

**Guidance Note for application to Minister for Culture, Heritage and the Gaeltacht  
under Section 481 Taxes Consolidation Act 1997**

**Relief for Investment in Films**

**April 2019**

## **1. Introduction**

Section 481 of the Taxes Consolidation Act 1997 (hereafter referred to as “Section 481”) and the Film Regulations 2019, (S.I. No. 119/2019) made by the Revenue Commissioners, with the consent of the Ministers for Finance and for Culture, Heritage and the Gaeltacht on 27 March 2019 provide for corporation tax relief for in the production of films by film production companies. The relief is available to film production companies provided certain conditions, as laid out in statute and regulations, and as specified in the Certificate issued by the Minister for Culture, Heritage and the Gaeltacht, are met.

This Guidance Note should be read in conjunction with Section 481 and with the Regulations. The information on this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case. While every effort is made to ensure that the information given is accurate, responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.

The relief is given at 32% of the lowest of:

- a) eligible expenditure
- b) 80% of the total cost of production of the film
- c) €70,000,000

and may be claimed against a producer company’s corporation tax liabilities.

Section 26 of Finance Act 2018 introduced a number of amendments to Section 481. These required such a number of consequential amendments to the Film Regulations 2015 that it required the introduction of the Film Regulations 2019. The Film Regulations 2019 have revoked the Film Regulations 2015 (except in so far as they relate to an application to which the Film Regulations 2019 do not apply).

The Finance Act 2018 provided for the making of an application by a producer company directly to the Minister for Culture, Heritage and the Gaeltacht (the Minister) for a certificate stating that the film is to be treated as a qualifying film for the purpose of Section 481. Where the Minister issues a certificate in relation to a qualifying film, and all the other provisions of Section 481 have been complied with, a producer company may make a claim for the film corporation tax credit.

Transitional arrangements are included for films that have commenced Irish production before the publication of the Regulations.

## **2. Transitional Arrangements**

The Regulations provide that an application for certification must be made in writing to the Minister by a producer company at least 21 working days prior to the commencement of the Irish production. The Regulations also provide transitional

arrangements for films commenced in advance of the commencement of the Regulations:

- 1) Where the Irish production of a film commenced in advance of the commencement of the Regulations (i.e. prior to 27 March 2019) and no application had been made to the Revenue Commissioners for a Certificate under Section 481 as it stood prior to the changes made by Finance Act 2018, an application under Section 481(1A) may be made in respect of that film at any time on or before 30 April 2019 (Regulation 4).
- 2) Where the Irish production of a film commenced in advance of the commencement of the Regulations (i.e. prior to 27 March 2019) and an application had been made to the Revenue Commissioners for a Certificate under Section 481 as it stood prior to the changes made by Finance Act 2018 but no authorisation was issued by the Minister under Section 481 as it stood prior to the Finance Act 2018 amendments, that application will be treated as having been made to the Minister under Section 481(1A) (Regulation 4).

### **3. The Application Process**

Section 481 provides that a producer company shall not make a claim for the film corporation tax credit unless the Minister has issued a certificate in respect of that film.

An application for a certificate must be made in the form prescribed by the Minister and contain such information as may be prescribed in the Regulations. This information must be set out in the Application Form (Tab A) with the supporting documentation set out in Tabs B to M.

The Minister, in considering whether to issue a certificate to the producer company in relation to a film, will examine the anticipated net contribution that the Section 481 Scheme and other State Aid Schemes will make to the project; and will consider whether the film will either or both:-

- (i) be of importance to the promotion, development and enhancement of the national culture including, where applicable, the Irish language (referred to as 'the Culture test') and
- (ii) act as an effective stimulus to film making in the State through among other things, the provisions of quality employment and training and skills development opportunities (referred to as 'the Industry development test').

The certificate will be based on the information submitted and on the understanding that the proposals will not contravene any of the conditions for relief. A certificate is issued on the basis of the information supplied during the application process. Any material change in the information supplied that may arise as the project progresses must be notified to the Department of Culture, Heritage and the Gaeltacht.

The application form and supporting documentation (Tabs B to M) should be submitted by email to [section481@chq.gov.ie](mailto:section481@chq.gov.ie).

#### **4. Tab A Application Form**

##### **1. Production Information**

###### Producer Company

1. At the time of making the application, the applicant must be a Producer Company, which complies with all of the following requirements:
  - a) it is resident in the State, or an EEA State other than the State and carries on business in the State through a branch or agency;
  - b) it carries on a trade of producing films on a commercial basis with a view to the realisation of profit,
  - c) the films are made for exhibition to the public in cinemas or by means of broadcast,
  - d) it cannot be a broadcaster or a company whose business consists wholly or mainly of transmitting films on the internet, nor can it be connected to a broadcaster or to a company whose business, taken together with all companies to which it is connected, consist wholly or mainly of transmitting files on the internet;
  - e) it holds all of the shares in the qualifying company; and
  - f) it is not part of undertaking which would be regarded as an undertaking in difficulty within the meaning of “undertaking in difficulty” as set out in the Rescuing and Restructuring Guidelines as defined in Section 481.

