on the liabilities side of the balance sheet and remain there until the last certificate of those mentioned in 7° and 7°bis has been received;

2° the exempted profits are not used to calculate any remuneration or allocation until the last certificate of those mentioned in 7° and 7°bis has been received;

3° the personal rights and the rights of ownership obtained at the moment of signing or executing the framework agreement are retained, without reimbursement or retrocession, in full ownership by the original holder of these rights until the realization of the finished product, i.e. the finished audiovisual work; however, the maximum period during which these rights remain non-transferable, as stated above, is limited to an 18-month period after signing the framework agreement for the production of an audiovisual work;

4° the total amount which has actually been paid by the resident companies or Belgian establishments of the taxpayers described in Article 227, 2°, who have concluded the agreement, for the execution of the framework agreement with exemption from profits pursuant to (2), shall not exceed 50% of the total expenses budgeted for the production of an approved Belgian audiovisual work and has actually been allocated for the execution of this budget;

5° the total amount allocated in compliance with the framework agreement as loans by the resident companies or Belgian establishments of taxpayers referred to in Article 227, 2°, who have concluded the agreement, shall not exceed 40% of the sums allocated for the execution of the framework agreement with exemption from profits pursuant to (2);

6° the company claiming the exemption shall submit a copy of the framework agreement as well as a document in which the Community concerned certifies that the work complies with the definition of an approved Belgian audiovisual work, as specified in the first line of (1), first paragraph, 3°, within the deadline for filing the income tax return for the taxable period, and must attach these documents to the tax return;

7° the company claiming the maintenance of the exemption shall submit a document in which the Audit office responsible for the resident company for the production of the approved audiovisual work, on the one hand states, within four years of signing the framework agreement, that the conditions concerning the costs incurred in Belgium pursuant to (1), 3° and 4°, for the purposes determined in the framework agreement for the production of an audiovisual work, have been fulfilled, as well as the conditions and limits established in 4° and 5°, and, on the other hand, that the company claiming the granting and maintenance of the exemption has actually paid the sums specified in (2), first paragraph, to the resident audiovisual production company within an 18-month period after signing the framework agreement;

7bis the company claiming the maintenance of the exemption shall submit a document in which the Community concerned confirms, within four years of signing the framework agreement, that the production of the work is finished and that the overall financing of the work has been realized pursuant to the conditions and limits established in (4);

8° the resident audiovisual production company has no arrears with the National Social Security Office (ONSS/RSZ) at the moment of signing the framework agreement;

9° the conditions mentioned in 1° to 5° of this paragraph have been fulfilled without interruption.

If one or more of these conditions have not been fulfilled or are breached during any taxable period, the previously exempted profits shall be considered as profits for that taxable period. If the certificates mentioned in 7° and 7°bis are not obtained within four years of signing the framework agreement for the production of an audiovisual work by the company claiming the exemption, the previously exempted profits shall be considered as profits for the taxable period during which the 4-year deadline expires.

§ 4bis. Contrary to (4) and inasmuch as the certificates mentioned in (4), first paragraph, 7° and 7°bis are received within the 4-year period mentioned in (4), first paragraph, 7° and 7°bis, the provisionally exempted sums pursuant to (2) to (4) shall be definitively exempted as from the assessment year for the taxable period during which the last of these certificates has been received.

§5. The framework agreement for the production of an audiovisual work must contain the following obligatory statements:

1° the name of the resident audiovisual production company and its business purpose;

2° the name and business purpose of the resident companies or the Belgian establishments of taxpayers described in Article 227,2°, who have signed the framework agreement with the company mentioned in 1°;

3° the total amount of the investments allocated pursuant to (2) as well as the legal form, giving details for each sum, of those investments allocated in the name of each participating company mentioned in 2°;

4° the identification and description of the approved audiovisual work for which the framework agreement is concluded;

5° the budget of the expenses necessary for the audiovisual work in question, with a distinction between the part accounted for by the resident audiovisual production company and the part financed by each resident company or Belgian establishment of taxpayers as referred to in Article 227, 2°, claiming the exemption as referred to in (2);

6° the agreed method for the repayment of the sums allocated, depending on their nature, in compliance with the framework agreement;

7° the guarantee that each resident company or Belgian establishment of taxpayers as referred to in Article 227,2°, who is identified pursuant to 2°, is neither a resident audiovisual production company nor a television broadcaster, as well as that the investors are no credit institutions;

8° the undertaking by the resident audiovisual production company:

- to spend 150% of the sum invested, except in the form of loans, in Belgium pursuant to (1);
- to restrict the final amount allocated in principle in compliance with the framework agreement under the exemption from profits to a maximum of 50% of the budget for the total expenses of the approved Belgian audiovisual work

