

**From the Official Gazette, no. 85, of 13-4-2010**

**MINISTRY FOR CULTURAL ASSETS AND ACTIVITIES**

**DECREE, 21 January 2010**

**Provisions for application of tax credits conceded to cinema exhibitors for the introduction and acquisition of systems and equipment to be used for digital projection. (10A04341)**

MINISTRY FOR CULTURAL ASSETS AND ACTIVITIES

in concert with

THE MINISTRY OF ECONOMY AND FINANCE

Considering article 1 of Italian Law no. 244 of 24 December 2007, which contained "Provisions regulating the preparation of the annual and multiannual State budget," and in particular, paragraph 327, letter c), no. 1;

Considering paragraph 333 of the above cited article 1, which states that through a Ministerial Decree the applicable provisions of the above cited tax incentive measures are dictated;

Considering the Italian Presidential Decree no. 917, of 22 December 1986, containing an "Omnibus law regarding taxes on income";

Considering the Law/Decree no. 79 of 28 March, 1997, containing, "Urgent measures to balance public finance," which was amended by Italian Law no. 140, of 28 May 1997;

Considering Italian Legislative Decree no. 241 of 9 July 1997, "Provisions for the simplification of taxpayers' fulfilment of their income statement and value-added tax obligations, as well as for the modernisation of the income statement management system";

Considering European Commission Communication of 26 September 2001 regarding certain legal aspects regarding film and other audiovisual works;

Considering Italian Legislative Decree no. 28 of 22 January 2004, as amended, "Reform of regulations governing cinematographic activities";

Considering Italian Law no. 311 of 30 December 2004, "Provisions regulating the preparation of the annual and multiannual State budget," and in particular, article 1, paragraphs 421-423;

Considering the European Commission Communication of 22 January 2009, as amended by the communication with similar content of 25 February 2009, regarding a "Temporary EU reference framework for State measures intended to support access to financing for companies during the current financial and economic crisis";

Considering the European Commission's decision of 28 May 2009, C(2009)4277, which authorised temporary assistance regimes with limited amounts and in accordance with the following notification from the directive of the President of the Council of Ministers, carried out in accordance with article 88, paragraph 3, of the EU Treaty concerning, among other things, the conditions to be respected in conceding temporary aid of a limited nature and compatible;

Considering the Decree of the President of the Council of Ministers of 3 June 2009, concerning the methods to apply said European Commission Communication of 22 January 2009, and in particular, article 3, regarding temporary aids limited and compatible, as well as article 2, paragraph 4, concerning respect for the Deggendorf commitment regarding temporary aid;

Considering article 14 of (EU) regulation no. 659/1999 of the Council of 22 March 1999, concerning recovery of assistance declared illegal or incompatible by the European Commission;

Considering Italian Ministerial Decree of 7 May 2009, which contained provisions applicable to tax credits conceded for production companies

working to complete cinematographic works, pursuant to Italian Law no. 244 of 2007;

Having consulted the Ministry of Economic Development;

Adopts the following decree:

## Definitions

1. For cinema exhibitors, for the purposes of the application of article 1, paragraph 327, letter c), no. 1, of Italian Law no. 244 of 2007, hereafter Law, means companies, resident and non-resident in Italy, subject to taxation in Italy, including non-commercial bodies in relation to business activity carried out, which, at the time the request is presented pursuant to article 3 of the present decree are registered, or have submitted a registration request, in the information register established and kept, pursuant to article 3, paragraph 1 of Italian Legislative Decree no. 28 of 22 January 2004, as amended, hereafter legislative decree, by the Ministry for Cultural Assets and Activities.

2. For the purposes of the application of article 1, paragraph 327, letter c), no. 1 of the law, the following can be considered as expenses sustained for the introduction and acquisition of equipment and systems destined for digital projection: a) purchase, including leasing, of digital projection and reproduction equipment; b) purchase, including leasing, of systems and equipment to receive digital signals via terrestrial means or via satellite; c) expenses for personnel training; d) expenses connected to and instrumental to remodelling and adapting projection rooms, and the accessory systems, services, and rooms set up for film-based projection.

## Article 2

Tax credits for expenses sustained by cinema exhibitors for the digitalization of screening rooms.

