TAX CREDIT AND TAX SHELTER UNDER ITALIAN LAW

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I. LEGAL BASES

- The 2008 Financial Law (Italian Law No. 244/2007) introduced a package of tax benefits for the film sector.

- The rules are provided for by art. 1, section from 325 to 343. In detail:

  - Section 325-337 provide for measures for a tax credit;

  - Section 338-339 provide for additional benefits available as a tax shelter.

European Commission approved (on December, 18, 2008) the measures devoted to domestic and foreign film producers while the measures dedicated to distributors, exhibitors and outside investors have been approved on July 22nd 2009. The benefit devoted to digital equipment is under assessment.
II. NATURE AND OBJECTIVES

Tax Credit

Including:
- national and regional income taxes
- VAT
- social contribution
- and taxes due on personnel cost (withholding taxes)

Offsetting tax debt

Tax Shelter

Sheltering company taxable income

Possibility to benefit from a tax shield for the portion of taxable income invested in film production and distribution
II. NATURE AND OBJECTIVES

- **Tax Credit**
  - No need of taxable income to use the benefit
  - Feasible for single projects and start-up entity

- **Tax Shelter**
  - Need of taxable income
  - Feasible for portfolio projects and ongoing business
III. A TAXONOMY OF BENEFICIARIES

Foreign Producers

Production companies
Distribution companies
Exhibitors
Outside Investors
Executive Producers and Technical Industries

Subject to taxation in Italy:
Italian tax payer or permanent establishment of a non resident entity
IV. THE STATUS OF APPROVAL

- **Production companies**
- **Executive Producers and Technical Industries**
- **Distribution companies**
- **Exhibitors**
- **Outside Investors**

**Foreign Producers**

**APPROVED AND IN FORCE**

**APPROVED**
V. CULTURAL REQUIREMENTS

All categories of film must pass a “cultural” test
To meet the EU requirement for State aid

Films of Italian Nationality
- Cultural test A

Films of Cultural Interest (CI)
- Cultural test A + B

Foreign Films
- Cultural test C
V. CULTURAL REQUIREMENTS: TEST FOR FOREIGN FILM

➢ THREE BLOCKS: A, B AND C

➢ BLOCK A: CONTENTS 60 POINTS

➢ BLOCK B: CREATIVE TALENTS 20 POINTS

➢ BLOCK C: PRODUCTION 20 POINTS

➢ TOTAL 100 POINTS

➢ AT LEAST 50 POINTS OUT OF 100

➢ AT LEAST 2 REQUIREMENTS OF BLOCK A
VI. AID INTENSITY

- **GENERAL RULE**: Up to 50% of the budget

- **EXCEPTIONS (EU guidelines)**:
  - **DIFFICULT FILMS**: First and second feature films; short films; documentaries; cultural interest film with more than 70 points at Test B
  - **LOW BUDGET FILMS**: €1.5 MLN

- **DIFFICULT AND LOW BUDGET FILM UP TO 80% OF THE BUDGET**
VII. TAX CREDIT RATES

**External Tax Credit**
- 40% of investment in production of eligible films (Joint Venture Agreement)

**Internal Tax Credit**
- 15% of production costs of eligible films (Italian nationality)
- 10%-15% of distribution costs
- 20% of investment in production of CIF

- 30% of costs for digital Equipment (under assessment)
- 20% of investment in production of CIF

- 15% of production costs of eligible films (Italian nationality)
- 25% of production costs of foreign film (non Italian nationality)

**Foreign Producers**
VIII. TAX SHELTER RATES

**External Tax Shelter**
- 30% of taxable profits
- Invested in production and distribution of eligible films of Italian nationality

**Internal Tax Shelter**
- Up to 100% of taxable profits
- Invested in distribution of eligible films of Italian nationality
- Up to 100% of taxable profits
- Invested in production of eligible films of Italian nationality

INVESTMENT IN DISTRIBUTION

INVESTMENT IN PRODUCTION
IX. LIMITS AND CONDITIONS

External Tax Credit
Max. annual credit: €1 mil. (€2.5 mil. invested)
Max investment: 49% of budget
70% of profits
80% of investment spent in Italy
Aid intensity: 19.6% (49% x 40%)

Producer Tax Credit
Max. annual credit: €3.5 mil. (€22.5 mil. invested)
80% of the credit spent in Italy
(12% of the investment: 15% x 80% = 12%)
Aid intensity: 15.0%

Distributor Exhibitor Tax Credit
Max. annual credit: €1 mil. (€5 mil. invested)
Max investment: 49% of budget
70% of profits
Aid intensity: 9.8% (49% x 20%)

Executive Producer Technical Industry Tax Credit
Max. annual credit: €5 mil./film (€20 mil./film invested)
Max investment: €20 mil./film
100% of the expenses in Italy
Max. 60% of budget
Aid intensity: max. 25%

- Investments allowed under joint venture and profit-sharing agreements
- Impossible to combine tax credit measures with tax shelter benefits
- Impossible to combine different tax credit measures for the same project at a group level
X. AN EXAMPLE OF TAX CREDIT FOR NATIONAL PRODUCTIONS

- **FILMS OF CULTURAL INTEREST**
- **BUDGET** €3.9 mil.
- **PRODUCER'S SHARE** €2 mil.
- **DISTRIBUTOR'S SHARE** €900,000
- **INVESTOR'S SHARE** €1 mil.