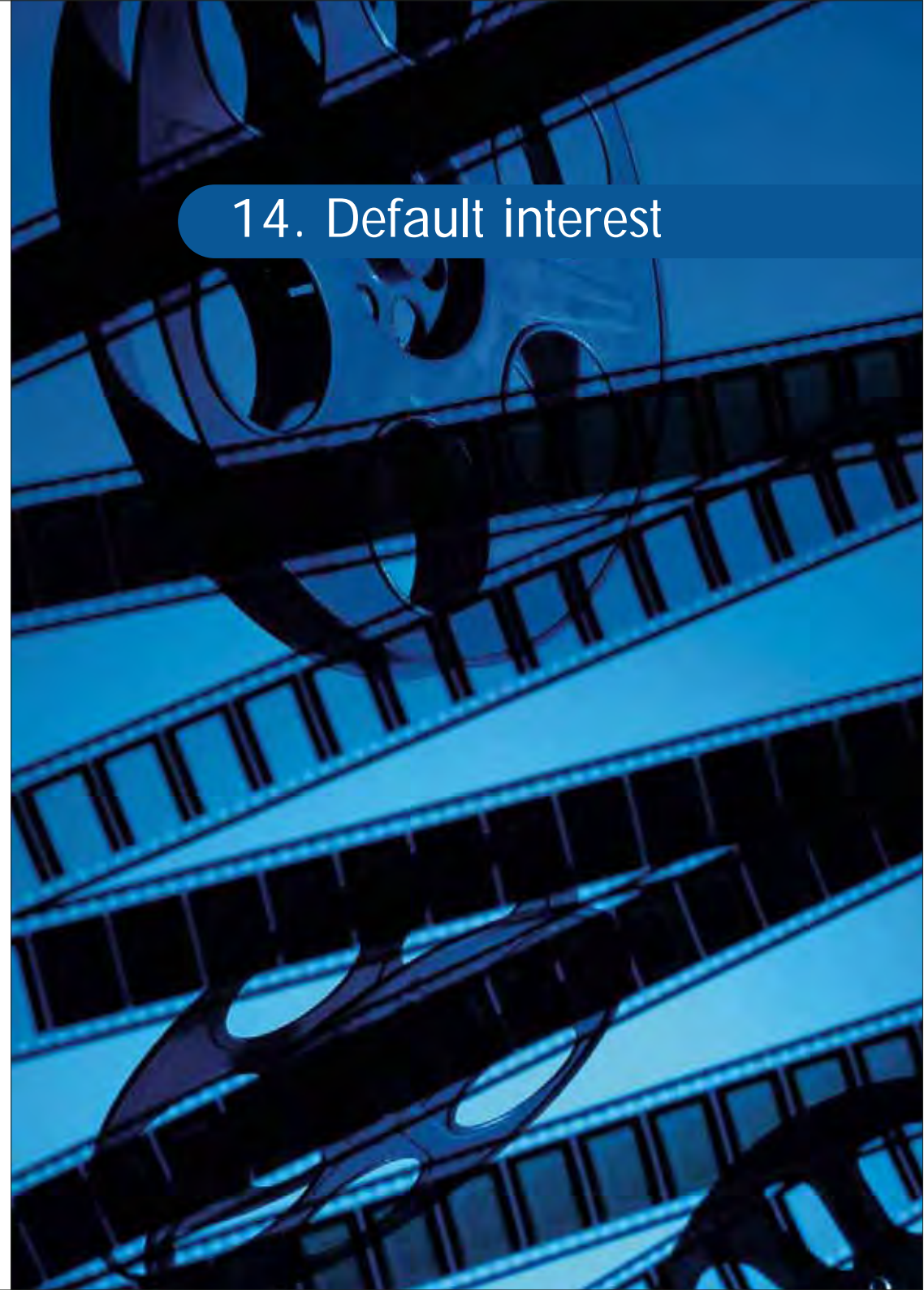
for all resident companies involved and Belgian establishments of taxpayers referred to in Article 227, 2°, and to actually use all sums deposited for the execution of this budget;

- to restrict the total sums allocated in the form of loans in execution of the framework agreement to a maximum of 40% of the sums intended in principle for the execution of the framework agreement with exemption from the profits for all resident companies involved and the Belgian establishments of taxpayers referred to in 227, 2°.

§ 6. The foregoing provisions do not impede the right of the company to claim the possible deduction as professional expenses of other sums than those mentioned in (2) and which were also allocated for the production of audiovisual works under the conditions specified by Articles 49 et seq.

Contrary to Articles 23, 48, 49 and 61, expenses and losses, and also depreciations, provisions and amortizations relating to, the personal rights and the rights of ownership and performance for the audiovisual work, which result from loans or operations mentioned in (2), are neither deductible as professional expenses or losses, nor exempted.

14. Default interest



Analysis

Default interest is due on the part of the tax which is proportionally related to the sums of the “exempted reserve tax shelter” and which becomes taxable if:

- the conditions for financing the audiovisual work are not fulfilled;
- the personal rights and rights of ownership for the audiovisual work are transferred before the audiovisual work is finished, before the expiry of the 18-month period;
- the certificates (which allow for the final and unconditional exemption for the “exempted tax shelter reserve”) are not received within four years of signing the framework agreement;
- the document in which the Community concerned confirms that the work meets the definition of a Belgian audiovisual work, is not received..

Default interest is calculated as from 1 January of the year to which the assessment year refers, during which the exemption was granted.

Legal texts

Contrary to Article 414 and without prejudice to the application of Articles 444 and 445, default interest, calculated pursuant to Article 414, shall be payable on the part of the tax which is proportionally related to the sums retained, which are taxable pursuant to 194ter, (4), second paragraph, in view of the non-compliance with the conditions referred to in (4), first paragraph, 3° to 7°bis, of the same Article, as from 1 January of the year to which the assessment year refers, during which the exemption was granted.

For further information, please contact:

Mrs Véronique TAI

Office for Advance Decisions in tax matters

Federal Public Service FINANCE

Rue Marie-Thérèse 1

B-1000 Brussels

Tel.: +32-(0)-257 938 35

E-mail: veronique.tai@minfin.fed.be

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