[DE] Review of Media Decree on Taxation of Film and TV Funds

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For some time now, the taxation of media and film aid funds in Germany has again been a topic of debate in economic and legal circles. The discussions have been triggered by announcements from the Bundesfinanzministerium (Ministry of Finance) that the current Medienerlass (Media Decree) of 23 February 2001 is to be amended.

For example, at a conference in Berlin on 10 February 2003 (" The First Annual European Film Finance Forum New Financial Perspectives for the Film Industry "), the Parliamentary State Secretary of the Federal Minister of Finance stated that the Media Decree would be closely scrutinised and possibly revised.

As a result, film industry investors are now worried that such a reform might mean that, from a fiscal point of view, investors in film aid funds will no longer be considered as film producers but as investors in film rights. This would be to their financial disadvantage, since as "film producers" they can designate all expenditure related to film production as losses. This is because Art. 5.2 of the Einkommensteuergesetz (Income Tax Act) implies that newly created intangible economic goods, such as film rights acquired by film fund investors, are non-taxable. This form of tax saving was, however, restricted by the 2001 Media Decree, which demanded that (after a transitional period in which investors had until 1 January 2004 to invest in funds launched before 1 September 2002) investors could only be treated as producers if the fund had a significant opportunity to influence film production and bore the economic risk inherent in the production. Most private investors do not exercise any influence on film production since they usually simply buy shares in the fund and sign a trust agreement with the fund initiator, who in turn concludes a series of contracts with screenplay writers, production teams, film distributors, advisers and insurers. Nevertheless, the Media Decree also created the possibility for film funds to retain their status as producers if they were dealing with a so-called "artificial commissioned production". Under this investment model, the fund employs an executive producer to oversee the work, while taking responsibility itself for important decisions concerning, for example, the choice of screenplay, casting, costing and the filming plan. According to the State Secretary, however, this notion of "producer" will be "closely examined once again" and, if necessary, "revised".

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On 21 May, the Federal Government adopted the draft Filmförderungsgesetz (Film Support Act), which is designed to improve the conditions for film production and provide assistance with the marketing of German films (see IRIS 20035: 14). The Act contains new rules governing the taxes paid by cinema owners and video distributors, increasing revenue for the Filmförderanstalt (Film Support Institute) from EUR 46.2 to EUR 64.7 million. Public and private TV broadcasters have also pledged to increase their voluntary contributions, although this has not yet been agreed in writing, since the details are still to be negotiated. The revised Act is due to enter into force on 1 January 2004.

Medienerlass vom 23. Februar 2001, Az.: IV A 6 - S 2241 - 8/01

http://www.bundesfinanzministerium.de/

Media Decree of 23 February 2001, No. IV A 6 - S 2241 - 8/01

Rede der parlamentarischen Staatssekretärin Frau Dr. Barbara Hendricks vom 10. Februar 2003 zum Thema Filmfinanzierung, Filmförderung und Medienerlass

http://www.film20.de/down/Rede_Hendricks.pdf

Speech by Parliamentary State Secretary Dr. Barbara Hendricks concerning film finance, film support and the Media Decree, 10 February 2003

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