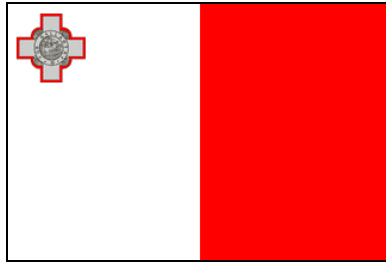


CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



MALTA
SYNTHESIS SHEET

July 2007

This Member State Synthesis Sheet should be read in conjunction with Chapter A of the Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions for the European Commission that is available on www.eufilmstudy.eu

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Legal Report by Germann Avocats

Part A of the EU Film Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions was written by Dr. Christophe Germann with important contributions for the Member States Synthesis Sheets, Output Tables and Charts from:

Dr. Delia Ferri
(main legal Consultant for the Synthesis
Sheets)

Johanna Jaeger
(main Consultant for the Output Tables and
Charts)

Dr. Marwa Daoudy
(Consultant)

Gritt Knirie Sogaard
(Consultant)

Brigitte Vézina
(Consultant)

Andrzej Jakubowski
(Consultant)

John Morijn
(Consultant)

Ljuba Kostadinova
(Consultant)

Dr. Cristina Poncibò
(Consultant)

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A Overview of the legal situation in Malta

1 Summary of main findings

Table A – Direct Territorialisation Requirements

Member State	Names of Funding Schemes	Available Budget	National (Nat) / Regional (Reg) Funding Scheme	Direct territorialization requirement quantified in the law			Direct territorialization requirement not quantified in the law		
				X% in terms of film budget	X% in terms of State aid granted	X% of the amount of the total available budget that is subject to territorialization	List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available
									Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N

Malta	Malta Film Commission (MFC) - Financial Incentives for the Audiovisual Industry Regulations	3,490,000 (2006) ¹	Nat	N/A ^o ^o There is no percentage but audiovisual productions spending less than Lm 35,000 (€1,780) in Malta are not eligible for the financial incentives	N/A	N/A	N	N/A	N/A	Y
	Malta Enterprise – Incentives under the Business Promotion Regulations	19,045,349 ²	Nat	N/A	N/A	N/A	Y The recipient tax reduction must spend locally a not quantified amount of the film budget (3.2).	N/A	N/A	

¹ Scheme was started in 2006 – there are no budget figures for 2005 or years before that.

² The incentives are expected to take the form of a cash grant given to qualifying productions on the portion of eligible expenditure spent in Malta. Up to 20% of this expenditure could be rebated to a qualifying production company. Feature film and television productions, mini-series, animation and documentaries are all eligible for the incentives, provided they are at least partially produced in Malta.

	MFC – Tax Credit for Audiovisual Infrastructure	2,330,000 (2006) ³	Nat	N/A	N/A	N/A	Y The recipient tax reduction must spend locally a not quantified amount of the film budget as the projects must expand and develop the audiovisual industry in Malta. (4.2)	N/A	N/A	
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³ The scheme was started in 2006 – there are no budget figures for 2005 or years before that.

Table B – Indirect territorialisation Requirements

Member State	Names of Funding Schemes	Indirect territorialization requirements located under “Formal Nationality Certification Procedures”	Indirect territorialization requirements located under selective aid criteria and procedures	Indirect territorialization based on any other provisions in the law that forces the producer to make local spending
		<p>List of requirements</p> <p>Estimation of the X% of how much local expending this involves in terms of film budget</p> <p>Estimation of the X% of how much local expending this involves in relation to the total aid available</p>	<p>List of requirements</p> <p>Estimation of the X% of how much local expending this involves in terms of film-budget</p> <p>Estimation of the X% of how much local expending this involves in relation to the total aid available</p>	<p>List of requirements</p> <p>Estimation of the X% of how much local expending this involves in terms of film-budget</p> <p>Estimation of the X% of how much local expending this involves in relation to the total aid available</p>

