EUROPEAN COMMISSION

Brussels, 13.7.2021
C(2021) 5227 final

PUBLIC VERSION
This document is made available for information purposes only.

Subject: State Aid SA.62194 (2021/N) – Italy
Tax credit to attract investments for cinematographic and audiovisual works in Italy

Excellency,

1. PROCEDURE

(1) On 3 March 2021, the Italian authorities notified the tax credit for attracting investments for cinematographic and audiovisual works in Italy (the scheme). Additional information was submitted by the Italian authorities on 16 April, 21 May and 11 June 2021.

(2) Italy exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE SCHEME

2.1. Objective of the scheme

(3) The objective of the scheme is to support production on Italian territory of audiovisual works commissioned by foreign production companies.

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.
2.2. Legal basis

(4) The legal bases for the scheme are the following:

(a) Draft Decree “Disposizioni applicative dei crediti d’imposta nel settore cinematografico e audiovisivo di cui agli articoli 16, 17, comma 1, 18, 19 e 20 della legge 14 novembre 2016, n. 220.”, which regulates the aid measure.

(b) Law n.220, 14 November 2016, ‘Disciplina del cinema e dell’audiovisivo’², amended by law n. 178, 30 December 2020, ‘Bilancio di previsione dello Stato per l’anno finanziario 2021 e bilancio pluriennale per il triennio 2021-2023’³. Pursuant to article 12, paragraph 3, the aid must be granted in compliance with state aid rules. Therefore, no aid will be awarded before the approval of the scheme by the Commission.

(c) Decree of 4 February 2021 ‘Disposizioni applicative in materia di credito di imposta per le imprese di produzione cinematografica e audiovisiva di cui all’articolo 15 della legge 14 novembre 2016, n.220’.

(d) Law n.234 of 24 December 2012, ‘Norme generali sulla partecipazione dell'Italia alla formazione e all'attuazione della normativa e delle politiche dell'Unione europea’.⁴

2.3. Eligibility criteria

2.3.1. Beneficiaries

(5) Beneficiaries are production and post-production undertakings that are established in the European Economic Area (EEA) and subject to taxation in Italy at the moment of payment of the aid for the costs they incur for the production of an eligible project.

(6) Undertakings that are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market are excluded from the benefit of the aid in application of Article 46 of the Law n.234 of 24 December 2012 (recital (4)(d)).

2.3.2. Eligible projects

(7) Eligible projects are audiovisual and cinematographic works commissioned by foreign production companies. Foreign production companies are cinematographic and/or audiovisual companies that are not primarily established in Italy or have fiscal residence or a stable establishment in Italy and that are not subject to taxation in Italy.

---

⁴ G.U. Serie Generale n.3 del 04.01.2013
Projects must fulfil the following criteria:

(a) They must meet the cultural eligibility requirements set out in Table A annexed to the Decree issued pursuant to Article 15 of Law No 220 of 2016 (see recital (4)(c) above). The cultural eligibility test is a points-based test where the project needs to achieve 50 out of a possible 100 points to pass. It consists of a section on "content" (70 points) and "production" (30 points). The latter includes several elements with regard to the localisation in Italy of the different activities that are part of the production process. However, it is not necessary to achieve any points on these elements in order to pass the test. The Ministry of Culture assesses compliance with the minimum requirements of the cultural test. 5

(b) At least one day of filming, or at least one day of work in the case of animated works, must be carried out in Italy.

2.3.3. Eligible costs

The scheme supports production and post-production costs.

The basis for calculating the tax credit is composed of the following expenditures, up to maximum 80% of the production budget of the eligible project:

(a) Expenditures for purchasing goods and services from natural and legal persons that are tax resident in Italy;

(b) Expenditures for purchasing goods and services on Italian territory from undertakings which have their registered office and tax domicile in Italy or are subject to taxation in Italy, and, subject to reciprocity, from undertakings having their registered office and nationality in another country of the European Economic Area, which have a branch, agency or branch established in Italy, which mainly carries on business there and is subject to taxation in Italy;

(c) Expenditure incurred in respect of natural persons not resident for tax purposes in Italy but subject to taxation in Italy in relation to the specific income generated by that expenditure.

---

2.4. Form of the aid

(11) The aid takes the form of a reduction of the tax normally due by the aid beneficiaries in application of tax legislation. The amount of the reduction is calculated as a proportion of the eligible costs incurred in Italy by the aid beneficiary.

2.5. Tax rates

(12) The tax credit rate is 40% of the eligible costs.

(13) The aid intensity must respect the limits set in the Decree of 4 February 2021 ‘Disposizioni applicative in materia di credito di imposta per le imprese di produzione cinematografica e audiovisiva di cui all’articolo 15 della legge 14 novembre 2016, n.220’. These are:

(a) In principle, the cumulative aid intensity under the scheme may amount up to 50% of the production costs.

(b) A 60% maximum aid intensity is foreseen for cross-border productions funded by more than one Member State and involving producers from more than one Member State.

(c) The definition of difficult works, to which higher aid intensities (of up to 100% of production costs) may apply, is relevant for the following cinematographic and audio-visual works:

– Documentaries, first and second films, young authors' works and short films, as well as animation works that have been declared unable to attract significant financial resources from the private sector.

– Cinematographic works that have been declared unable to attract significant financial resources from the private sector.

– Works with a total production budget below EUR 2.5 million;

– Cinematographic works released simultaneously in less than 20% of the total number of active cinemas and that have been declared as unable to attract significant financial resources from the private sector.

– Co-productions involving countries from the Development Assistance Committee (DAC) List of the OECD.

(14) The aid may amount to a maximum annual limit of EUR 20 million for each production company or group of production companies.

