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# International Film Production Incentives

**By Sean F. Kane**

Given the ever-increasing expense of filmmaking in the United States, and particularly in California, many filmmakers have looked for alternatives to the traditional Hollywood-based production. While this trend originally was for smaller-budget and independent films, more and more producers and large studios have sought alternate locations in which to film. While certain U.S. states like Hawaii, New Mexico and New York provide tax incentives and other ancillary location benefits, these states haven't generally been as successful in luring so called "runaway production" as have countries with incentives that may be available.

Various international destinations are attracting productions away from Hollywood for, among other reasons, a particular nation's economic realities. Many international destinations enable a filmmaker to provide food, lodging, filming locations, acting and other creative services at a much lower rate than available in Hollywood. If a filmmaker is able to shoot in a location that is economically depressed compared to the United States, a film's ancillary production costs may be reduced by 50% or more. While there may be certain inherent risks to personnel and equipment in filming in some of these less-accessible locations, the benefits in terms of production-cost savings may greatly outweigh potential difficulties.

In addition to the exchange-rate benefits a filmmaker may receive, many nations have instituted production, financing or tax incentives that can be a boon in reducing a production's overall budget. These incentives were enacted, for the most part, as an attempt to protect the respective nations' film industries. Among the countries that have such incentives, Australia, Canada, Ireland, New Zealand and the United Kingdom are the most generally beneficial and widely utilized. The terms of these and other countries' incentives are discussed below.

## AUSTRALIA

Unlike some countries that wish to protect their small native film industries, Australia has enacted incentives specifically designed to attract larger productions. The Australian government offers favorable tax incentives to films with budgets of more than $15 million Australian dollars. The requirement is that where a film's qualifying Australian production expenditure is between $15 million and $50 million, the production company must spend at least 70% of the film's total production budget on qualifying Australian expenditures. A company that has spent $50 million or more on qualifying Australian production expenditures will qualify regardless of the total amount of production budget involved.

This program, enacted under 10B of the Australian tax code, may provide an offset against Australian tax liabilities of up to 12.5% of the production monies spent within the country. Generally, this isn't in the form of a payment to the production company but is merely a decrease in any tax payments due. However, in the event that the incentive is greater than any tax liability, a direct cash payment may be made by the Australian Taxation Office. The government also supports "qualifying Australian films," as that term is defined by the tax code, by entitling investors to an accelerated tax deduction and allowing for possible participation in Australia's Film Finance Corporation. This fund co-finances an Australian film production along with private individuals and may provide a majority of the funds necessary for a production's budget. In order to qualify for such an investment, a filmmaker must demonstrate a market for the production, usually through preexisting third party licensing or distribution agreements.

Additionally, each of Australia's states and territories offer a variety of incentives that can include payroll tax rebates or exemptions, cast and crew wage rebates, location attraction cash grants, and free or subsidized public service resources. The range of assistance and qualification criteria varies from state to state but is worthy of note.

## CANADA

Canada is by far the most utilized foreign location for U.S. filmmakers and producers. In addition to its geographic continuity to the United States, its variety of urban and scenic locations and its skilled workers, Canada offers governmental programs to assist with and induce film production in the country. Incentives are offered for films containing Canadian content and those films that don't. In order to qualify for a Canadian-content film incentive, the production company must be owned or controlled by a citizen or permanent resident of Canada. Moreover, the director or screenwriter and one of the two highest-paid performers must be citizens of Canada and 75%

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## International Film

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of the production costs must be paid to Canadian citizens. The production must also employ a qualifying number of key Canadian personnel, which is determined on a case-by-case basis using a six-point qualification formula. If all these requirements are met, the production can receive a tax credit in the amount of 25% of the total labor expenditures made to Canadians.

For films that don't comply with the Canadian-content requirements but have a budget of over 1 million Canadian dollars, the Production Services Tax Credit may be available. This refundable tax credit can consist of up to 16% of all payments made to resident Canadians in connection with a production. Additionally, certain of the Canadian provinces provide their own complementary incentives intended to induce filming in their jurisdiction. British Columbia allows a tax credit of 18% for wages paid to its residents and a 6% regional incentive is available for productions made outside of Vancouver. New Bruns-wick provides a film tax credit equal to a maximum of 40% of eligible salaries paid to New Brunswick residents and has loan and investment funds available to qualified productions. Also, Ontario offers an 18% refundable tax credit on Ontario labor through its Production Tax Services Credit. In certain instances, financiers may lend production funds to filmmakers backed by these tax credits.

### Fiji

There are three main incentives that qualifying filmmakers can take advantage of in Fiji including a tax rebate, a foreign-film-employees tax exemption and a film-tax concession for investors. Under the tax rebate incentive, eligible films can receive a 15% rebate on qualifying production expenditure in Fiji up to a maximum of $3.75 million Fijian dollars. However, for productions with budgets of between $250,000 and $25 million Fijian dollars, the qualifying expenditure must represent 35% of the total film budget. Productions with budgets above the $25-million level qualify for the rebate regardless of the percentage spent in relation to the total budget. To assist in qualifying, remuneration for one above-the-line crew or cast member may be excluded from the total budget. Additionally, a non-resident film company may apply for a full or partial tax exemption for its non-resident employees under the foreign-film-employees tax exemption. Lastly, qualifying Fiji taxpayer investors — which can include a wholly foreign owned corporation — in large-format films, feature films, short films or telemovies can obtain up to a 150% tax concession on their film investment. Plus up to 60% of the income from that investment will be tax exempt.

