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Chartered Accountants & Professional Business Advisers

High End TV/Animation Tax Credit

The draft legislation in relation to tax relief for high-end television production and animation was published for consultation on Tuesday 11 December 2012, with responses to be made by 6 February 2013.

Current Situation

In their current format, the rules are set to be similar to the film tax credit regime. An additional deduction against taxable profits will be given for core production expenditure incurred. If this results in a loss, it can be surrendered for a payable tax credit. The rules are due to apply to expenditure after 1 April 2013 (EU state aid approval is required) so in some instances it may be worth considering deferring planned expenditure. It is likely that productions that straddle the 1 April 2013 will be able to claim the TV tax credit but only for spend incurred after 1 April.

Value of the relief

The additional deduction and payable credit are to be calculated on the UK core expenditure up to a maximum of 80% of the total core expenditure by the TV Production Company. The additional deduction is 100% of qualifying core expenditure and the payable tax credit is 25% of losses surrendered.

This means that the maximum tax credit can be 25% of UK core expenditure, but restricted to 80% of total core expenditure. So if 80% or more of the total core expenditure is incurred in the UK, the payable tax credit will be 20% (25% of 80%) of the total core expenditure. This is in line with the current rules for the film tax credit.

Who will be eligible?

Only television production companies can claim the relief for a programme and the definition is the same as for the film tax relief regime. Broadly speaking the production company must be a company within the charge to UK corporation tax (although this could be through a UK permanent establishment rather than a UK incorporated company), and it may sub-contract so that it is not necessarily the owner of the programme nor of its distribution rights.

Eligible programmes

(a) Drama, comedies and documentaries which have a slot length longer than 30 minutes with average “core expenditure” per hour of slot length of not less than £1,000,000.

(b) Animations. Dramas and documentaries will be treated as animations if expenditure on the animation is at least 51% of the total “core expenditure”.

Where several programmes are commissioned together under one agreement they are to be treated as a single programme. This may cause some difficulty in applying for the credit on a single episode in a series, unless it has been separately commissioned, but we would expect any problems in this area to be ironed out once the legislation is in place

Credits are to be available for programmes produced for television broadcasting and also to be seen on the internet.

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Ineligible programmes

Advertisements, news, current affairs and discussion programmes as well as quiz, game, panel, variety and chat shows and other similar entertainment, competitions and results of competition shows, live events and performances and training programmes will not be included.

Key Requirements

The three key requirements which must be satisfied for the TV Production Company to claim TV tax relief are:

1. *The programme must be "intended for broadcast to the general public":* the test is applied when television production activities begin
2. *The programme must also be certified as British:* There are two options to qualify:
   - The Cultural Test (see below); or
   - it is a qualifying co-production. This covers those co-produced under a relevant co-production treaty. Currently, the UK has treaties for TV programmes with Australia, Canada, France, Israel, New Zealand, and the occupied Palestinian Territories. There is a possibility that some of the current treaties that do not permit television co-productions, such as the European Convention, will be amended to bring them into the tv net although this is obviously subject to legislative change.
3. *Minimum UK expenditure thresholds are met*: at least 25% of the total "core expenditure" must be "UK expenditure" on goods or services "used or consumed" in the UK. This must be incurred by the TV Production Company or, for a qualifying co-production, by the co-producers. It is the same test as for the film tax relief regime.

"Core expenditure" is expenditure on pre-production, principal photography and post-production of the Programme. Certain development, distribution and finance will not attract the tax relief.

The Cultural Test

There are separate Cultural Tests for (a) drama and documentaries and (b) animation programmes, but both are substantially the same as the existing Cultural Test for films. 16 points will be required out of a possible 31 points in order to qualify as British

The main difference to the film Cultural Test is the expansion of the "Cultural Content" section to include the EEA, not just the UK. So points will be awarded for programmes: (i) set in the UK or another EEA state; (ii) with lead characters from the UK or another EEA state; and (iii) depicting a British story or a story which relates to an EEA state (including where the underlying material is British or relates to an EEA state).

There is no modification to the so-called "Cultural Practitioners" test, which remains the same as the Cultural Test for films, so there is no additional flexibility to hire non-EEA key talent.

London
10 Orange Street
Haymarket
London
WC2H 7DQ

T +44 (0)20 7312 0000
F +44 (0)20 7312 0022
E advice@shipleys.com

Godalming
3 Godalming Business Centre
Woolsack Way
Godalming
Surrey
GU7 1XW

T +44 (0)1483 423607
F +44 (0)1483 426079
E godalming@shipleys.com

www.shipleys.com