Malta	Malta Film Commission (MFC) - Financial Incentives for the Audiovisual Industry Regulations	N	N/A	N/A	N	N/A	N/A	Y The purpose clause to promote the local economy arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A
	Malta Enterprise – Incentives under the Business Promotion Regulations	N	N/A	N/A	N	N/A	N/A	Y The purpose clause to promote the local economy arguably qualifies as indirect territorialisation that is not quantifiable (3.6)	N/A	N/A
	MFC – Tax Credit for Audiovisual Infrastructure	N	N/A	N/A	N	N/A	N/A	Y The purpose clause to promote the local economy arguably qualifies as indirect territorialisation that is not quantifiable (4.6)	N/A	N/A

Table C – Budget and Territorialisation Intensity

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law ⁷	Degree of the territorialisation ⁸		
				Funding Scheme Level ⁹	Funding body level	Member State Level ¹⁰
Malta	Malta Film Commission (MFC) - Financial Incentives for the Audiovisual Industry Regulations	3,490,000 (2006) ⁴	no applicable requirement Audiovisual productions spending less than Lm35,000 (€1,780) in Malta are not eligible for the financial incentives	not applicable	No data	0 %
	Malta Enterprise – Incentives under the Business Promotion Regulations	19,045,349 ⁵	no applicable requirement The recipient tax reduction must spend locally a not quantified amount of the film budget.	not applicable	No data	

⁴ Scheme was started in 2006 – there are no budget figures for 2005 or years before that.

⁵ The incentives are expected to take the form of a cash grant given to qualifying productions on the portion of eligible expenditure spent in Malta. Up to 20% of this expenditure could be rebated to a qualifying production company. Feature film and television productions, mini-series, animation and documentaries are all eligible for the incentives, provided they are at least partially produced in Malta.

	MFC – Tax Credit for Audiovisual Infrastructure	2,330,000 (2006) ⁶	no applicable requirement The recipient tax reduction must spend locally a not quantified amount of the film budget as the projects must expand and develop the audiovisual industry in Malta.	not applicable	No data	
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⁶ The scheme was started in 2006 – there are no budget figures for 2005 or years before that.

⁷ Assessment based on replies from local lawyers (see synthesis sheet)

⁸ High territorialisation: ratio “total amount subject to territorialisation”/“total budget available” >1

Moderate territorialisation: ratio “total amount subject to territorialisation”/“total budget available” =1 or <1

No territorialisation: total amount subject to territorialisation = 0

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

⁹ Formula: Sum of the budget of the scheme x its degree of territorialisation and divided by the sum of the budget of all the schemes.

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

¹⁰ “total amount subject to territorialisation”/“total budget available”

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

Table D – Co-Production Agreements

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
Malta	European Convention on Cinematographic Co-Production	1 st January 2002	N
	Canada	23 rd September 1997	

Malta is currently a party to the European Convention on Cinematographic Co-production (see reply A.3 for Malta). Furthermore, Malta has signed a Memorandum of Understanding on Audiovisual Relations with Canada.

In Malta, there are three funding schemes for independent film production (see reply A.2 for Malta; see below Section B1):

- the Financial Incentives for the Audiovisual Industry Regulations of 2006
- the Incentives under the Business Promotion Regulations
- a Tax Credit for Audiovisual Infrastructure

The Film Commissioner at the Malta Film Commission is the responsible authority for the various regulations. Malta Enterprise, dealing with business promotion in general, is the authority responsible for the Incentives under the Business Promotion Regulations.

2 Synopsis of conventions on co-production agreements

Malta is party to the European Convention on Cinematographic Co-production, which came into force on 1 January 2002. The authority in charge of supervision and administration is the Film Commissioner.

Furthermore, Malta signed the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audiovisual Relations which came into force on 23 September 1997. This memorandum is also administered by the Film Commissioner.

3 *Synopsis of formal nationality certification procedures*

In Malta, there is no formal nationality certification procedure (see reply A.4 for Malta)⁷.

4 *Synopsis of expected legal developments*

In Malta there are no new co-production agreements expected as of 1 January 2007 (see reply A.5 for Malta).