2.6. Budget and duration

(15) The annual budget allocated to the scheme is EUR 100 million.

(16) The scheme is valid until 31 December 2026.
2.7. Financing and granting authority

(17) The State finances the scheme as it is not collecting tax normally due and the State authorities administrate the scheme.

3. Assessment of the scheme

3.1. Presence of aid

(18) 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".

(19) In order to be classified as a State aid, the scheme must thus fulfil the following cumulative conditions: a) the scheme must be granted through State resources; b) it has to confer an economic advantage to undertakings; c) this advantage must be selective; and d) the scheme must distort or threaten to distort competition and affect trade between Member States.

(20) State resources: The Italian authorities grant a tax relief to production companies that produce cinema and audiovisual productions (see recital (11)). Thus, the Italian authorities forego tax revenues, which constitute resources for the State (see recital (17)). The scheme is administered by the State (see recital (17)) and is hence imputable to the State.

(21) Advantage: the scheme awards its beneficiaries with a reduction of part of their financial obligations (see recital (11)). The scheme therefore provides an advantage to the benefit of the aid recipients.

(22) Selectivity: The scheme provides support only to production companies and for projects that fulfil the conditions set out by the Italian authorities (see recitals (5)-(6) and (7)-(8)). The scheme is therefore selective as it favours only certain undertakings.

(23) Distortion of competition and affection of trade between Member States: the scheme provides aid to audiovisual and cinematographic works that are aimed to circulate between Member States, and involves the participation of production companies established in other Member States (see recital (7)). The scheme therefore has an impact on competition and trade between Member States.

(24) Conclusion on the existence of the State aid: in light of the above, the Commission concludes that the scheme constitutes State aid in the meaning of Article 107(1) TFEU.
3.2. Compatibility assessment

The scheme is assessed under Article 107(3)(d) TFEU, in the light of the criteria set out in the Cinema Communication. In application of these criteria, aid schemes for the production of audiovisual works must:

(a) Comply with the general legality principle (paragraphs 48 to 50 of the Cinema Communication), including with the limits pertaining to the territorial spending obligations. These obligations may not:

- Require that more than 50% of the overall production budget is spent in the granting authority’s territory, for projects to be eligible;
- Link more than 80% of the overall production budget to local spending.

(b) Support only audio-visual cultural products (paragraph 52.1. of the Cinema Communication).

(c) Limit the aid intensity to 50% of the production budget, except for difficult audiovisual works and certain co-productions that are excluded from this limit (paragraph 52.2. of the Cinema Communication). Aid to development may amount up to 100% of the costs; if these costs are subsequently included in the production budget, the allocated aid must be taken into account for calculating the production maximum aid intensity (paragraph 52.3 of the Cinema Communication).

(d) Not reserve the aid to specific production activities or individual parts of the production value chain apart from scriptwriting, development, distribution or promotion activities (paragraph 52.5. of the Cinema Communication).

Finally, the aid scheme must comply with the transparency obligation, implying publication of the aid measure and the individual aid awards exceeding EUR 500,000 (paragraph 52.7. of the Cinema Communication).

3.2.1. General legality principle

The scheme does not contain any provision contrary to the TFEU in fields other than State aid; the aid scheme is open to undertakings established in the EEA (see recital (5) above). The scheme complies with the general legality principle (recital (25)(a) (a) above).

The scheme includes a territorial obligation to have at least one day of filming (or at least one day of work in the case of animated works) carried out in Italy (recital (8)(b)). The tax credit is calculated on expenditure incurred on Italian territory up to maximum 80% of the production budget (recital (10)). The aid measure does not contain any other obligation to spend a minimum of its production budget on Italian territory.

Communication from the Commission on State aid for films and other audiovisual works, OJ C 332, 15.11.2013, p.1.
(29) The cultural test contains territorial components (recital (8)(a)). However, as concluded in previous decisions regarding tax credit schemes in Italy using the same cultural test\textsuperscript{7}, none of its territorial components are of an obligatory nature.

(30) The territorial conditions are hence in line with the Cinema Communication (recital (25)(a) above).

3.2.2. Cultural project

(31) The scheme ensures that only productions of cultural nature are supported (see recital (8)(a)). The scheme hence complies with the Cinema Communication (see recital (25)(b) above).

3.2.3. Aid intensity

(32) The aid intensity is principle limited to 50\% of the eligible costs of production, it can be of 60\% maximum for cross-border productions and can go up to 100\% for difficult works (recital (13)). The maximum annual limit of EUR 20.000.000 for each production company (recital (14)).

(33) These limits are in line with the Cinema Communication (see recital (25)(c) above).

3.2.4. Aid not reserved to specific production activities

(34) The scheme supports the entire value chain of the production of audio-visual and cinematographic works (see recitals (9) and (10) above). It is therefore in line with the Cinema Communication (see recital (25)(d) above).

3.2.5. Transparency

(35) The scheme and the individual aid awards exceeding EUR 500 000 are published on the national website\textsuperscript{8}, in line with the Cinema Communication (see recital (26) above).

3.2.6. Deggendorf principle

(36) Undertakings that are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market are excluded from the benefit of the aid (see recital (6) above). The scheme complies with the so-called Deggendorf principle.

(37) In the light of the above considerations, the Commission considers the aid scheme to be compatible with Article 107 (3) (d) TFEU.

\textsuperscript{7} See recital (17) of Decision SA.49294 and SA.49296 of 18 December 2017. It was concluded that the conditions of the categories of the test that contained a territorial component did not have to be fulfilled in order to reach the minimum score of the test.

\textsuperscript{8} http://www.cinema.beniculturali.it/
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
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION