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**Subject: State aid SA.38959 (2014/N) – Ireland  
Film tax relief support scheme modifications**

Sir,

The European Commission has assessed the modifications and prolongation of the Irish tax relief support scheme and decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union ("TFEU"). The modified scheme is approved until 31 December 2020.

## 1. PROCEDURE

- (1) On 25 June 2014 the Irish authorities notified modifications and a prolongation of the Irish film tax relief support scheme. On 28 August 2014, the Irish authorities submitted additional information.
- (2) The scheme had been approved until 31 December 2015 by the Commission on 10 May 2012<sup>1</sup>.
- (3) The Irish film tax relief support scheme was originally approved in 1999 (NN49/97 and N357/99)<sup>2</sup>, and subsequent modifications and prolongations of the measure were

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<sup>1</sup> SA.34581 (2012/N) – Ireland – Irish film support scheme prolongation, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_34581](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_34581).

<sup>2</sup> State aid Nos NN 49/97 and N 357/99 – Ireland – "Section 35/481" tax-based film investment incentive, [http://ec.europa.eu/eu\\_law/state\\_aids/comp-1997-95/nn049-97.pdf](http://ec.europa.eu/eu_law/state_aids/comp-1997-95/nn049-97.pdf).

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the subject of decisions in 2000 (N237/2000<sup>3</sup>), 2004 (N387/04<sup>4</sup>), 2006 (N151/06<sup>5</sup>) and 2009 (NN10/09<sup>6</sup>).

## 2. DESCRIPTION OF THE MEASURE

### 2.1 General information on the scheme

- (4) The notified aid scheme has a cultural objective. It provides tax relief for investments in the production of qualifying feature films, television drama, animation and creative documentaries.
- (5) The legal basis of the measure is Section 481 of the Taxes Consolidation Act, 1997, as amended. The Finance Act (No1) 2013 and the Finance Act No2 (2013) introduced amendments to the film tax relief, which will not take effect before the Commission has given its approval. Further provisions on the tax relief can be found in the Film Regulations 2008.
- (6) The modified scheme will run until 31 December 2020. The Irish authorities have committed not to implement the scheme before it is approved by the Commission. It is expected that the commencement date will be 1 January 2015.
- (7) The budget of the Irish film tax relief is estimated at, on average, EUR 45 million per year for the period 2015-2020.
- (8) The tax relief is only available for films which have been certified by the Revenue Commissioner and the Minister for Arts, Sport and Tourism as satisfying certain verifiable, national, cultural criteria. They must have a production budget of not less than EUR 250 000 to be eligible under the scheme.
- (9) The Irish film tax relief can be cumulated with other aid, up to a maximum aid intensity of 50%. Higher cumulative aid intensities are possible for difficult and low-budget<sup>7</sup> films.
- (10) The notification relates to the following modifications to the scheme:
  1. The tax investor scheme has been changed to a tax credit scheme.
  2. The rules regarding eligible expenditure have been modified.

### 2.2 Change from tax investor to tax credit scheme

- (11) Previously, the tax relief had the form of a tax investor scheme, providing a fiscal incentive to both corporate and individual taxpayers to invest in film production. Under the scheme, the amount invested could be written off for tax purposes<sup>8</sup>. The

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<sup>3</sup> State aid No N 237/2000 – Ireland – Extension of aid schemes to film and TV production, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_N237\\_2000](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N237_2000).

<sup>4</sup> State aid N 387/2004 – Ireland – Tax relief for investment in film, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_N387\\_2004](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N387_2004).

<sup>5</sup> State aid No N 151/2006 – Ireland, Tax relief for investment in film – modification of scheme N 387/04, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_20662](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_20662).

<sup>6</sup> State aid NN 10/09 (formerly N487/08) – Ireland – Irish film support scheme, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_NN10\\_2009](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_NN10_2009).

<sup>7</sup> A difficult film is defined by the Irish authorities as a film of high quality that faces severely limited prospects of attracting commercial finance for its production and/or of achieving wide commercial distribution, whereas a low-budget film is currently defined (based on empirical evidence of Irish indigenous production in the past years) as a film with a production budget of less than EUR 4 million. See also the previous Commission decisions mentioned in paragraphs (2) and (3).

<sup>8</sup> The top personal rate of income tax in Ireland is currently 41%.

investor's investment in the production was required to be spent on 'eligible expenditure'. Whereas immediate aid recipients were the taxpayers investing in shares of production companies, the Section 481 incentive scheme provided an indirect net benefit to production companies. In this way, the scheme aimed to stimulate private sector investment in film and independent television production by providing a cushion against the inherent risks of production investment. The investor received a return on his investment in the film through the tax deduction but also in part from the film producer, depending on the individual agreement between the investor and the production company. The producer benefited from the difference between the investment received and the return given to the investor. In this way and on average, the tax relief's worth to the producer stood at 28% of the 'eligible expenditure'.

- (12) Under the modified tax relief, the private individual investor is removed from the legislation. Instead, a direct payment<sup>9</sup> (corporation tax credit) is introduced, worth 32% of the 'eligible expenditure', up to a maximum of 80% of the total production costs. The maximum eligible expenditure is furthermore capped at EUR 50 million. The payment will be made directly to the producer company. The cost to the Irish Exchequer is thereby reduced by removing the necessity for an investor return as well as the costs associated with the investor-driven scheme.