The Financial Incentives for the Audiovisual Industry Regulations, 2006 (Legal Notice 65 of 2006), were published in the Government Gazette on 21 March 2006. These Regulations have not yet come into force, but upon coming into force shall apply retrospectively to audiovisual productions initiated after 1st June, 2005 and [in respect of which an application for provisional approval is made in accordance with Regulation 6 of these regulations] before 31st December, 2008. The Film Commissioner is in charge of the administration of this scheme.

The Tax Credit (Audiovisual Infrastructure) Regulations, 2006 (Legal Notice 66 of 2006), were published in the Government Gazette on 21 March 2006 and came into force on the latter date. This scheme applies in respect of qualifying expenditure incurred on or after 1 January, 2005. The Film Commissioner is in charge of the administration of this scheme (see reply A.6 for Malta).

⁷ This indication refers to the attached replies and follow-up replies from the local lawyer to the legal questionnaire.

B The Maltese funding schemes

1 Overview

In Malta there are three national funding schemes relating to audiovisual works:

- the Financial Incentives for the Audiovisual Industry Regulations of 2006
- the Incentives under the Business Promotion Regulations
- a Tax Credit for Audiovisual Infrastructure

The latter two came into force only in 2006 but were in part retrospectively applied.

2 Analysis of the Maltese Financial Incentives for the Audiovisual Industry Regulations Scheme

2.1 Description of the funding scheme

The Financial Incentives for the Audiovisual Industry Regulations Scheme (Fiscal Incentive) is based on the Malta Film Commission Act (Chapter 478 of the Laws of Malta), which came into force on the 15th July 2005 and on the *Regolamenti ta' l-2006 dwar Incentivi Finanzjarji ghall-Industrija Awdjovisiva* (Financial Incentives for the Audiovisual Industry Regulations, Legal Notice 65 of 2006) that were issued under the Malta Film Commission Act of 21 March 2006. There are no amendments and the regulations have not yet come into force. After coming into force the regulations will be applied retrospectively to audiovisual productions initiated between 1 June 2005 and 31 December 2008.

The Audiovisual Industry Regulations are administered by the Malta Film Commissioner.

For contact information see reply B.14 for Malta for Audiovisual Industry Regulations.

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 25 and Art. 27 of the Malta Film Commission Act of 2005 (see reply B.6 for Malta for the Audiovisual Industry Regulations Scheme).

To be eligible to apply for State aid under this scheme, the film must be a qualifying production produced by a qualifying company. A qualifying company is any natural or legal person who carries on, or intends to carry on in Malta, a

trade or business which consists in the production of film (see Art. 25 of the Malta Film Commission Act of 2005). A qualifying production eligible for funding is one wholly or partly made in Malta (see Art. 27 of the Malta Film Commission Act of 2005).

Amount and payment conditions depend on what the Commissioner considers to be appropriate and expedient. Audiovisual productions spending less than Lm35,000 (€1,780) in Malta are not eligible for the financial incentives (see Legal Notice 65 of 2006 in the Second Schedule). For the purpose of assessing expenditures in Malta relevant to qualifying for the support granted under this funding scheme, local labour, accommodation, per diems, catering and craft services supplied by Maltese companies, air travel (flights operated by Air Malta), expenses at Malta International Airport, shipping (with Maltese-owned shipping companies), all local handling, rental of equipment from Maltese suppliers, rental of props from Maltese suppliers are taken into account. Furthermore, to be eligible for funding, the producer must hire at least three Maltese trainees (see Par. 12 of First Schedule of Legal Notice 65 of 2006).

Companies complying with these criteria shall be given a rebate of up to 20% of eligible expenditure, as a cash grant, upon completion of a qualifying production in Malta. The cash grant shall be exempted for the purposes of the Income Tax Act (see Regulation 5(1) of Legal Notice 65 of 2006).

2.2.2 Practice

There is no relevant judicial practice reported.

Regarding administrative practice it is worth noting that to apply, companies must submit all relevant documentaries and information at least thirty days before the principal filming in Malta starts.