These requirements are set out in the ‘Producer Company Test’ in the application form.

The producer company should provide details of an individual who will be the main contact in relation to the application to include that individual’s name, telephone number and email address. Any queries from the Department of Culture, Heritage and the Gaeltacht will be addressed to this individual.

###### Qualifying Company

A qualifying company is a special purpose production company which complies with the following requirements:

- a) it is incorporated and resident in the State or is carrying on a trade in the State through a branch or agency;
- b) it exists solely for the purposes of the production of only one qualifying film; and
- c) it does not contain in its name the words “Ireland”, “Irish”, “Éireann”, “Éire” or “National”, where the company name in question is either registered under either or both the Companies Act 2014, and the Registration of Business Names Act, 1963, or registered under the law of the territory in which it is incorporated.

## **2. Production Schedule**

Details are to be provided on the film title, any alternative title, the film structure and length, the production schedule, the date that the Irish production commences and the estimated date of completion. An application for certification must be made in writing to the Minister by a producer company at least 21 days prior to the commencement of the Irish production.

## **3. Category of Film**

Regulation 5 sets out the types of film which are eligible for certification. A qualifying film must be produced on a commercial basis with a view to the realisation of profit and produced wholly or principally for exhibition to the public in cinemas or through broadcasting. The categories are:

1. Feature film,
2. Short film of feature quality,
3. Television drama (feature length or series),
4. Animation (whether computer generated or otherwise, but excluding computer games), or
5. Creative Documentary, where the project:
  - is based on an original theme, preferably demonstrated by a script or treatment the design and style of which bear the undeniable stamp of creative originality and personal perspective; and
  - contains a certain “timeless” element so that there is no loss of interest when the event with which it may be linked has passed; and
  - involves production arrangements which give evidence of, in particular, a substantial period of preparation and a significant period devoted to post-production; and
  - contains significant original filming and does not merely report information.

The following categories of film are not eligible for certification: (Regulation 6)

1. Films made for exhibition as an advertisement or advertising programme
2. Reality television whether scripted or unscripted,
3. Production, other than a documentary, all or substantially all of which consists of stock footage,
4. Current affairs programming which may feature a variety of formats, including live or pre-recorded news reporting, interviews, debates, round-table discussions, documentary segments, open forums and panel discussions,
5. Talk show formats that may involve one or more hosts and are largely unscripted,
6. Review, magazine style or lifestyle programmes,
7. Localised versions of licenced international formats,
8. Films comprising or substantially based on:
  - a. public or special performance(s) staged for filming or otherwise;

- b. sporting event(s);
- c. games or competitions or contests;
- d. demonstration programmes for tasks, hobbies or projects;
- e. live programming.

#### **4. Film Outline**

##### Industry Development Test

The producer company must demonstrate how, in promoting, developing and enhancing culture, the film acts as an effective stimulus to film making in the State through, among other things, the provision of quality employment and training opportunities. Information provided here should be supported by the information set out in Tabs B – M that must accompany the application form.

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##### Culture Test

The decision on whether to issue a certificate to a film project will require a film to meet at least three of the criteria set out in this section of the application form. The producer company must demonstrate how the film complies with the criteria by specific reference to aspects of the film, script and content. It is not sufficient to simply reiterate the wording of the criteria without reference to specific examples.

#### **5. Key personnel**

Total remuneration, including pay and benefits-in-kind, including per diems and other emoluments must be stated for each of the key personnel.

#### **6. Parties to the Production**

Details should be provided of the parties involved in the project. In particular, the person to whom the completed film is to be delivered, those providing post-production and other services and providers of finance should be identified.

#### **7. State Aid**

The cumulation of State Aid in principle is limited to 50% of the production budget of the film, with a view to stimulating normal commercial initiatives. The aid intensity for cross-border productions funded by more than one Member State and involving producers from more than one Member State may be up to 60% of the production budget.

#### **8. Production Budget**

Details of the production budget are required to determine if the project is acceptable from a state aid point of view. Applicants are asked to provide details of other sources of funding, together with details of any other EU/State Aids, including details of any

Screen Ireland or Broadcasting Authority of Ireland funding applied towards the cost of production of the film.

## **9. Employment information**

### **Crew and Cast Numbers**

Details of the total numbers of personnel to be employed on the film in the specified categories and their tax residence are required.

## **10. Skills Development and Training**

In producing the film, the producer is required to develop the skills of those working on the film. This section should set out the estimated number of Participants likely to be upskilled in the course of the film. Detailed information relating to Skills Development and Training should be included in Proposed Skills Development Plan which is Tab F (see below).

