European Commission: Tax Shelter in the Audiovisual Sector in Belgium

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Tax shelter is a national tax incentive in favour of the production and creation of Belgian audiovisual works.

The scheme was introduced into Belgian legislation by the outline law of 2 August 2002. This law incorporated into the Income Tax Code an Article 194(b) under which a company resident in Belgium participating in the financing of an approved audiovisual work may, under certain conditions and within certain limits, have the advantage of a tax exemption in respect of its taxable profits amounting to up to 150% of the amount invested. In return for this tax break, the law requires the production companies receiving such financing to spend at least 90% of the amount invested in this way in Belgium.

In accordance with the provisions of European law on State aid, Belgium could not implement the scheme before it had been approved by the European Commission. In its Decision C(2003)1469fin adopted on 13 May 2003, the Commission found that the requirement making exemption conditional on the entitlements acquired by the investing companies in exchange for their investment not being transferred was not compatible with the principle of the free circulation of capital, goods and services. The amendment demanded by the European Commission was included in the outline law of 22 December 2003, although the Royal Decree of 3 May 2003 had already made the measure applicable.

The films that may benefit from the scheme must be full-length cinematographic films, either fiction, animated or documentary, that correspond to the definition of a European film given in the Television Without Frontiers Directive. The Communities are instructed to approve works that are to be allowed the benefit of the scheme. An administrative structure (approval group in the French-Speaking Community) therefore verifies that the work in question may be considered a European work within the meaning of the Television Without Frontiers Directive. The approval of the work is, a priori, a mere formality. It does not constitute a verification of the feasibility of the project, nor does it guarantee that the company’s financial structure as declared at the time of approval will be maintained.

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Thus the tax shelter scheme brings in new financial resources that are essential to the development of the Belgian cinema industry.

Décision de la Commission européenne en date du 13 mai 2003

http://ec.europa.eu/eu_law/state_aids/comp-2002/n410-02-fr.pdf

Decision adopted by the European Commission on 13 May 2003

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