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**Subject: State Aid SA.56047 – United Kingdom – Film Tax Relief
Prolongation**

Dear Foreign Secretary,

1. PROCEDURE

- (1) On 19 December 2019, the authorities of the United Kingdom (hereafter: “UK”) submitted notified the prolongation of their film tax relief scheme to the Commission.
- (2) Originally the Commission approved the UK Film Tax Incentive scheme in case N 461/2005¹ on 22 November 2006. An extension of the scheme was approved on 27 October 2011 in case SA.33234². Further modifications were made to the scheme in cases SA.37176³ and SA.38306⁴ on 17 March 2014, and on 14 July 2015 in case SA.41396⁵.

¹ SA.19919 – UK Film Tax Incentive:
https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_19919

² SA.33234 – UK Film Tax Incentive extension:
https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33234

³ SA.37176 – Modifications to the UK Film Tax Relief:
https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37176

⁴ SA.38306 – Modifications to the UK Film Tax Relief:
https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38306

⁵ SA.41396 – Film Tax Relief Modification

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2. DETAILED DESCRIPTION OF THE MEASURE

- (3) The UK Film Tax Relief was set up to encourage the production of British cultural films. It provides film production companies with tax incentives for expenditure incurred in the UK on pre-production, principal photography, and post-production of a film which is intended for release in cinemas⁶.
- (4) The aid is granted by Her Majesty's Revenue and Customs, the UK national tax authority.
- (5) The legal basis of the prolonged scheme is the Corporation Tax Act 2009, in particular Part 15, Chapter 3 to 5⁷.
- (6) The beneficiaries of the Film Tax Relief are film production companies in relation to a film they produce.
- (7) The UK Film Tax Relief is characterised by the following key elements:
 - 1) The Film Tax Relief is only available up to a maximum of 80% of a film's expenditure;
 - 2) The cultural test to demonstrate that the film is a cultural product, administered independently by the British Film Institute;
 - 3) The minimum UK spend requirement: this requires that a minimum of 10 % of the core expenditure of a film is qualifying UK expenditure;
 - 4) The tax credit is given at a rate of 25 % of UK expenditure. This gives a maximum aid intensity of 20% (25%*0.8).
- (8) The tax relief is given in the form of an additional deduction against corporation tax profits. This is calculated as the amount of UK qualifying expenditure, up to a maximum of 80% of the total qualifying expenditure. In the case where the deduction results in a trading loss, the lesser of the trading loss and the amount of qualifying expenditure can be surrendered for the credit at a rate of 25%.
- (9) The current scheme runs until 31 March 2020. It will be prolonged until 1 April 2025.
- (10) The UK authorities expect a steady and consistent growth in the cost of the Film Tax Relief of approximately 3% per year, which corresponds, with an annual increase of GBP 20 million. The overall budget of the scheme will amount to GBP 2 960 million, divided over the upcoming years as follows:

Year	2019-20	2020-21	2021-22	2022-23	2023-24
Forecast (GBP million)	555	570	590	610	635

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_41396

⁶ See recital 9 of decision N 461/2005.

⁷ http://www.legislation.gov.uk/ukpga/2009/4/pdfs/ukpga_20090004_en.pdf

- (11) All aspects and conditions of the scheme will remain unchanged nor will changes to UK legislation be required.
- (12) The prolonged scheme will not be put into effect before the Commission has given its approval.
- (13) The UK Government commits to meet the requirements of the Cinema Communication concerning transparency⁸.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (14) In the initial decision concerning the UK Film Tax Relief scheme the Commission has concluded that the measure constitutes State aid within the meaning of Article 107(1) TFEU⁹.