## **11. Creative Documentary Test**

This section need only be completed if you have ticked the Creative Documentary category at the Category of Film section above. In order to qualify as a Creative Documentary, a project is required to

- a) Be based on an original theme, preferably demonstrated by a script or treatment, the design and style of which bear the undeniable stamp of creative originality and personal perspective, and
- b) contain a certain timeless element so that there is no loss of interest when the event with which it may be linked has passed, and
- c) involve production arrangements which give evidence of, in particular, a substantial period of preparation and a significant period devoted to postproduction, and
- d) contain significant original filming and does not merely report information.

## **12. Declaration**

The declaration must be made by a director of the producer company.

## **5. Accompanying Information**

### **Tab B: Synopsis of Film Project**

This section should be completed where the category of film under Regulation 5 is (1) a feature film, or (2) a short film of feature quality, or (3) a television drama (feature length or series), or (4) an animation (whether computer generated or otherwise, but excluding computer games). Applicants should provide a description and overview of the proposal with an outline of the how the story develops as the film or series progresses.

For creative documentaries (category (5) under Regulation 5), applicants should provide a description of how the theme and documentary will be developed and must ensure

that section 11 of the application form (i.e. the Creative Documentary Test) is completed.

### **Tab C: Completed Screenplay, Sample Television Scripts or Storyboard**

To qualify for certification, a full script must be completed and available for inspection by the Department of Culture, Heritage and the Gaeltacht. For the purposes of the application, a sample of the script may be submitted. This sample should comprise of extracts from the beginning, middle and end of the script.

### **Tab D: Detailed Production Schedule**

This should give details of the dates on which activity is scheduled to take place and should, as a minimum, give details of the pre-production, production and post-production phases. It should correspond with the information contained in the Person Days Schedule.

### **Tab E: Person Days Schedule**

Tab E is a Person Days Schedule showing job title, number of days each person is engaged in the State and abroad and the associated budget. All of the individuals included in the Proposed Skills Development Plan (Tab F) should be clearly identified in the Person Days Schedule.

### **Tab F: Proposed Skills Development Plan**

The Proposed Skills Development Plan for the film should be agreed in advance with Screen Ireland and the plan endorsed accordingly by Screen Ireland and included at Tab F.

The Proposed Skills Development Plan should include a list of the appropriate number of Participants giving the following information for each:

- Name of Participant;
- Area of employment;
- Participant Role and Grade;
- Planned duration of skills development activity in days;
- Daily rate of payment to Participant;
- Planned Budget for the activity incorporating wages, PRSI, etc.;
- Title of mentor/supervisor/tutor to whom the Participant will report;
- Period for which the mentor/supervisor/tutor is engaged in days;
- Learning objectives of the planned activity;
- Outline of tasks involved in the planned activity; and
- Confirmation as to whether or not the Participant will progress to another role or grade on completion of the activity.

The information provided in the case of both the Participants and the mentors/supervisors/tutors should be reflected in the Person Days Schedule (Tab E).

In no circumstances should the participant be paid at a rate lower than the Minimum Wage.

If the period of employment of the Participants and the mentors/supervisors/tutors are not of similar duration, an explanation should be included.

For the time being, films with eligible expenditure of under €2million may provide a Skills Development Plan directly to the Department of Culture, Heritage and the Gaeltacht. A minimum of two people (to be known as “Participants”) must be employed on the project for the purpose of developing their skills. A skills development Participant must be engaged for every €177,500 of corporation tax credit claimed up to a maximum of eight Participants.

A sample template for a Screen Ireland agreed plan is below.

A post-project Skills Development Report will be required as part of the compliance report required under Section 10 (Schedule 5 Tab E). A sample of a reporting form is below.

**Sample Template for Screen Ireland agreed Skills Development Plan**

1. Planned Activity Type (Work-Based Learning, New Entrant Programme, Participant Programme, Apprenticeship Programme, Mentoring, Shadowing, Training Course etc.)

2. Planned Activity Methodology (Instructor Led, Mixed Learning, Online Learning, Work Based Learning, Blended Learning etc.)

3. Rationale for Planned Activity (Is the Activity addressing an identified need related to hard skills, soft skills, future skills, technical skills, management skills, gender equality, inclusivity, diversity etc.)

4. Justification for Planned Activity (How have the needs been identified (Government Reports, Sectoral Reports, Regional Development Plans, Skills Needs Analysis Surveys, Skills Audits etc.) and do the identified needs relate to the company and/or the Participant, and/or the production and/or the sector as a whole?

