



## AUDIO-VISUAL TAX RELIEFS CONSULTATION

Issued 8 February 2023

ICAEW welcomes the opportunity to comment on the audio-visual tax reliefs report published by the government in November 2022, a copy of which is available from this [link](#).

For questions on this response please contact our Tax team at [taxfac@icaew.com](mailto:taxfac@icaew.com) quoting REP11/23.

This response of 8 February 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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## KEY POINTS

1. As a professional body, we do not have experience of operating within the AV sector and therefore we have not set our response out in the form of answers to the questions raised in the consultation document, but we have sought to address the general issues highlighted in these questions, where possible, through our discussions with members.
2. All members stressed the importance that any new legislation should simplify the existing rules and standardise them. It will be important that the rules are clear and easy to apply. Technology in the AV sector is constantly evolving and it is impossible to predict what new methods of AV entertainment might emerge over time. It is therefore important that any new rules are not unduly complex and could be applied to new areas of technology as and when they develop.
3. There was concern that for some businesses in this sector, particularly small and medium sized entities, applying the new rules from April 2024 might be ambitious and not provide sufficient time for consultation and guidance on the new mechanism for relief. For many they have no awareness of how a credit scheme would work and education on what this might look like is essential.
4. There were no objections to changing the way relief is given to a credit scheme similar to the Research and Development Expenditure Credit (RDEC). However, this was clearly on the basis that the changes do not result in the quantum of relief declining. This response deals with how any proposals might affect the quantum and nature of any relief separately.

## COMMENCEMENT

5. Some thought would need to be given to commencement and how the new rules would begin to apply. For example, in the context of video games, there might be updates and new downloads monthly. Would the rules only apply to new production commenced on or after a particular start date? This might be the easiest commencement provision to apply but would have to accept that a number of arrangements and productions would exist at least for a period of time, under the old regime.
6. Similarly, consideration would need to be given to when expenditure would be treated as incurred for commencement purposes as this is not always straightforward, depending on the nature of the contracts in place and terms around payment.

## HETV MINIMUM SLOT LENGTH

7. Feedback here suggested that the minimum slot length is not a big barrier to entry to the relief given the expenditure threshold is sizeable at £1m. Some members even questioned whether a minimum slot length criteria is required, given such a substantial expenditure threshold exists.

## DEFINITION OF A DOCUMENTARY

8. Currently this operates with a broad scope to claim with some exceptions and this does lead to a degree of uncertainty. Some members suggested that a 'main test' clause might assist claimants to assess whether their programme would qualify as a documentary. It was noted that this type of test is often subjective but might provide more clarity than, for example, using the BFI's guidance.

9. In terms of whether defining a documentary would lead to any negative impacts, it was thought not assuming the definition itself was properly considered.

## OVERSEAS ASPECTS AND VGTR

10. Members suggested that the removal of European expenditure from the qualifying costs of VGTR would negatively affect production activities. This is because there is a skill shortage in the UK and it is very common for businesses to use overseas resources to fulfil production requirements in the video games technology sector. This was widely reiterated by members who all indicated their clients struggled with recruitment in this sector and widespread vacancies can be identified. Members suggested that the legislation could be worded so as to not exclude European expenditure in the case of VGTR alone, or if some merger of the schemes were to go ahead, merge the other three reliefs but leave VGTR separate.
11. Another option might be to take a similar approach to that in the research and development (R&D) relief regime and allow overseas costs to qualify in certain defined circumstances only where it is not possible to carry out the relevant activity in the UK although this is still likely to result in a significant reduction in qualifying spend. We have also received feedback that the 'wholly unreasonable' test within the new R&D legislation is very subjective and therefore plenty of guidance and examples would be required to make this change work in practice. Some sort of transitional period would be helpful to manage any cliff-edges in relief. For example if skills shortages in the UK were not sufficient to meet the criteria for qualifying overseas spend, this would likely mean a significant drop in relief for a number of businesses.
12. Some members also were concerned that a requirement for expenditure to be 'used or consumed in the UK' might result in video games production being moved overseas. Some territories have their own version of this tax relief which is more favourable than what is being proposed in the UK. While the policy intent clearly appears to be to encourage production in the UK, it might actually have the opposite effect.
13. The definition of 'used and consumed' will need to be explored to ensure that it is clear for claimants to apply. The guidance will need to be expanded to ensure that claimants are clear what costs will meet this criteria.
14. This is because the 'used or consumed in the UK' condition for VGTR will likely create complexities. The pandemic has meant that it matters very little where workers are actually located, with some production companies even moving to an entirely virtual studio.
15. There are also further complexities due to the nature of the production of video games. By way of example, a member discussed 'voice-overs'. These can be recorded anywhere in the world with voice artists often only recording singular words. These recorded words will then be passed to the studio to be integrated into the game. If the studio is in the UK but the recordings made around the world, it is not clear whether the voice-over cost would be used and consumed in the UK. Clearly this is not the only area of complexity but is used as an example to highlight the types of issues that will arise when implementing a domestic condition on an industry which is inherently virtual and global.
16. Currently the cultural test is applied on an EU level rather than the UK. If this is changed this might mean that certain costs might no longer qualify which do under the current reliefs. An example could be a French character in a video game which under the existing rules would qualify. If equivalent regimes in other territories do not have these restrictions, this might incentivise companies to move their productions to those territories.
17. Some members also suggested scrapping the rule that all costs within the VGTR claim must be settled within 4 months of the year end, especially if the move was to include only UK costs. If it couldn't be scrapped entirely, some suggested a 12 month settlement period might be administratively easier to manage.

### **Subcontracted expenditure**

18. The £1m cap on subcontracted expenditure has been in place since 2014/15 and there was a general consensus that it would not be unreasonable to raise this figure for example in line with inflation.
19. While we do not have any direct data from production companies, members advising these businesses have indicated that subcontracting is not unusual. Concerns were raised that disallowing VGTR subcontracting expenditure incurred in the EU could punish those who are compliant when more targeted measures to challenge non-compliance are appropriate.
20. Some production companies will have more than one studio and output from an EU studio could be used in the production of a UK game. It is therefore not unusual for recharges to occur in this situation where the costs of production are legitimately shared between two studios. Would this form of arrangement be considered subcontracting and what impact would it have to disallow subcontracting expenditure into the EU.
21. Many members suggested that a cap would appear unnecessary if only subcontracted UK expenditure was to be allowable.

### **80% CAP ON QUALIFYING EXPENDITURE**

22. Members felt that scrapping the 80% cap would reduce the administrative burden on claimants as there would be less need to track the accumulated costs.
23. Affected companies might have to alter their quarterly instalment payments (QIPS) for corporation tax purposes so they would need to be advised of any changes in a reasonable time frame for this.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).