3.2. Compatibility of the aid

- (15) The notified measure concerns the prolongation of an aid scheme which has previously been confirmed by the Commission as compatible with the internal market based on Article 107(3) (d) TFEU and the Cinema Communication¹⁰.
- (16) The UK authorities notified a mere prolongation of the Film Tax Relief scheme without any modifications to it. Therefore, the prolongation does not affect the assessment done with regard to the general legality of the scheme, the cultural character of the measure and aid granted for specific production activities, as stipulated in recitals 31 to 35 of the joint decision in State aid cases SA.37176 and SA38306 (see footnotes 3 and 4), and in recital 16 of the decision in State aid case SA.41396 (see footnote 5).
- (17) With regard to transparency, the Commission notes that the UK authorities committed that they will put in place the transparency mechanisms of the Cinema Communication (see recital (13)).
- (18) According to the Cinema Communication, the cumulative aid intensity levels are in principle limited to 50% of the production budget. The aid intensity levels concerning the prolongation of the Film Tax Relief have not changed and still amount to maximum 20%, so they remain below the limits set by the Cinema Communication.

⁸ Communication from the Commission on State aid for films and other audiovisual works (OJ C 332, 15.11.2013, p. 1), as amended by 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 (OJ C 198, 27.06.2014, p. 30).

⁹ See recitals 23 to 29 of decision N 461/2005.

¹⁰ Communication from the Commission on State aid for films and other audiovisual works (OJ C 332, 15.11.2013, p. 1),

- (19) On the basis of the foregoing assessment, the Commission's analysis confirms that the criteria set out in the Cinema Communication are met for the prolongation of the Film Tax Relief. Hence, the aid involved in the notified measure is compatible with Article 107 (3) (d) TFEU.

4. ADDITIONAL OBSERVATIONS

- (20) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union, pursuant to Article 50 of the Treaty on European Union (TEU). In accordance with Article 50(3) TEU, the Treaties are to cease to apply to the withdrawing State from the date of entry into force of a withdrawal agreement or, failing that, two years after the notification, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period. The period has been extended three times, last time by European Council Decision (EU) 2019/1810¹¹, which extended it until 31 January 2020.

On 11 January 2019, by Decision (EU) 2019/274¹², the Council authorized the signature of the withdrawal agreement agreed at negotiators' level on 14 November 2018. On 17 October 2019, the European Council endorsed the revised Withdrawal Agreement agreed at negotiators' level. On 21 October 2019, the Council, amended Decision (EU) 2019/274 so as to authorise the signature of the revised Agreement¹³. The Union and the United Kingdom signed the revised Withdrawal Agreement on 24 January 2020. The ratification process should be finalized by the Union after the vote in the European Parliament on 29 January 2020 and the adoption of the Council Decision on conclusion on 30 January 2020, allowing for the entry into force of the Withdrawal Agreement on 1 February 2020. Part Four of the Withdrawal Agreement¹⁴ provides for a transition period starting on the date of entry into force of the Agreement and ending, unless extended, on 31 December 2020, during which Union law is to continue to apply to and in the United Kingdom as laid down therein.

In any event, this Decision applies only if (i) Union law applies to and in the United Kingdom on the first day of the period for which the notified scheme is approved, and (ii) to individual aid granted¹⁵ under the notified scheme as long as Union law applies to and in the United Kingdom.

¹¹ European Council Decision (EU) 2019/1810 taken in agreement with the United Kingdom of 29 October 2019 extending the period under Article 50(3) TEU (OJ L 278I, 30.10.2019, p.1).

¹² Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 47I, 19.2.2019, p.1).

¹³ Council Decision (EU) 2019/1750 of 21 October 2019 amending Decision (EU) 2019/274 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 274I, 28.10.2019, p.1).

¹⁴ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 384I, 12.11.2019, p.1).

¹⁵ According to the case-law of the CJEU, aid must be considered to be granted at the time that an unconditional right to receive it is conferred on the beneficiary under the applicable national rules (see judgment in Case C-129/12 Magdeburger Mühlenwerke EU:C:2013:200, paragraph 40).

5. CONCLUSION

The Commission has accordingly decided not to raise objection 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
Executive Vice-President

