Post-Budget Catch Up

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The 2014 Budget was held on March 19 and, as expected, didn't contain any earth-shattering proposals or overhauls of the tax system (unsurprising, given there is an election next year). There have been a few developments in areas that had previously been announced by the Chancellor, however, particularly in respect of video games and film.

Video games tax relief

At the end of March, the European Commission finally approved the tax reliefs for the UK video game sector that had been announced by the Government at Budget 2012. Originally, the tax break had been due to come into force on April 1, 2013, at the same time as similar reliefs for the high end TV and animation sectors. However, the EC had been concerned that, as "there is no obvious market failure in this dynamic and growing sector", the relief proposed by the UK Government was unnecessary. The EC's in-depth investigation has now concluded which means the relief has been given the green light. As a result, the relief came into effect from April 1, 2014. Initial Government estimations are that the relief will provide around £35 million of support to the sector each year.

Film tax relief

The European Commission has also approved changes to the UK film tax relief that were originally announced in the 2013 Autumn Statement (in December 2013). This approval means that, from April 1, 2014, the rate of film tax credit (available in return for the surrender of losses) will be 25 per cent on the first £20 million of qualifying core expenditure (subject to a maximum of 80 per cent of qualifying core expenditure) and 20 per cent thereafter. Until these changes, the 25 per cent rate had only applied to films with expenditure of £20 million or less, with the 20 per cent applying to those with costs exceeding £20 million. It is hoped the reduction in the minimum spend will encourage more film production activity in the United Kingdom.

Enterprise Investment Scheme and co-productions in film and television

In March, HMRC released a note to clarify the eligibility of co-productions in film and TV to access the Enterprise Investment Scheme ("EIS"). EIS is a tax efficient regime that was introduced to encourage investment in small companies. It provides an income tax deduction for investors in eligible companies, with the deduction currently being 30 per cent of the amount invested up to a maximum annual investment of £1 million (provided that the shares are held for at least three years). If the shares are held for the three years, any sale of the shares is also exempt from CGT.

In order to qualify for EIS, a company must, amongst other things exist wholly for the purpose of carrying on a "qualifying trade" which cannot consist, either wholly or substantially, of an "excluded activity". Crucially, one specified excluded activity is "receiving royalties or licence fees".

Previously, HMRC had accepted that the majority producer of a co-production (i.e. the one creating in excess of 50 per cent of the production) could qualify for EIS even if it received royalties or licence fees because those fees were attributable to the exploitation of relevant intangible assets (for example, the IP in the co-production).

HMRC has now clarified that, notwithstanding this IP exemption that has been available in the past, the key test to pass to gain EIS status is that of the qualifying trade. In the case of a film or TV programme, there is a single product that is produced. In a co-production, that film or programme has been produced by the activities of more than one party so, as a consequence, the trade of a potentially EIS qualifying company is, in reality, being conducted by another person. As a result, that company will fail the test.

The upshot of this is that, when co-production companies are raising finance and are looking to use the EIS regime as a method of attracting investors, they will now need to be very careful that operating under a co-production structure doesn't prejudice the company's EIS status. It may be that companies look to contract out aspects of the production as opposed to establishing a recognised co-production system simply to ensure that HMRC's EIS tests are met.

Sporting events

For several years, the Budget has been used to exempt certain major sporting events from the scope of UK income tax (and, sometimes, corporation tax), meaning that participators in those events will not become liable to UK tax simply because of their time spent in the United Kingdom in order to compete. The exemption has been used when Wembley hosted the Champions League final in both 2011 and 2013, for the London 2012 Olympic and Paralympic Games and, most recently, the 2013 London Anniversary Games.

The Finance Bill 2014 will introduce an income tax exemption for the 2014 Glasgow Grand Prix and legislation will also be introduced to permit Treasury Regulations to exempt future major sporting events. This will remove the need to legislate for these provisions in a formal finance bill and is a sign that the UK Government is minded to continue to exempt major events so as to ensure tax liabilities do not become a hurdle for sporting stars competing in UK events.