Entertainment Law

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UK Announces New Tax Relief for Television Production, Animation and Video Games

In an effort to attract international investment and encourage the production of animation, high-end TV productions and video games in the United Kingdom, the Rt Hon. George Osborne, Chancellor of the Exchequer, recently announced the UK government's plans to introduce new tax relief for the television, animation and video game industries which will supplement the existing UK tax relief for feature films.

In his Budget 2012 Statement, delivered on Wednesday March 21, 2012, Chancellor Osborne announced a wide-ranging program of over 250 economic reforms including new tax incentives for producers of video games, animation and high-end television productions. He said:

"The film tax credit, protected in our spending review, helps generate more than £1Bn of film production investment in the UK in the last year alone. Today I am announcing our intention to introduce similar schemes for the video games, animation and high-end TV production industries".[1]

According to the UK government, the UK is the second biggest exporter of television content in the world. In his speech, Chancellor Osborne stated that the new tax relief for TV productions will help "attract top international investors like Disney and HBO to make more of their premium shows in the UK."

There are currently approximately 600 animation companies in the UK, including the Oscar winning Aardman Animations Studio, which collectively employ over 4,700 people. In 2009, the UK animation industry produced approximately 190 hours of content worth £102m.

As of November 2011, there were approximately 9,000 creative staff working in almost 300 UK video games studios. In 2009, UK studios generated £1.7B in worldwide sales. The UK games industry body, TIGA, has been lobbying the UK government for years for tax relief, as jurisdictions such as Canada and France have introduced tax incentives for the gaming industry.[2]

Current UK Tax Relief for Feature Films

At present, tax relief is available to feature films that are certified by the British Film Institute as "British" either (a) under the applicable "cultural test", (b) as an official co-production under one of the UK's 7 bilateral co-production treaties with Canada, Australia, France, India, Jamaica, New Zealand and South Africa, or (c) under the European Convention on Cinematographic Co-production. The current program provides cash rebates of up to 25% of UK qualifying film production expenditure for qualifying films that cost up to £20 million and cash rebates of up to 20% of UK qualifying film production expenditure for qualifying films that cost over £20 million. The tax relief on UK qualifying production expenditure is available for up to a maximum of 80% of total production expenditure and there is no cap on the amount that can be claimed. In order to access the UK tax relief, among other requirements, a film must be "genuinely intended for theatrical release" which eliminates most TV productions from eligibility.

Proposed New UK Tax Relief For TV Productions, Animation and Video Games

The proposed tax relief program will expand the pool of eligible beneficiaries of UK tax relief to include producers of television shows, animators and video game producers. Although few details have yet been provided, it is anticipated that:

1 A Laughlin, "Budget boost for British animation, TV and games studios" (2012) Digital Spy Media (*http://www.digitalspy.ca/media/news/a372389/budget-boost-for-british-animation-tv-and-games-studios.html*).

2 Ibid. facts and figures care of Digital Spy Media

- while the exact level of tax relief is yet to be determined, it will be very similar to the current level of tax relief (ie. 20%-25%) for qualifying British films (see the discussion above);
- in the case of TV productions, TV dramas with a budget of more than £1m will qualify (the Chancellor referred to "high-end TV production" in his remarks);
- the new expanded tax relief program will operate in a similar manner to the existing film tax relief whereby each project will be required to pass a "cultural test" to qualify;
- the proposal is subject to further consultation and European Union approval; and
- it will come into force as early as April 2013.

Implications for Canadians and Americans

While the proposed new UK tax relief program has been celebrated by British newspapers as an effort to keep creative talent in Britain, both Canadians and Americans will likely also benefit.

First, the new tax relief will facilitate new production activity in the UK involving animation productions and TV dramas which are filmed in the UK and which cannot access UK film incentives at the present time (ie. because they are only available for feature films). Provided that these TV dramas and animation productions ultimately qualify as "British", they will be able to access the new UK tax incentive once it is implemented (hence the Chancellor's hope that Disney and HBO will be induced to produce their premium shows in the UK).

Second, new financing opportunities will likely emerge for both live action TV dramas and animation TV co-productions by virtue of the UK-Canadian film co- production treaty. As mentioned above, the UK currently has 7 bi-lateral co-production treaties with other countries including Canada. A "British" film includes a film which is co-produced pursuant to the Canada-UK co-production treaty. Although the treaty does not cover video game production, it does cover eligible television and animation productions in addition to feature films. Therefore, assuming that such TV productions will soon also qualify as "British" for purposes of the new UK tax relief, in the near future it should be possible for the co-producers of eligible TV co-productions to access film tax incentives in both Canada and the UK - not just feature film co-productions.

This will directly benefit Canadian TV co-producers and indirectly benefit any US broadcasters or distributors who are licensees of the co-productions. In this regard, it is noteworthy that several recent high profile Canadian official TV co-productions , such as "The Tudors" (CBC/Showtime), "Camelot " (CBC/Starz/GK), "The Borgias" (CTV/Showtime) and "Vikings" (History Television/AETV/MGM), have all been structured as official Canada-Ireland treaty co-productions rather than Canada-UK co-productions. Presumably they were so structured, at least in part, because the local Irish film incentive covers eligible television productions (as well as feature films), unlike the current UK tax relief which is limited only to feature films. It will be interesting to see what transpires in terms of future television co-productions once the UK becomes another viable "soft money" alternative for TV productions too.

If you would like further information about this matter or have any questions with respect to the forgoing, please do not hesitate to contract any member of our Entertainment Law Group:

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