

BINDING CLASS RULING: BCR 040

DATE: 14 May 2013

The guidance contained in this ruling is affected by subsequent law changes.

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 10(zG), 23(n) AND 24F
SUBJECT : INVESTORS ACQUIRING RIGHTS IN A COMPLETED FILM

1. Summary

This ruling deals with the tax consequences for an investor who will acquire rights in a completed film.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 76R of the Act.

In this ruling legislative references to sections are to sections of the Act, applicable as at 21 April 2011 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of sections 10(1)(zG), 23(n) and 24F.

3. Class

The class members to whom this ruling will apply will be investors as described in point 4 below.

4. Parties to the proposed transaction

The Applicant:	The producer of the film
Filmco:	A film production company which will be a special purpose vehicle for the production of the film
The Financier:	A registered financial services provider
The Investors:	Investors who will acquire film rights in a completed film from Filmco

5. Description of the proposed transaction

The Applicant will incorporate Filmco and transfer the film rights in the film to be produced to Filmco. Filmco will obtain an interest bearing loan from the Financier to cover the production costs of the film and utilise the funds to produce the film. On completion of the production of the film and when it is in a form in which copies thereof can be made and distributed for presentation to the general public, the producer, along with distributors and sales agents, will source the Investors to invest in the ownership of the film rights.

Filmco will apply for and claim the film incentive rebate available from the Department of Trade and Industry known as the Large Budget Film and Television Production Rebate Scheme (DTI film rebate). Filmco will distribute the DTI film rebate received to the Investors as contractually agreed.

The Investors will each acquire a share in the ownership of the film rights in their individual capacities. The Investors will use their own cash resources or obtain loan funding to acquire the film rights. Where loan finance is utilised, the loan will be repayable within a period of 10 years.

The net revenues from the world wide exploitation of the film will be distributed to the film owners according to their percentage share in the film rights.

6. Conditions and assumption

This ruling is not subject to any conditions and assumptions.

7 Ruling

The ruling made in connection with the proposed transaction is as follows:

- An Investor who purchases a share of the rights in the completed film will qualify as a “film owner” defined in section 24F(1).
- An Investor who purchases film rights with the use of borrowed funds will also qualify as a “film owner”.
- An Investor will be eligible to claim the section 24F allowance in the year of assessment in which the film rights are acquired and any subsequent year of assessment, subject to the provisions of section 24F(4).
- The purchase price of the film rights will be the basis for calculating the section 24F allowance. The receipt of the DTI film rebate will not affect the calculation of the section 24F allowance.
- Section 23(n) is not applicable to the DTI film rebate and will accordingly not be applicable to the section 24F allowances.

- The provisions of section 10(1)(zG) will be applicable to the DTI film rebate that the Investors will receive from Filmco.

8. Period for which this ruling is valid

This binding class ruling is valid as from 21 April 2011 until 31 December 2012.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**