The production budget and a detailed itemised estimate of the production's expenditure in Malta must be attached to the application. On the basis of these documents the Film Commissioner recommends to the Film Commission the level of the rebate to be granted to the qualifying company and on what conditions. Only qualifying companies will be considered in this procedure. The Film Commission may not grant State aid beyond the amount recommended by the Film Commissioner.

Not later than six months after completion of the production, the qualifying company or its local branch must apply for final approval, together with all the relevant information and documentation, to the Film Commissioner. The Film Commissioner and the Film Commission will review the final application together and agree on the final rebate to be granted. During this procedure, the local

expenditure is analysed in detail (see reply B.7 on Audiovisual Industry Regulations).

2.2.3 Discussion

The Financial Incentives for the Audiovisual Industry Regulations Scheme require that the producer applying for support complies with the specific criteria provided by the law and respects the described administrative practices (see Section 2.2.2). The maximum rebate upon completion of a qualifying production in Malta is 20% of eligible expenditure.

2.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of a tax reduction must spend locally a not quantified amount of the film budget. These objective territorialisation requirements take the form of expenditure requirements. However the minimum amount to be spent in Malta is not determined as a percentage of the budget, but as an absolute amount. As a consequence, the lower the film production budget, the higher the percentage of the production budget that has to be spent in Malta to be eligible for funding.

2.3 *Synopsis of indirect territorialisation requirements*

2.3.1 Practice

There is no relevant administrative or judicial practice reported (see, however, reply B.7 for Malta on Audiovisual Industry Regulations funding schemes).

2.3.2 Discussion

N/A

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (however see below Section 3.6).

2.4. Synopsis of State aid selective granting criteria and procedures

Beside the eligibility criteria there is no formal procedure for the selective granting of State aid.

However to be eligible for funding, a production must meet certain quality requirements in addition to the expenditure conditions (see Art. 25 of the Malta Film Commission Act of 2005. The film project should be a cultural product produced wholly or partially in Malta on a commercial basis with a view to profit, in particular it should be produced wholly or principally for exhibition to the public in cinemas or through television broadcasting. Furthermore it should make a valid contribution to the expression of creativity and culture in Malta through the development of production capability skills in the media of film and television (see reply B.13 for Malta Audiovisual Industry Regulations).

Since there is no formal selection procedure, all the film projects fulfilling the eligibility criteria are financed. The eligibility requirements arguably qualify as objective territorialisation requirements that are not quantified in the law.

2.5 Synopsis of the relation between territorialisation requirements and co-production agreements

Films produced under the Memorandum of Understanding between Canada and Malta on Audiovisual Relations will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them (see reply B.8 for Audiovisual Industry Regulations).

Films produced under the European Convention on Cinematographic Co-Production shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned. The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention (see reply B.8 for Audiovisual Industry Regulations).

Territorialisation requirements arguably do not constitute obstacles to the eligibility for State aid of films produced in the framework of the two co-production agreements to which Malta is a party. However, in case of a conflict or an inconsistency between the rules on territorialisation contained in the national or internal legislation on State aid to cinema and the rules contained in

conventions on co-production agreements, the international agreements prevail over national or internal law.

2.6 Synopsis of purpose and cultural clauses applying to the funding scheme

At the Constitutional level, Chapter II, Article 8, of the Constitution provides that “The State shall promote the development of culture and scientific and technical research”. Chapter II, Article 21, proceeds to stipulate that “The provisions of this Chapter (i.e. Chapter II) shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws”.

The Cultural Heritage Act (Chapter 445 of the laws of Malta) in Part II, Article 2, defines cultural heritage as: “...movable or immovable objects of artistic, architectural, historical, archaeological, ethnographic, palaeontological and geological importance and includes information or data relative to cultural heritage pertaining to Malta or to any other country. This includes archaeological, palaeontological or geological sites and deposits, landscapes, groups of buildings, as well as scientific collections, collections of art objects, manuscripts, books, published material, archives, audio-visual material and reproductions of any of the preceding, or collections of historical value, as well as intangible cultural assets comprising arts, traditions, customs and skills employed in the performing arts, in applied arts and in crafts and other intangible assets which have a historical, artistic or ethnographic value”.