1. For cinema exhibitors, pursuant to article 1, paragraph 1 of the present decree, a tax credit equal to 30% of the total expenses sustained for the introduction and acquisition of systems and equipment destined for digital projection is granted, as defined in article 1, paragraph 2 of the present decree, with a maximum annual limit for each screen not to exceed fifty thousand euro. The tax credit is granted, hence: a) for single-screen cinemas and multi-screen cinemas with up to four screens, regardless of location; b) for multi-screen cinemas with up to ten screens located in cities with populations smaller than 50,000. In all other cases, the tax credit is granted on the condition that the company undertakes to respect, for the six-month period successive to when the present decree comes in effect, or the six-month period successive to completing the work, an obligation of programming in terms of films that fall within the categories pursuant to article 1, paragraphs 4, 5, 6, and 9 of Italian Ministerial Decree of 7 May 2009, regarding "Provisions applicable to tax credits conceded for production companies in relation to the completion of film works, pursuant to Italian Law no. 244 of 2007», hereafter Ministerial Decree of 7 May 2009, and European films that have passed the test of cultural value in the context of similar tax benefits already approved by the European Commission, in reference to the complex in which one or more digital systems were introduced, as follows: a) for the first 12 months, 20% of the programming days for each digital system introduced; b) for the second 12 months, 30% of the programming days for each digital system introduced; c) for the third 12 months, 50% of the programming days for each digital system introduced. The programming days, pursuant to the obligation described above, can be fulfilled in the context of all the screens that make up the complex.

2. Without prejudice to the limits and percentages pursuant to article 1, paragraph 327, letter c), no. 1 of the law, expenses pursuant to letters c) and d) of article 1, paragraph 2 of the present decree are admissible in amounts no greater than 20 percent of the total expenses sustained in accordance with letters a) and b) of the same article 1, paragraph 2.

3. The tax credits pursuant to the present article are granted in reference to investments made and expenses incurred as of 1 June 2008 and until the tax period successive to that in effect at 31 December 2009, taking into account that called for in article 5, paragraph 1 of the present decree. The right to the tax credit pursuant to the present article matures starting from the month after that in which the following conditions are both met: a) expenses pursuant to article 1, paragraph 2 of the present decree are considered to be sustained in accordance with article 109 of the Italian Income Tax Consolidation Act

(TUIR); b) effective payment of the expenses pursuant to letter a) has occurred. The tax credit is forfeited in the case that, for the cases in which it applies, the obligation regarding programming pursuant to paragraph 1 of the present article is not respected.

### Article 3

#### Procedure for the concession of tax credits pursuant to article 2

1. Upon penalty of forfeiture, before using the tax credit, the interested parties must present the following to the Ministry for Cultural Assets and Activities:

a) the self-declaration with which they declare to not fall in the category of those who have received assistance identified as illegal or incompatible, and, successively, not reimbursed or deposited in a blocked account said funds, pursuant to article 14 of (EU) regulation no. 659/1999 of the Council of 22 March 1999;

b) a communication, to be drawn up using the models made available by said Ministry within 30 days after the present decree takes effect, which contains, among other things, a works plan for each screen, including indications of the estimated cost.

2. Within the end of the month following that in which the communication pursuant to paragraph 1, letter b) of the present article is received, the Ministry for Cultural Assets and Activities will communicate, with a registered letter with return receipt, to the parties in question, the temporary ineligibility of the expenses indicated. The parties in question may resubmit said communication pursuant to paragraph 1, letter b), not more than once in reference to the same screen.

3. Upon penalty of forfeiture, the operating company must present an appropriate request to the Ministry of Cultural Assets and Activities, to be drawn up using models made available by said Ministry within 30 days after the present decree takes effect, within 90 days after the work is completed. In any case, the request must specify, for each screen:

a) the total cost, including the certification effectiveness of expenses incurred, issued by the Chairman of the Supervisory Board or by an auditor or by a professional registered in the Register of Auditors, of Chartered Accountants, of Accountants or in the of Employment Experts, in the forms provided for by article 13, paragraph 2, of decree-law no. 79 of 28 March 1997, implemented, with amendments, by law no. 140 of 28 May 1997 and subsequent amendments, or by the officer in charge of the tax office;

b) that the declaration and communications pursuant to paragraph 1 have been presented.

4. Within 60 days of the receipt of the request pursuant to paragraph 3 of the present article, the Ministry for Cultural Assets and Activities will communicate to the parties in question, through a registered letter with return receipt, the amount of the credit payable. In the case of a failure to send this communication within the indicated timeframe, the tax credits shall be deemed payable to the extent indicated in the request.