5. Learning Objectives of the Planned Activity

6. Outline of Tasks in the Planned Activity

7. Target Number of Participants for the Planned Activity \_\_\_\_\_

8. Planned duration of activity \_\_\_\_\_ days

9. Planned Budget for activity €\_\_\_\_\_

10. Daily rate of payment to participant €\_\_\_\_\_.

<b>Sample Skills Development Reporting Form</b>	
Participant name	
Participant role/grade (new entrant, trainee, cast, crew, director, producer etc.)	
Participant gender	
Participant contact details (email and mobile number)	
Completed activity type (work-based learning, new entrant programme, traineeship programme, apprenticeship programme, mentoring, shadowing, training course etc.)	
Completed activity methodology (instructor led, mixed learning, online learning, work based learning, blended learning etc.)	
Duration of completed activity	
Budget for completed activity	
Daily rate of payment to participant	
Was the completed activity uncertified or certified (award title, NFQ level, type of certification - industry certification, QQI certification etc.)	
Objectives of the completed activity (did the activity address an identified need related to hard skills, soft skills, future skills, technical skills, management skills, gender equality, inclusivity, diversity etc.)	
Outcomes of the completed activity (did the activity address an identified need related to the participant and/or the production and/or the company and/or the sector as a whole etc.)	
Did the Participant progress to another role or grade on completion of the activity?	
Mentor/Supervisor/Tutor name associated with the completed activity	
Mentor/Supervisor/Tutor contact details (email and mobile number)	
Mentor/Supervisor/Tutor contact days associated with the completed activity	

**Tab G: Full list of Heads of Department**

This should state the name and position and remuneration of the relevant

individuals.

**Tab H: Track Record and CV's**

The CV or a description of the track record, especially artistic achievements should be provided for each of the producers, directors and writers.

**Tab I: Production Expenditure**

A top sheet production expenditure summary is required. This is a summary of the total cost of production and eligible expenditure classified into the principal categories of the film production budget.

**Tab J: Low Budget/ Difficult Projects**

A Tab J should be included if the applicant wishes the project to be treated as a low budget or difficult film for the purposes of State-Aid rules.

The cumulation of State Aid, in principle, is limited to 50% of the production budget of the film, with a view to stimulating normal commercial initiatives. The aid intensity for cross-border productions funded by more than one Member State and involving producers from more than one Member State may be up to 60% of the production budget.

Difficult audio-visual works and co-productions are excluded from these limits. Films whose sole original version is in an official language of a Member State with a limited territory, population or language area may be regarded as difficult audio-visual works in this context. Difficult audio-visual works may include short films, films by first-time and second-time directors, documentaries, or low budget or otherwise commercially difficult works. A difficult film is a film of high quality that faces severely limited prospects of attracting commercial finance for its production and/or of achieving wide commercial distribution.

In determining whether the maximum aid intensity is respected, the total amount of public support measures of Member States for the aided activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or Union sources.

The European Commission has advised that funding provided by a Public Service Broadcaster is considered to be financing by a market participant (no matter where it gets its funds from) for the purpose of ensuring input for its programming and does not count as State Aid.

If the applicant wishes to apply for a derogation from the State-Aid funding limit, the reasons that the project is considered to be difficult should be stated in Tab J.

If difficult categorisation is sought for the project, documentation to this effect from Screen Ireland and/or from the Broadcasting Authority of Ireland should be included as part of Tab J detailing the reasons that the categorization is sought.

#### **Tab K**

Tab K is a declaration that neither the applicant company nor the undertaking which it is part of is an undertaking in difficulty in compliance with Section 481(2A) (b) (v) of the Act of 1997. It should be completed and signed by a director of the producer company and a director of the qualifying company.

For further information on ‘an undertaking in difficulty’ please see Official Journal of the European Union 31.07 2014, C249/1.

#### **Tab L**

Tab L is a declaration that no company in the film group is the subject of outstanding recovery proceedings in compliance with Section 481(2A)(b)(vi) of the Act of 1997. It should be completed and signed by a director of the producer company.

#### **Tab M**

Tab M is an Undertaking in respect of quality employment. It should be completed and signed by a director of the producer company and a director of the qualifying company.

#### **Issue of Certificate**

If the application is successful, the Minister will issue a certificate to the applicant which will contain a number conditions including, but not limited to the following:-

- The conditions relating to employment and skills development on the production;
- The details of the acknowledgement of the award of S481 to be included in the opening titles or credits of the film;
- The requirement to credit the Irish Producer in the opening and/or main titles of the film as not less than that of ‘producer’ or ‘co-producer’ or ‘executive producer’ as follows: -

*“The Irish Producer’s name is to appear in the opening credits reflecting accurately the producer’s role, or exceptionally, in the main titles, as dictated by the dramatic requirements of the film”.*

A derogation may be sought from this condition in very limited circumstances; such as if the Irish part of the film consists exclusively of post-production or visual effects.

Payment of the relief is subject to compliance with all the conditions specified in the Certificate issued by the Minister for Culture, Heritage and the Gaeltacht