Beside these general provisions, the rules applying to this funding scheme include a reference to the promotion of cultural policies and economic incentives. Qualifying productions eligible for funding shall make a valid contribution to the expression of creativity and culture in Malta through the development of production capability skills in the media of film and television (see Article 3(1) of Legal Notice 65 of 2006).

The Audiovisual Industry Regulations scheme requires that the authorities adopt and implement measures for the development, support and promotion of the audiovisual industry in Malta, and, in general, that they implement Malta’s audiovisual policy (see Art. 6, Malta Film Commission Act).

The objectives of this funding scheme as stated in its Regulations mention the promotion of both, the cultural and the economic aspects of the film sector. The objective of promoting the local film industry arguably qualifies as indirect territorialisation that is not quantifiable.

3. Analysis of the Maltese Incentives under the Business Promotion Regulations Scheme

3.1 Description of the funding scheme

The Maltese Incentives Scheme - *Regolamenti dwar il-Promozzjoni tan-Negozju* (Financial Incentives for the Business Promotion Regulations, Legal Notice 135 of 2001) is based on the Business Promotion Act (Chapter 325 of the Laws of Malta). The Business Promotions Regulations came into force in November 2000 and were amended in the period from 2001 to 2005 (see reply B.4 for the Business Promotion Regulations). For additional information on this scheme, see Malta Enterprise website <http://www.maltaenterprise.com>.

3.2 Synopsis of objective territorialisation requirements

3.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme.

A company qualifies for support by carrying on or intending to carry on *in Malta* actually and physically a trade or business in specific activities. The production of feature films, television, films, advertising programmes or commercials, and documentaries is such a specific activity. Companies may apply for funding to meet qualifying expenditures – expenditures of a capital nature that are incurred in Malta (see reply B.6 for the Business Promotion Regulations).

Different options are available under the Business Promotion Regulations. One is to calculate one's Investment Tax Credits as a percentage of qualifying expenditure. One may also claim an investment tax credit by reference to the wage costs pertaining to the jobs created in Malta, as a result of an investment project.

The Business Promotion Regulations foresee a defined rate with which the profits derived from trade or business carried out in Malta shall be subject to a reduced income tax. Reduction depends on the years of assessment. A company being assessed for business in Malta is eligible for an income tax reduction of 5% for the first seven years; for the following six years this rate rises to 10 %. From year 13 onwards, a 15 % reduction is available for the following five years of assessment (see reply B.7 for the Business Promotion Regulations).

Companies qualifying for a reduced income tax also qualify for an investment tax credit. Up to 50% (65% for small and medium enterprises) of the qualifying expenditure or of the wage costs incurred during the first two years of the investment project may be reimbursed, provided that the job created did not

replace another individual and exists for at least five years (see reply B.7 for the Business Promotion Regulations).

3.2.2 Practice

There is no judicial practice reported.

Regarding administrative practice it should be noted that Malta Enterprise determines within 60 days whether the company qualifies for a reduced rate of income tax. Qualifying companies receive a certificate for the period assessed, defining the company's entitlement to the reduced rates of income tax. A copy of the certificate is forwarded by Malta Enterprise to the Commissioner of Inland Revenue.

A company wishing to claim an investment tax credit must provide documents on the investment project and the jobs created. Malta Enterprise may, from time to time, examine books, documents, premises and other things and matters.

From 2004 onwards, only a limited amount of the profits can be taken into account (see reply B.7 for the Business Promotion Regulations as well as Regulations 4 and 43 of the Business Promotion Regulations). The Business Promotion Regulations, furthermore, expire in 2009.

3.2.3 Discussion

The Incentives for the Business Promotion Regulations Scheme was not created for the promotion or development of Maltese culture, but for the promotion and development of Maltese industries and economy in general. The expenditure requirements are interpreted in view of this general purpose (see also below section 2.6).

