[IT] Tax Shelter Schemes for the Digitisation of Cinema Theatres

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On 22 July 2009 the European Commission approved under state aid rules most aspects of a EUR 82 million Italian tax incentive scheme for film investment and distribution (see IRIS 2009-9: 6/5). The approved tax incentives complement the Italian film production tax already approved by the Commission in December 2008 (see IRIS 2008-9: 15/24; IRIS 2009-3: 14/23; and IRIS 2009-6: 14/23).

The Italian notification had included a number of fiscal measures for various activities related to the film sector. a) a tax credit for businesses outside the film sector investing in the production of Italian cultural films; b) a tax relief for businesses outside the film sector reinvesting profits in Italian cultural films; c) a tax credit for film distributors and exhibitors investing in the production of films of special cultural interest; d) a tax credit for film distributors investing in the distribution of Italian cultural films; e) a tax relief for film distributors reinvesting profits in the distribution of Italian cultural films; and f) a tax credit for exhibitors installing digital projection equipment. This package of tax incentives is intended by the Italian authorities to stimulate the market dynamics to support Italian cultural films in an environment conducive to competition and to promote such films in Italy and Europe. The same verifiable national criteria examined by the Commission in its December 2008 approval of the Italian film production tax incentives are applied to define “Italian” cultural films and films of special cultural interest. The Italian authorities consider that incentives (a)-(b) will help increase the independence of small producers from television networks by attracting private investment from outside the film sector. They aim to relieve film producers from the commercial needs of such networks and to allow them to focus on the quality and cultural nature of the film. The Italian authorities believe that incentives (c)-(f) will help to support Italian cultural films, both in their promotion and in their release in cinemas, even when these films are not produced by international or national majors. These incentives aim to stimulate the creation of a “project network/partnership” between producers, distributors and exhibitors.

The estimated budget of the scheme was EUR 48 million for 2009 and EUR 50.5 million for 2010. The overall budget of the scheme is therefore EUR 98.5 million.

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The Commission determined that the incentives for the production and distribution of films and for businesses outside the film sector are compatible with the criteria set out in the 2001 Cinema Communication. The Communication has provided specific rules for assessing aid for film and audiovisual production under Article 87 (3) (d) of the EC Treaty.

The incentive concerning the tax credit for installing digital projection equipment in Italian cinemas, by contrast, has not yet been approved. The objective of the measure is to encourage the use of digital projection equipment with a view to increasing the circulation of cultural films, both Italian and European. The tax credit is available to exhibitors who invest in installing digital projection equipment. The tax credit available amounts to 30% of the amount invested in installing such equipment. The maximum annual tax credit amounts to EUR 50,000 per screen. The notified scheme offers a 30% tax credit for the costs of introducing digital projection equipment in all of the 3,957 screens in Italy. The support would be unconditional for cinemas with a number of screens ranging from 1 to 4 and for multiplex cinemas with a number of screens ranging from 5 to 10 in towns with a population of 50,000 or less. For other multiplexes with up to 24 screens there would be an obligation to show cultural films for 50% of the screenings and to convert at least 50% of the screens to digital projection as a condition for the aid.

The issue of state aid for digital projection is one for which the Commission does not yet have a defined policy. As the Italian tax incentive for digital projection is the first such scheme to be available primarily to commercially successful exhibitors, there is no obvious precedent the Commission could follow to assess the scheme. On a wider level, the issue of state aid for digital projection is quite a complex topic, potentially requiring major public intervention, while there has so far been no public consultation at the EU level.

The Commission would need to assess the compatibility of the Italian tax credits for digital cinema under either Article 87 para. 3(c) of the EC Treaty or under the cultural derogation of Article 87 para. 3(d). Both require the Commission to consider the necessity, proportionality and adequacy of the aid. Because the Commission has doubts about the necessity, proportionality and adequacy of the proposed Italian digital cinema tax credit, it has opened a formal investigation into this question.

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/parlam/leggi/08133l.htm

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Law of 6 August 2008 number 133

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

http://www.parlamento.it/parlam/leggi/07244l.pdf

Law of December 2007 number 244

Decision of the European Commission, "Film Investment & Distribution Tax Incentives: State Aid Approval Digital Cinema tax credit: Opening of formal investigation", Brussels, July 2009

http://ec.europa.eu/competition/state_aid/cases/232435/232435_979012_15_1.pdf

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