### **2.3 The modified rules on eligible expenditure**

- (13) The tax relief is based on the amount expended in Ireland on a given film production. This 'eligible expenditure' may include all expenditure necessary to produce the film from the development phase up to and including post-production together with the cost of providing an archive print. This includes the direct employment of eligible individuals or the provision of eligible goods, services and facilities.
- (14) The scheme's definition of 'eligible individuals' has been modified. It used to include a) citizens of or b) individuals domiciled, resident, or ordinarily resident in Ireland or in another State of the European Communities. This definition has now been enlarged to mean "an individual employed by a qualifying company for the purposes of the production of a qualifying film". Payments to non-EU personnel working in Ireland will in other words now also qualify as eligible expenditure.

### **2.4 Other elements**

- (15) The 2013 Cinema Communication<sup>10</sup> invites the Member States to encourage and support producers to deposit a copy of the aided film in the film heritage institution designated by the funding body for preservation, as well as for specified non-commercial use agreed with the right holder(s).
- (16) The Irish authorities have indicated that Ireland encourages and supports producers to deposit a copy of the aided film in the film heritage institute designated by the funding body. Under the current film regulations, the producer company has to provide copies of the film within four months of the completion of production, one of which is stored in the Irish Film Institute's Irish Film archive.

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<sup>9</sup> If the producer company owes corporation tax, this will be deducted from the payment.

<sup>10</sup> Communication from the Commission on state aid for films and other audiovisual works, Official Journal of the European Union, 15.11.2013, C 332, pp. 1-11.

### 3. ASSESSMENT OF THE MEASURE

#### 3.1 Existence of state aid

- (17) According to Article 107 (1) TFEU, *Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*
- (18) As set out in the earlier Commission decisions mentioned in paragraphs (2) and (3), the measure constitutes State aid within the meaning of Article 107 (1) TFEU. The changes introduced to the tax relief do not affect this assessment. The Irish authorities will continue to forego tax revenues, but the aid will now go directly to the production companies, bypassing the individual and corporate taxpaying investors who were previously also benefitting from the measure.

#### 3.2 Compatibility of the aid

- (19) In the preceding decisions of the Commission, the aid scheme was approved on the basis of the 2001 Cinema Communication<sup>11</sup>. Published on 15 November 2013, the new Cinema Communication ("2013 Cinema Communication")<sup>12</sup> updated these rules for the assessment of state aid for films and other audiovisual works under Article 107 (3) (d) of the TFEU. The aid can be justified if the aid scheme complies a) with the general legality principle and b) with the specific compatibility criteria set out in the 2013 Cinema Communication.
- (20) With regard to the general legality principle, the 2013 Cinema Communication (in its Paragraph 50) has modified the limits set to the territorial spending obligations of film support schemes that Member States can require. The tax relief is calculated as a percentage of the expenditure in Ireland. In such a case, Member States may require a minimum level of territorial spending under the eligibility criteria of the scheme, which does not exceed 50%. Furthermore, under the Cinema Communication the territorial linking may in any case not exceed 80% of the total production budget.
- (21) Under the Irish tax relief, the amount expended in Ireland on a given film production that is taken into account for the calculation of the tax relief cannot exceed 80% of the total budget. There is no minimum level of territorial expenditure required to be eligible for the tax relief. The modified film tax relief is therefore in line with the territorial spending limits of the new Cinema Communication.
- (22) Furthermore, compared to the assessment done in the previous Commission decisions (see paragraphs (2) and (3)), the modified scheme does not contain other provisions that would raise issues with respect to the general legality principle, and is therefore compliant with the 2013 Cinema Communication.

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<sup>11</sup> Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works of 26/09/2001 (OJ C 43 of 16/02/2002); extended in 2004 (OJ C 123 of 30/04/2004); 2007 (OJ C 134 of 16/06/2007); and 2009 (OJ C 31 of 7/02/2009).

<sup>12</sup> Communication from the Commission on state aid for films and other audiovisual works, Official Journal of the European Union, 15.11.2013, C 332, pp. 1-11.

- (23) Regarding the specific compatibility criteria (see Article 52 of the 2013 Cinema Communication), the modification of the Irish film tax relief support scheme does not affect its provisions with regard to the cultural character of the aid or the absence of aid for specific production activities. The assessment done with regard to these compatibility criteria in the State aid cases mentioned in paragraphs (2) and (3) is therefore not affected and is also in line with the 2013 Cinema Communication's provisions on these criteria.
- (24) Under the modified scheme, the aid intensity will amount to 32% of the eligible expenditure, or maximum up to 26% of the production budget (i.e. 32% \* 80%). The cumulative aid intensities have not been amended and are in line with the limits set by the 2013 Cinema Communication.
- (25) The Irish authorities have assured that they will comply with the transparency requirements of the European Commission. In this regard the Commission reminds the Irish authorities that on 21 May 2014, the Commission adopted a Communication aligning the transparency requirements across all the recently revised state aid rules<sup>13</sup>, which modifies the transparency requirements included in Article (52) 7 of the Cinema Communication.
- (26) The Commission therefore concludes that the aid scheme constitutes State aid within the meaning of Article 107 (1) TFEU, but that it can be considered compatible with the internal market pursuant to Article 107 (3) (d) TFEU.

#### **4. CONCLUSION**

- (27) The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107 paragraph 3 d) of the TFEU. The amended scheme is approved until 31 December 2020.
- (28) The Commission reminds the Irish authorities to submit annual reports on the implementation of the aid scheme.
- (29) The Commission moreover reminds the Irish authorities to inform the Commission according to Article 108 paragraph 3 of the TFEU on all plans to modify the scheme or to introduce a new scheme.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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<sup>13</sup> Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines (C(2014) 3349/2), [http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html#](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html#).

Your request should be sent by encrypted e-mail to [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu), by registered letter or by fax to:

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Yours faithfully,  
For the Commission

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Vice-President