3.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of a tax reduction must spend locally a not quantified amount of the film budget. Thus, these objective territorialisation requirements take the form of expenditure requirements. However the minimum amount to be spent in Malta is not determined as a percentage of the budget.

3.3 Synopsis of indirect territorialisation requirements

3.3.1 Practice

There is no relevant judicial and administrative practice reported.

3.3.2 Discussion

N/A

3.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (however, see below Section 3.6).

3.4. Synopsis of State aid selective granting criteria and procedures

This funding scheme grants State aid on a purely "automatic" basis.

3.5 Synopsis of the relation between territorialisation requirements and co-production agreements

Details of the interpretation and implementation of the territorialisation requirements relating to this scheme in the context of the Maltese co-production agreements are not specified for this funding scheme.

Films produced under the Memorandum of Understanding between Canada and Malta on Audiovisual Relations will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country that grants them.

Films produced under the European Convention on Cinematographic Co-Production shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned. The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention.

The Business Promotion Regulations do not distinguish between foreign and Maltese film producing companies as long as they do business in Malta (see also Section 2.5, above).

3.6 Synopsis of purpose and cultural clauses applying to the funding scheme

There are no specific cultural clauses for this funding scheme. For general cultural clauses see above Section 2.6; see also reply B.12 for Malta for the Business Promotion Regulations.

The Incentives for the Business Promotion Regulations Scheme has an economic objective: it was not created for the promotion or development of Maltese culture, but for the promotion and development of Maltese industries and economy in general.

The requirement of promoting the local economy arguably qualifies as indirect territorialisation that is not quantifiable.

Analysis of the Tax Credit (Audiovisual Infrastructure) Regulations Scheme

4.1 Description of the funding scheme

The *Regolamenti ta' l-2006 dwar Kreditu ta' Taxxa (Infrastruttura Awdjovisiva* (Tax Credit (Audiovisual Infrastructure) Regulations of 2006 (Legal Notice 66 of 2006) is based on the Malta Film Commission Act of 21 March 2006. They have not come into force yet. The Tax Credit Regulations Scheme will be applied retrospectively to expenditures incurred on or after 1 January 2005. The Regulations are administered by the Malta Film Commissioner.

4.2 Synopsis of objective territorialisation requirements

4.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme.

In order to be eligible, a qualifying company must report on the qualifying expenditures it spends on a qualifying project (see reply B.6 for Malta for the Tax Credit Regulations).

An eligible company is established or has a place of business in Malta. The business contemplated under these rules refers to activities that form part of the film servicing industry (see Regulation 2 of Legal Notice 66 of 2006). The eligible company's activities shall develop or expand the audio visual industry in Malta. The Commissioner decides upon the eligibility of the applying company, and, in the case given, certifies its qualification.

Qualifying expenditures are expenditures for a qualifying project, i.e. expenditures in the form of the acquisition, construction, development or improvement of any industrial building or structure (including related labour costs), the acquisition of plant and machinery (except motor vehicles, works of art and antiques, any assets of a mainly decorative nature, and assets with intrinsic value rather than a specific usefulness), and the acquisition of intellectual property rights from third parties under open market conditions the cost of which is amortizable. In sum, these types of expenditures that are typically investments must contribute to develop or expand the Maltese audiovisual industry. These expenditures may not be reimbursed or recovered otherwise (see reply B.6 for the Tax Credit Regulations Scheme).

The tax credit may amount to 25% of expenditure for any industrial building or structure and to 40% of expenditure for plant, machinery or intellectual property rights. If the company has already received State aid from other funds for the realisation of the project, the amount will be reduced by the value of that aid. The

funding is transferred in the form of a tax credit. The tax chargeable on profits deriving from the activities relating to the investment and the project will be reduced in the current and the following years until the full amount is absorbed, but at the latest up to assessment year 2013. Other payment modalities or refunding are not possible (see reply B.7 for the Tax Credit Regulations Scheme).

