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Subject: State Aid SA.48021 – Italy
Tax credit for film production companies – modifications

Sir,

1. PROCEDURE

(1) By letter dated 13 April 2017, the Italian authorities notified the modification of their tax credit for film production companies. On 6 June 2017, the Italian authorities submitted additional information.

(2) The tax credit for film production companies was initially approved by the Commission in its Decision of 18 December 2008[1]. It is part of a comprehensive package of tax incentives targeting the film and audiovisual sector, which were assessed together in later Commission decisions. In 2014, the Commission for the first time assessed the tax incentives on the basis of the 2013 Cinema Communication[2], which had updated the rules for the assessment of state aid for films and other audiovisual works[3]. Most recently, an extension of the scope of

[1] State aid N 595/08 – Italy – Tax incentives for film production, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N595_2008.
[2] 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] State aid SA.37922 (2013/N) – Italy - Tax incentives for film production, investment and distribution – prolongation, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37922.

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the Italian film and audiovisual tax incentives was approved by decision of 3 December 2014[4].

(3) The notified modifications only concern the tax credit for film production companies. The Italian authorities have indicated that the other tax incentive measures will henceforth be implemented under the General Block Exemption Regulation[5]. Therefore, the current Decision only concerns the tax credit for film production companies.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. The measure, its objective and legal basis

(4) The objective of the measure is centred on the protection and promotion of the cultural potential of the film sector.

(5) The aid scheme consists of a tax credit for film production companies for the production of Italian cultural cinematographic works[6].

(6) The legal bases for the modified scheme are the following:

- *Legge 24 dicembre 2007, n.244, articolo 1, comma 327 - lettera a), comma 328, 332, 333, 334.*
- *Legge 28 dicembre 2015, n. 208, articolo 1, commi 331, 334 e 336.*
- *Decreto-legge 8 agosto 2013, n. 91, convertito dalla legge 7 ottobre 2013, n. 112, articolo 8, commi 1, 3, 4, 6 e 7.*
- *Schema di decreto interministeriale recante "Disposizioni integrative e correttive in materia di crediti d'imposta nel settore della produzione cinematografica", che modifica il decreto ministeriale 7 maggio 2009.*

2.2. The notified modifications

(7) The yearly estimated expenditure for the modified scheme amounts to circa EUR 80 million. As such, the overall *estimated* budget for the period 2016-2022 amounts to EUR 560 million.

(8) There is an increase of the annual tax credit cap (per company) from EUR 3.5 million to EUR 6 million.

(9) The Italian authorities have introduced two tax credit rates instead of the previous single tax credit rate of 15%. The generally applicable rate has been increased to 25% of eligible expenditure. A reduced rate of 15% applies to productions for

[4] State aid SA.39375 (2014/N) – Italy – Tax incentives for audiovisual works, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39375.

[5] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26 June 2014, p. 1.

[6] The requirements for a work to be considered Italian cultural cinematographic works have not changed and are detailed in section 3.3 and 3.4. of the Decision of 18 December 2008 (see footnote 1). In the context of recognising a work as "Italian", European citizens are assimilated to Italian citizens.

which the tax credit available for businesses outside the film or audiovisual sector investing in Italian cinematographic works was also requested[7].

(10) Moreover, works that do not fulfil at least two of the following criteria are also subject to the reduced rate of 15%:

- Being distributed in at least 25 screens for a duration of minimum 7 consecutive days per screen.
- Being a co-production in which the Italian share is at least 20%.
- Having participated in a film festival of primary importance at national level or in an international film festival.
- Having sold distribution rights in at least one country outside the Italian language area.
- Having concluded contracts for international distribution.
- Having a total production budget of more than EUR 800 000.

(11) The cumulative aid intensities have been updated. While in general limited to 50% of the production budget, higher cumulative aid intensities are possible for EU co-productions (60%), difficult[8] and low-budget[9] films (100%).

(12) The minimum territorial spending obligation is increased from 80% of the incentive to 100% of the incentive. Taking into account the maximum tax credit rate of 25%, applied to the total cost of production, this territorial spending obligation equals, at most, up to 25% of the production budget.

(13) The other main elements of the tax credit scheme for film production companies remain unchanged[10], including its end date of 31 December 2022. No aid will be granted under the measure until the Italian authorities have received the approval from the Commission contained in this decision.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

(14) 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"*.

(15) The notified modifications of the tax credit rates amount to changes of the relevant aid intensities but do not affect the analysis made in the previous Commission Decisions on the tax incentives (see footnotes 1, 3 and 4) to which this Decision fully refers as regards the existence of aid. The Commission

[7] This specific tax credit is not covered under the present notification.
[8] The Italian authorities include the following categories in their definition of difficult films: first and second films, documentaries, short films, works produced by cinema schools recognised by the Italian State, and works of particular cultural interest recognised by the Commission for cinematography as incapable to attract significant financial resources or attracting a large audience.
[9] The Italian authorities define low-budget films as those with total production costs below EUR 1 500 000.
[10] For details, see the precedent Commission decision (footnotes 1, 3 and 4).

therefore concludes that the measure constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2. Compatibility assessment

(16) The envisaged measure consists of a few modifications to one of the tax incentives schemes that has previously been approved by the Commission under Article 107(3)(d) of the TFEU as compatible with the internal market, on the basis of the 2013 Cinema Communication.

(17) The 2013 Cinema Communication contains criteria related to general legality and a number of specific compatibility criteria.

(18) With regard to the general legality principle, the notified modifications include some changes to the territorial spending obligations of the measure. According to the 2013 Cinema Communication, film production support schemes may require:

- that up to 50% of the overall production budget is spent in the territory in order to qualify for aid.

- that up to 160% of the aid amount awarded is spent in the territory granting the aid. Alternatively the aid amount awarded may be calculated as a percentage of territorial production expenditure.

In any case, not more than 80% of the overall production budget may be linked to territorial spending obligations.

(19) The fiscal nature of the mechanism means that the potential beneficiaries need to have taxable income in Italy to take advantage of the tax incentives. However, the tax incentives are not limited to those elements of the production budget that are spent in Italy but are calculated against the overall eligible expenditure.

(20) The minimum territorial spending obligation under the scheme is increased from 80% of the incentive to 100% of the incentive. Taking into account the maximum tax credit rate of 25%, applied to the total cost of production, this territorial spending obligation equals, at most, up to 25% of the production budget. These percentages are in line with what is allowed under the 2013 Cinema Communication.

(21) With regard to the specific compatibility criteria, the Commission notes that the maximum aid intensities applicable under the scheme have increased to 25% of the production budget, whereas the cumulative aid intensities have been updated (see paragraph (11)). As allowed by the Cinema Communication, the cumulative aid intensity is limited to 50% of the production budget and higher aid intensities of 60% and 100% are reserved for respectively co-productions and difficult audiovisual works (including low-budget films).

(22) The notified changes do not affect the assessment done in the previous Commission Decisions with regard to the cultural character of the aid or the absence of aid for specific production activities, to which this Decision fully refers on this point.

(23) The aid should be awarded in a transparent manner, as set out in the Commission's 2014 Communication on the subject[11]. The Italian authorities have committed to this.

(24) In the light of the above considerations, the Commission considers that the modified aid scheme is compatible with Article 107 (3) (d) TFEU.

4. CONCLUSION

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 (3) (d) of the Treaty on the Functioning of the European Union.

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.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

[11] 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#.