5. The tax credits are forfeited in the case that the expenses are not recognised as eligible in accordance with article 1 of the present decree, or in the case that the other requirements established are not satisfied. In such case, any benefits already received shall be recovered.

6. The Ministry for Cultural Assets and Activities shall transmit annually, electronically, to the Revenue Agency, by 30 April of the year successive to that in which the right to the tax credits was communicated in accordance with paragraph 5 of the present article, a list of the beneficiaries allowed to take advantage of the tax credit based on the requested presented and the relative amounts to which each is due.

7. For works which were already in progress on the date in which the present decree takes effect, the parties in question shall present the communications pursuant to paragraph 1, letters a) and b) within 60 days of the date in which the present decree enters into effect. For works which had already been completed on the date in which the present decree takes effect, the parties in question shall present the request pursuant to paragraph 3 of the present article within 60 days of the date in which the present decree enters into effect. The request must also include the declaration pursuant to paragraph 1,

letter a) of the present article as well as the communication pursuant to paragraph 1, letter b). The deadline pursuant to paragraph 4 of the present article is extended by 30 days.

## Article 4

### Other provisions

1. Tax credits pursuant to the present decree shall not contribute to the creation of profit for the purposes of taxes on income nor to the production value for the purposes of regional taxes on productive activities, are not relevant for the purposes of the report pursuant to articles 61 and 109, paragraph 5 of the Italian Income Tax Consolidation Act, and can be used exclusively as compensation in accordance with article 17 of Italian Legislative Decree no. 241 of 9 July 1997, as of the date in which, in accordance with the previous provisions, the right to use such is considered to have matured.

2. The tax credits pursuant to the present decree can be combined with the contributions pursuant to article 15, paragraph 5 of the legislative decree and with other similar public support measures within the financial limit established by the provisions pursuant to letters a) and b) of article 5, paragraph 1, taking into account the respective times period which are called for in them.

3. The tax credits granted shall be indicated, on penalty of forfeiture, in the income tax statements relative to the period in which the credits were recognized, as well as in the income tax declaration relative to the tax period in which the credits were utilised, noting separately the amount matured and the amount utilised.

4. In the case that, following controls carried out by the Ministry for Cultural Assets and Activities, it is ascertained that undue use of the tax credits of the present decree has occurred, even partially, due to a lack of respect for the conditions requested by the norms, or due to the inadmissibility of the costs based on which the amount used was determined, the Ministry will communicate such, electronically, to the Revenue Agency that shall see to recovery of the relative amount, increased by interest charges and sanctions in accordance with the law.

5. Recovery of tax credits used unduly shall be carried out in accordance with the provisions in article 1, paragraphs 421- 423, of Italian Law no. 311 of 30 December 2004 within 31 December of the fourth year after that in which the credit was revoked or redetermined. For all that not expressly regulated by the present decree, the provisions regarding liquidation, verification, recovery, and tax cases called for in the norms regarding income taxes shall apply.

6. In any case, the Revenue Agency shall communicate electronically to the Ministry of Cultural Assets and Activities any undue use, either total or partial, of the tax credits verified in the context of ordinary activities of control.

7. Through a directorial procedure of the Ministry for Cultural Assets and Activities and of the Revenue Agency, to be issued within 60 days after the present decree enters into effect, the terms, methods, and contents of the transmission shall be established, to be sent electronically, for the data pursuant to paragraphs 4 and 6 of the present article, and pursuant to article 3, paragraph 6 of the present decree.

## Article 5

### Entry into force and Application

1. Until the decision of authorisation by the European Commission, pursuant to article 1, paragraph 334 of Law no. 244 of 2007, the provisions of the present decree may be applied exclusively within the limits and conditions called for:

a) by the EU European Commission regulation no. 1998/2006 of 15 December 2006, regarding assistance in smaller amounts (de minimis) for costs sustained from 1 June 2008 through 17 December 2008;

b) by the Decree of the President of the Council of Ministers of 3 June 2009,

the European Commission communication of 22 January 2009, as amended by the communication with similar content of 25 February 2009, and by the European Commission decision C (2009) 2477 of 28 May 2009 regarding assistance in limited amounts, for costs sustained after 17 December 2008.  
The present decree shall be submitted to the competent auditing bodies.  
Rome, 21 January 2010

Ministry for Cultural  
Assets and Activities  
Bondi

The Ministry of Economy and  
Finance  
Tremonti

Registered at the Court of Auditors on 22 February 2010;  
Office of preventive control for Ministries providing services for citizens and  
for cultural assets, register no. 2, page no. 207