4.2.2 Practice

There is no judicial practice reported.

Regarding administrative practice it should be noted that companies apply to the Film Commissioner for certification as a qualifying company not later than three months prior to their tax return date for the year of assessment. Upon application, it is approved as a qualifying company developing or expanding the audiovisual industry in Malta by the Malta Film Commission upon the recommendation of the Commissioner. The Certificate is only valid within a limited period specified by the Commissioner.

Applications must allow the Commissioner to distinguish whether the applying company qualifies or not as a small or medium size enterprise. The project, its purpose and its duration must be described. Details of the planned investment have to be provided by listing all the items of qualifying expenditure sorted by the categories plant, machinery, expenditure on industrial buildings and structures and expenditure on intellectual property rights. The application shall state the number of additional employees that the company plans to employ during the project period. The Film Commissioner must be authorised to pass on information to the Commissioner of Inland Revenue who also receives a copy of the certificate of qualification for the Tax Credit Regulations Scheme. The Commissioner of Inland Revenue may request an independent opinion on the certificate.

The Commissioner recommends a maximum amount for each item according to what seems necessary and reasonable and a maximum sum of State aid the applicant may receive. Projects with a realisation period of more than five years and projects to be approved later than 31 December 2008 shall be rejected.

The Film Commissioner keeps a database of all assistance provided to or claimed by a company under these Regulations for ten years. This makes it possible to verify whether the provisions of these Regulations have been complied with, to provide the State Aid Monitoring Board with such information as it may require, and to inform the Commissioner of Inland Revenue whether the credits claimed in terms of these Regulations have been properly calculated.

The Commissioner of Inland Revenue has the right to deny a benefit under these Regulations if any default is committed by the applicant in respect of any

provision of the Income Tax Act, the Income Tax Management Act or the Social Security Act.

4.2.3 Discussion

The Tax Credit Regulations Scheme requires objective territorialisation criteria from the companies applying for support. The requirements are rather simple. The important feature of this funding scheme is the direct territorializing effect stemming from the fact that it directly supports the Maltese economy and film industry in financing its expansion and development.

The expenditure requirements are interpreted in view of this general purpose (see also below section 4.6).

4.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of a tax reduction must spend locally a not quantified amount of the film budget as the projects must expand and develop the audiovisual industry in Malta.

As the funding is not paid out in cash, but reduced from the taxes to be paid in the years that follow the investment, it can only be of use for companies paying such taxes in Malta.

4.3 Synopsis of indirect territorialisation requirements

4.3.1 Practice

Since the scheme has not yet come into force, no relevant judicial and administrative practice has developed so far.

4.3.2 Discussion

N/A

4.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see below Section 4.6).

4.4. Synopsis of State aid selective granting criteria and procedures

This funding scheme grants State aid on a purely "automatic" basis.

4.5 Synopsis of the relation between territorialisation requirements and co-production agreements

Films produced under the Memorandum of Understanding between Canada and Malta on Audiovisual Relations will be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them.

Films produced under the European Convention on Cinematographic Co-Production shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned. The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention.

Projects within the framework of one of the two co-production agreements can qualify for funding for the Tax Credit Regulations scheme if they comply with the applicable criteria. As funding is not paid out in cash but will be deducted from tax in the following years, application only makes sense for companies paying taxes in Malta.

See also Section 2.5 above.

4.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The fund primarily promotes investments promoting and enhancing the audiovisual industry in Malta in general. The applicable regulations do not contain provisions articulating cultural objectives or justifications (see Section 2.6 above).

The requirement of promoting the local economy arguably qualifies as indirect territorialisation that is not quantifiable.

References:

Jeanine Rizzo, *An Analysis of the Law Relating to the Film Industry*, University of Malta, Faculty of Laws, LL.D. thesis, June 2006. This is not a specialised study and gives more of an overview of the incentives available to the audiovisual industry.

Attachments:

- Replies to the legal questionnaire by Pierre Mifsud, attorney at law, Ellul Mifsud & DeBono, Malta
- Regulations for Malta