[DE] Amendment of Media Decree on Film and TV Fund Taxation

IRIS 2003-8:1/26

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After it was announced early in the year that the provisions of the *Medienerlass* (Media Decree) of 23 February 2001 were to be examined and revised (see IRIS 2003-6: 11), the *Bundesministerium der Finanzen* (Ministry of Finance) issued a communication on 5 August 2003, finally stating its position on the taxation of the profits of film and TV support funds and in particular the question of whether investors in these funds should be treated as producers. According to Section 5.2 of the *Einkommenssteuergesetz* (Income Tax Act), investors, as long as they are treated as "film producers", can designate all expenditure on film production as losses from a taxation point of view. According to this provision, newly created intangible economic goods, such as the film rights acquired through ownership of these funds, are non-taxable.

The communication clearly establishes that investors in film and TV support funds should not be treated as film producers, but as purchasers of film rights if the fund iniinvestment advisers, leasing companies) issues a standard contract and if shareholders have no influence over its content. Furthermore, in order for investors to be treated as producers, the fund must bear the economic risk inherent in the production; it must also have and actually exercise "significant influence" over the production process from beginning to end. It is pointed out that this "significant influence" does not automatically result from the fund initiator acting as a shareholder or managing director of the fund, but rather that the shareholders themselves must hold such influence. Representation by specially appointed third parties is not sufficient for this, but rather the shareholders should elect such representatives from their own midst; neither the fund initiator nor other associated persons may belong to such a body. According to the Finance Ministry, a crucial factor in deciding whether such influence exists is the extent to which the shareholders are legally and actually in a position to take decisions themselves and at their own responsibility concerning all contractual negotiations and stages of the production process (eg selection of the screenplay, casting, calculation of costs, filming schedule, etc).

These principles are now applicable in all cases where no current tax assessment exists. However, they do not apply to investments made before 1 January 2004 in funds that were set up before 1 September 2002 if such application would result in higher taxation than under the previous fiscal arrangements.

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

http://www.bundesfinanzministerium.de/Aktuelles/BMF-Schreiben-.745.2087/Artikel/.htm

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

Schreiben des Bundesministeriums der Finanzen, Az.: IV A 6 S 2241 81/03

http://www.bundesfinanzministerium.de/Anlage19766/BMF-Schreiben-vom-5.-August-2003-IV-A-6-S-2241-81/03-Adobe-Acrobat-5.0.pdf

Communication by the Ministry of Finance, No. IV A 6 S 2241 81/03

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