

# A productive PARTNERSHIP



**E**ven those working flat out to cope with the 31 January tax filing and payment deadlines can't have missed the furore generated by Slumdog Millionaire. The uplifting storyline offers an especially welcome escape from current economic problems. The film has attracted widespread approval, it is a UK box office number one, the winner of eight Oscars (including best picture and best director for Danny Boyle), four Golden Globes and seven BAFTAs. It received a total of 10 Oscar nominations.

In Slumdog Millionaire, Mumbai slum kid Dev Patel plays Jamal Malik, who takes part in the Indian version of 'Who

wants to be a millionaire?'. He makes it through to his final question and a chance to win 20m rupees. When the show runs out of time and breaks for the night, the host Prem has Jamal arrested on suspicion of cheating. Overnight, the police revisit the questions one by one and Jamal explains how he came to know each answer. As he does so, his extraordinary life story unfolds, and he is allowed to return to the show to try to answer the final question.

I shall look here at the tax incentives available to the UK film industry, and the questions Slumdog Millionaire had to answer to win the prize of certification

as a British film – the first step to securing access to film tax credits.

## A British film?

Readers may be surprised that the film might be considered in any way British. At first sight, its connection with the UK is not clear; it was shot in India and has a largely Indian cast. Scratch the surface however, and the links start to be revealed: it is a result of collaboration between two British media businesses – Celador Films, and Film 4 – which together primarily financed the film, along with a helping hand from HMRC in the form of a producer film tax credit. It has a British director, Danny Boyle

The British film *Slumdog Millionaire* has won eight Oscars, seven BAFTAs and four Golden Globes. So it's a good time for *Steve Joberns* to examine the tax incentives available to the UK film industry

(*Trainspotting*, *28 Days Later*), was written by British writer Simon Beaufoy (*The Full Monty*) and the post-production work was carried out in the UK.

### What relief is available?

The principles behind the basic relief are that it should be straightforward to administer and easy to apply, the aim being to ensure that tax relief is given for film production costs by matching film production expenditure against contracted film income.

The film tax relief is a government-approved scheme based around the statutory accounts and the corporation tax return, totally independent of private funds such as the sale and leaseback operators. It enhances film-making production (or 'core') expenditure and allows this to be used against trading profits or, more commonly, to be exchanged for a cash payment from HMRC.

The production tax credit is 25% of core expenditure in the UK for limited-budget films under £20m (20% for all other films), subject to a cap of 80% of the total core expenditure for the film. Relief for limited-budget films where 80% or more of the core expenditure is in the UK will therefore be no greater than 20% of the total core expenditure (16% for films over £20m) before taking into account financing or distribution costs, which do not form part of the relief.

### Who qualifies for film tax relief?

Film tax relief is available to the production company that is actively involved in the pre-production, principal photography, post-production and delivery of a film. As there is no requirement to own the master negative or film rights, the production company can be a special-purpose vehicle. Aspects of the work can be subcontracted. A film qualifies for relief if:

1. There is genuine theatrical intent.
2. It qualifies as British, either as
  - a) culturally British, or
  - b) an approved co-production (under one of the UK bilateral treaties or the European Convention for Cinematographic Co-production), and
3. At least 25% of the production budget ('core expenditure') must be 'used or consumed' in the UK. The core expenditure is defined in *Finance Act 2006*, s. 34 and 35.

### The cultural test

The cultural test included in the application for a British Film Certificate under *Films Act 1985*, Sch 1 (as revised in 2007) includes a 31-point test. For the film to qualify it must be regarded as British under at least 16 of those points. At first sight it's quite a straightforward test, although individual points can be rather marginal, leading to a result that is a bit different from the overall picture.

The application to be granted a British Film Certificate can amount to a substantial package of documents, including:

- the shooting script (in English);
- a complete synopsis or treatment of the screenplay;
- shooting schedule;
- production budget;
- a copy of the chain of title;
- a DVD copy of the finished project;
- the application form;
- accountants' report.

