[IT] Commission Authorises Italian Film Production Tax Incentives

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On 22 August 2008, the General Direction for Cinema, according to the provisions of the third paragraph of Article 88 of the EC Treaty, formally notified the European Commission of new measures containing fiscal incentives for film production and distribution companies. The relevant paragraph - which deals with State aid - indeed provides that, “The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision”.

The Italian Act of 6 August 2008 no. 133, which comprised an amendment to the Italian Finance Act of 2008, provides a new system of incentives for Italian cinema (see IRIS 2008-9: 15). The Law proposes to ensure the support policy for the national film industry, so as to promote the production and distribution of national films. To achieve this goal, the Act specifically introduces tax breaks for companies, internal and external to the cinema sector, which reinvest their profits in Italian film production and distribution.

Technically, these legal measures provide two intervention channels: a tax credit and tax shelter, which, according to the supporters of the reform, aim at strengthening the entire cinematographic chain, avoiding the direct intervention of the government, while also respecting freedom of expression. In fact, the logic behind the new Law, more innovative than ever before, is to overcome the direct intervention of the State, which until now could decide whether or not a project was eligible for finance.

In general terms, tax shelters are a method of reducing taxable income, cutting the revenue receipts. In the new Italian Law, in accordance with this tax measure, a maximum default budget is introduced. Moreover, this is proportionate to the cost of production of a funded film with regard to the size of the loan.

The tax credit, on the other hand, provides an incentive for companies with little income or even those making a loss. Every company, in fact, owes the treasury a

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debt, even if it does not make a profit. In this regard, the tax credit can be an attractive option for everyone.

The main objective of the Italian film support scheme is to maintain and enhance the cultural potential of the film sector. In Italy, the fragmentation of the film sector and the strong presence of the US majors in distribution and production have combined to create a dominance of mainly US commercial films with high budgets. Up to now, the Italian film sector had focused increasingly on films with limited audience appeal, leading to a few major commercial films with a near dominant position. The scheme introduces tax credits to support the production of European cultural films and films of special cultural interest, as well as a tax shelter for European cultural films. The tax credit and tax shelter are available to companies which are taxable in Italy and the tax credit is available against all types of taxes.

The new rules grant the taxpayers outside the film industry a tax credit of as much as 40% on funds invested for the production of Italian films for the years 2008, 2009 and 2010. In turn, the film industry should use 80% of these resources in the national territory, employing Italian workers and services and promoting training and apprenticeship in all technical areas of production.

Tax credits for direct production and film distribution are also foreseen, as well as total exemptions from taxable income that the film industry reinvests in film production. This exemption is partial (30% of profits) for companies outside of the film sector that invest their profits in the cinema. In any case, in order to find out in detail how the economic incentive will work, it is necessary to wait for the ministerial directives.

In accordance with the provisions of European law on State aid, Italy could not implement the new scheme before it had been approved by the European Commission. Therefore, the Italian Government, in order to enact measures implementing the aforementioned Law, awaited European authorization.

On 19 December 2008, the European Commission approved under EC Treaty State aid rules a EUR 104 million Italian tax incentive scheme for film production until 31 December 2010. The Commission found that the scheme was compatible with the cultural derogation of the EC Treaty, in line with the Cinema Communication rules concerning aid for film production. The Commission's assessment of the tax credit and tax shelter for film production was based on the State aid rules in the 2001 Cinema Communication, applying the derogation in Article 87.3(d) of the EC Treaty, allowing aid for cultural activities under certain conditions.

In line with the Cinema Communication, the support is targeted towards cultural products, where the maximum aid is limited to 50%, with the exception of low budget and "difficult" films, in which case it could amount to 80%. The applicable

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territorial conditions are below the maximum territorial requirement allowed in the Cinema Communication. The Italian authorities are also committed to implementing any changes that may be required by modifications to the State aid criteria in the Cinema Communication before the scheme comes to an end.

Legge 6 Agosto 2008, numero 133: "Conversione in legge, con modificazioni, del decreto-legge 25 giugno 2008, n. 112, recante disposizioni urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria"

http://www.parlamento.it/leggi/08133l.htm

Italian Law 6 August 2008 number 133

Legge 24 Dicembre 2007, numero 244: "Legge finanziaria 2008", articolo 1 commi 325 - 343

Italian Law 6 August 2008, no 133, Art. 1, paras. 325 - 343

Comunicato Stampa del Ministero per i Beni e le Attività culturali pubblicato il 22 agosto 2008: "Incentivi fiscali per la produzione e la distribuzione delle opere cinematografiche (Tax shelter e Tax credit)"

http://www.beniculturali.it/sala/dettaglio-comunicato.asp?nd=ss,cs&Id=2710

Press Release of Ministry of Cultur of 22 August 2008

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