### Germany

The German system of incentives is markedly different from most other countries discussed here. Instead of a system of tax incentives, Germany enacted certain funds to invest directly in films in order to reduce overall production costs. Annually, the Bavarian Film and Television Fund makes available a total of approximately 32 million Euros for screenplay, production, distribution and sales. Filmmakers may request financial support at each stage of the production process, starting with script funding to production of theatrical and TV-movies as well as exhibition. In order to qualify for fund assistance, at least 150% of the production support must be spent in Bavaria. Feature films can be eligible for support of up to 1.6 million Euros as long as the producer or co-producer is based in Germany. Foreign producers can only access this funding source by submitting an application through a local partner. In cooperation with the Bavarian Film and Television Fund, the Bavarian Bank Fund is an additional

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**Sean F. Kane** is an entertainment attorney and a member of the New York law firm of Drakeford & Kane LLC. He is also a Member of the Board of Editors of the LJN publication *Internet Law & Strategy*. He can be reached at 212-696-0010 or skane@drakefordkane.com.

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tool for qualifying production projects that have a quantifiable promise of economic success. Moreover, several of the German states, including Hamburg, Berlin, Brandenburg and Schleswig-Holstein, have instituted their own funds that provide additional support to filmmaking within their respective territory.

### IRELAND

The avoidance of a language barrier, affability of the population and the beauty of the landscape provide for a natural incentive to film in Ireland. Additionally, in accordance with Sec. 481 of the Irish Revenue Code, qualifying films that promote Irish culture and the Irish film industry may receive the added benefit of allowing 80% of the amount invested to be written off for tax purposes. The Irish Film Board may also offer loans and equity investments to qualifying films. As a means to protect the Irish literary and musical tradition, the country also offers a tax exemption for new residents on income derived from, among other things, original books, plays and music. Film-production companies choose Ireland for the additional benefit of its low income-tax rate and its double taxation agreements. If applicable, these agreements may allow foreign owners to defer taxation or avoid paying taxes in their home nation on after-tax profits. Lastly, certain producers film in Ireland because it is a signatory to treaties with various nations allowing for the aggregation of production incentives for productions co-produced in several nations.

### JAMAICA

Under Jamaica's Motion Picture Industry Encouragement Act a film producer may be entitled to relief from income tax for a period not exceeding 9 years after the first release of the motion picture. An investor may also qualify for an investment allowance of 70% of the total expenditure on production facilities and may also be exempted from the payment of import duty on equipment, machinery and materials for the building of studios or for use in motion picture production. However, a company seeking to capitalize on these incentives must be incorporated in Jamaica, qualify for recognition status, and spend a substantial portion of the budget for the production in Jamaica.

### NEW ZEALAND

New Zealand offers producers the possibility of tax incentives and government grants, as well as its diverse natural scenery. In order to entice large-budget productions, New Zealand enacted a Large Budget Screen Production Grant administered by the national film commission. Films spending between fifteen million and fifty million New Zealand dollars may be able to receive a rebate from the government of up to 12.5% of the monies spent in New Zealand. However, a criterion for such a rebate is that 70% of the aforementioned budget must be spent within the country. If a production budget is larger than 50 million dollars, the rebate is still available but the 70% spending mandate is waived. Additionally, investment in a New Zealand film, which is defined as containing significant New Zealand content in accordance with the New Zealand Film Commission Act of 1978, may entitle private investors to additional incentives under the 1994 Tax Act.

### SOUTH AFRICA

South African tax law makes special provision for film investment by way of a special allowance codified in Sec. 24F of the Income Tax Act. Qualifying productions may be entitled to a tax deduction with a maximum amount totaling the full production and post-production expenditures. Because this section has been widely abused in the past as a tax dodge instead of being used to promote legitimate film productions, the government has taken a much more hands-on approach in investigating its use and may look to modify its coverage in the future.

### UNITED KINGDOM

The United Kingdom provides some of the most interesting production incentives of all the nations surveyed. The Film Council has created several funds to provide assistance to the British film industry. Certain of these funds provide monies for virtually all stages including scriptwriting, production and development. What is interesting about these funds is that several of them (the Premiere, the New Cinema and the Development Fund) are financed using lottery monies. In addition to the film funds, the United Kingdom provides a taxpayer with the ability to receive a 100% capital allowance for all expenses connected to a British production in that year. The production company must be registered and managed within the European Union or one of the additional signatory nations to an association agreement. Additionally, 70% of the production expenses for the film must be spent in the United Kingdom.

Practitioners utilize a system where the film is purchased from the filmmaker by the taxpayer entity and then leased back to the filmmaker for purposes of distribution. Therefore, the tax entity gets the full value of the capital allowance in that year and then receives the lease payments over time. In order to ensure the lease payments, contracts usually require a filmmaker to deposit the purchase monies with a lender. The results of these sale-leaseback arrangements may be a benefit of up to 10% of a film's budget.

*Editor's note: For a list of "International Film-Incentive Resources," see the online version of this issue at www.ljnonline.com/alm?ent.*

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