### UK expenditure

The new rules are designed to bring investment and expenditure into the UK and counteract what many observers considered to be a fundamental flaw in the previous section 48 relief, where films could qualify for a substantial tax break but with little production activity actually having taken place on these shores. Now, at least 25% of the core



Although funds from the banks are limited, films are now seen as not quite so risky – and a bit of fun

expenditure must be used and consumed here. This means for example that under the current rules there are no benefits in having a British actor working in India, whereas an Indian actor engaged and paid for by the film production company and working in the UK would help.

**How did Slumdog qualify?**

The 31 points are grouped into various categories, including: *Cultural content.* Because the film is not set in the UK and the lead characters are not English, no points were gained in these areas. However, points were picked up for the subject matter and underlying material. The film is based on a book written in the UK by Vikas Swarup, and the dialogue is recorded in English.

*Cultural hub.* These tests review areas such as filming and music. While nothing was obtained for principal photography, which took place on location in India, the whole of the substantial visual-effects spend was with a UK-based company. The relatively minor expenditure in India on special effects did not stop the film picking up both the points available in this

category. All the film's post-production work was completed in the UK.

*Cultural practitioners.* This category looks at the people involved in making the film. Although most of the cast are Indian, the star Jamal is played by British national and resident Dev Patel. Lead director Danny Boyle and scriptwriter Simon Beaufoy are both British, as are the producer, lead production designer, lead editor, and lead sound designer. The lead cinematographer is Danish, which in a nod to matters EU counts as British for this purpose. The well-known composer, record producer and musician A R Rahman, who wrote the music, is of course Indian, but overall the film still picked up five of the available eight points in this category.

The overall result was that the film qualified as culturally British. Although it wasn't a borderline case in the end, it is fair to say that without advance planning and careful monitoring of expenditure, the decision might have gone the other way. We enjoyed working with the production team, who provided first-class information, clearly identified points where my input was needed and coped admirably with the inevitable cultural issues.

**Government investment**

Recent government help, notably for the banking sector, has been criticised for failing to secure a return for the

taxpayer, however reluctant it may have been to put our money in. By contrast, the film tax incentives have played a major role in promoting Britain as an important location in the film industry and gone some way to securing British jobs for British workers. The UK has a number of co-production agreements and is keen to develop relationships with other key film-making countries, notably India, Morocco, South Africa and China.

In the current economic climate, the industry is faring well. Although funds from the banks are limited, in a climate where traditional 'safe' investments such as bank shares have plunged and serious investors are spreading their money around and trying to work out which banks are safe, films are now seen as not quite so risky, with the prospect of a bit of fun along the way.

The British cultural test and film tax credit is also opening up new avenues for collaboration. The test has been broadly drafted (as can be seen from the example of Slumdog Millionaire) to enable as many films as possible to benefit from being labelled 'British'. As a result, many films that would perhaps have previously gone elsewhere are now coming to the UK for at least part of their production work. In particular, after the success of March of the Penguins, natural history films are very much on the 'studio' radar and can take advantage of the UK's pre-eminent position in natural history filming and post-production work, while still shooting around the world to capture the necessary photography of animals in their natural habitats.

It is thus, more than ever, a creative industry, and it is hoped that with the opening up of new co-production agreements and greater incentives for world film makers to come to the UK, the British film industry can continue to look forward with confidence.



**A TAXING ROLE**

Before the film tax credit was introduced, the Department for Culture, Media and Sport (DCMS) used to be the arbiter of what constituted a British film. Nowadays, while the DCMS still issues the certificates, this is done at the recommendation of the UK Film Council Certification unit. As an adviser to both the DCMS and the UK Film Council, Steve Joberns has been involved with the current rules from the very beginning. At the

invitation of the UK Film Council he has recently spoken at the Berlin Film Festival about the film tax credit regime and how the UK's co-production agreements can help to generate closer links with European film makers. He has a close working relationship with HMRC's film unit.

His work with Slumdog Millionaire began at the pre-production stage, helping with the structuring to ensure that the film would qualify as culturally British and for the tax incentives if at all possible. The work during production covered areas such as VAT, double tax treaties, withholding tax and national insurance, as well as the ultimate audit of the production and liaison with the financiers.

*Steve Joberns is a principal at Shipleys – production accountants to Slumdog Millionaire. He is a qualified lawyer, chartered accountant and chartered tax adviser who specialises in dealing with independent film and television producers, film studios and intermediaries such as completion guarantors and banks*