**Total Tax Credit** €1.165 mil. (29.87% of budget)

- €585,000 (15% of €3.9 mil.)
- €180,000 (20% of €900,000)
- €400,000 (40% of €1 mil.)
XI. OPPORTUNITIES FOR FOREIGN PRODUCERS

**OPTION 1**
The foreign producer makes use of an Italian tax resident executive producer

25% of tax credit up to 60% of the budget granted to the Italian executive producer

**OPTION 2**
If the film can be qualified as Italian the foreign producer may opt for an Italian production

15% of the total budget (Plus other measures?) granted to its subsidiary or permanent establishment
XI. OPPORTUNITIES FOR FOREIGN PRODUCERS: OPTION 1 – CASE A

ASSUMPTIONS:
• STORY TO BE SHOT IN: NEW YORK (40%)
  ROME (30%)
  PARIS (30%)
• TOTAL BUDGET= $ 10 MLN

RESTRICTIONS:
• RELEVANT BUDGET MAX
  $ 6 MLN
• IN ITALY UP TO $ 6 MLN
• IN PARIS MAX 3 MLN

TOTAL EXPENDITURE
$ 8.5 MLN

TOTAL TAX CREDIT
($ 1.5 MLN)
25% OF $ 6 MLN

ITALIAN EXECUTIVE PRODUCER

RELEVANT BUDGET FOR TAX CREDIT
$ 6 MLN

EXPENDITURE IN PARIS
$.3 MLN

EXPENDITURE IN ITALY
$ 3 MLN
XI. OPPORTUNITIES FOR FOREIGN PRODUCERS: OPTION 1 - CASE B

ASSUMPTIONS:
• Story to be shot in: New York (70%)
  Rome (20%)
  Paris (10%)
• Total budget = $10 MLN

RESTRICTIONS:
• Relevant budget max
  $6 MLN
• In Italy up to $6 MLN
• In Paris max 3 MLN

ITALIAN EXECUTIVE PRODUCER

RELEVANT BUDGET FOR TAX CREDIT
$3 MLN

EXPENDITURE IN PARIS
$.1 MLN

EXPENDITURE IN ITALY
$2 MLN

TOTAL TAX CREDIT
($0.75 MLN)
25% of $3 MLN

TOTAL EXPENDITURE
$9.250 MLN
XI. OPPORTUNITIES FOR FOREIGN PRODUCERS: OPTION 2 - CASE B

ASSUMPTIONS:
• STORY TO BE SHOT IN:
  NEW YORK (70%)
  ROME (20%)
  PARIS (10%)
• TOTAL BUDGET = $10 MLN

RESTRICTIONS:
• ITALIAN NATIONALITY OF THE FILM
• 15% OF TAX CREDIT TO BE SPENT IN ITALY

ITALIAN PRODUCTION

RELEVANT BUDGET FOR TAX CREDIT
$10 MLN

EXPENDITURE IN ITALY
$2 MLN

TOTAL EXPENDITURE
$8.5 MLN

TOTAL TAX CREDIT
($1.5 MLN)
15% OF $10 MLN

OTHER MEASURES UNDER EU ASSESSMENT ????
XII. TAX CREDIT FOR FOREIGN FILMS: THE APPLICATION

ITALIAN EXECUTIVE PRODUCER  →  FOREIGN PRODUCER

DEMAND TO MINISTRY OF CULTURE

NO  →  SECOND AND LAST DEMAND TO MINISTRY OF CULTURE

YES  →  ITALIAN EXPENDITURE WITH MONTHLY TAX CREDIT

END OF PRODUCTION AND FINAL ASSESSMENT BY MINISTRY OF CULTURE
XIII. MAIN CONCLUSIONS

TOTAL TAX CREDIT ($1.5 MLN)  
25% OF $6 MLN

=  

TOTAL TAX CREDIT ($1.5 MLN)  
15% OF $10 MLN

GO ALWAYS FOR THE TAX CREDIT FOR FOREIGN FILM IF:

• THE FILM IS NOT ELIGIBLE FOR ITALIAN NATIONALITY
• IF THE LOCAL EXPENDITURE IN ITALY IS 60% OF THE BUDGET (including a maximum of 30% of the budget spent in other EU countries)

TAKE INTO CONSIDERATION THE POSSIBLE APPLICATION OF THE OTHER MEASURES EXPECTED TO COME INTO FORCE WITHIN THE FOLLOWING MONTHS…
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