Revenue phantom haunts Oscar gifts

BUSINESS PLATFORM

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LAST week's Oscars only produced one British winner, but disappointed nominees did not leave Tinseltown empty-handed. Far from it. Nominees and presenters came away with gifts worth tens of thousands of pounds. Inside their goody bags were vouchers for luxury holidays, first-class flights, spa treatments, laser eye surgery and Dyson vacuum cleaners. After the ceremony, at glamorous studio parties, invitees were showered with more gifts, including mobile phones and customised iPods. But this year there was a phantom at the feast – the British tax inspector.

It was no surprise to read press speculation last week, fuelled with barely suppressed schadenfreude, that the Inland Revenue would be taxing the goody bags of UK resident recipients such as Imelda Staunton, Kate Winslet and Clive Owen. Just how UK Chancellor Gordon Brown plans to get his hands on 40% of a Dyson cleaner remains unclear, but with an estimated average value of more than £50,000, the tax bill in respect of an Oscar goody bag alone could be about £20,000. That won't do much to reduce the big black hole in the Chancellor's finances ... but every little helps.

These stories are not fanciful. Inland Revenue inspectors are renowned party poopers and are rubbing their hands with glee at the prospect of subjecting these freebies to income tax, no doubt encouraged by the good run they have had recently with wealthy stars. They won a case against tennis ace Andre Agassi which found that sponsorship income paid in connection with his appearances in the UK was subject to UK income tax even though that income was not received in the UK. And footballer Dennis Berghamp failed to persuade the courts that payments made by Arsenal football club in respect of the use of his image rights (which were owned by an offshore company) should escape UK tax.

But it is far from clear whether gifts, such as Oscar freebies, can be brought within the UK tax net. A gift received by self-employed actors or actresses is generally only subject to income tax if it is a receipt of the profession of being an actor or an actress. But is it?

The Revenue will argue that appearing at a professional award ceremony after being nominated for an award for outstanding professional performance means that any gift received in connection with that appearance is received in the course of the profession of being an actor.

Against that, it can be argued that these gifts are entirely voluntary and are not income from the profession of the recipient. The motive of the giver is to promote their product but there is no obligation on the recipient to do that. If Kate Winslet leaves the Dyson in its box, the company will not ask for it back.

There is authority for the view in the UK that the receipt of a gift which has a connection with the actor's or actress's trade is an ex gratia receipt and outside the scope of professional income.

The position in the US is even less clear, not least as the analysis depends to some extent on the motive of the giver. If the giver of the gift successfully argues that gifts are given because of "detached and disinterested generosity", then the items would be tax-free. The problem is that US corporations cannot make tax-free gifts. The payment would be taxable if it was an inducement of some sort, but it is difficult to see how this is an inducement. In any event though, any tax to be paid is almost certainly going to be picked up by the giver. That's just the way it works in Hollywood.

If you are wondering if there is a point where all this speculation on the part of tax inspectors, accountants and lawyers could actually cost more than the tax at stake, then you are probably right. And there are plenty of similar issues in UK tax legislation for revenue inspectors to get excited about. For example, the UK's inheritance-tax rules have a small gifts exemption but it is only £250 per year. A gift by parents in consideration of the marriage of their child could potentially be subject to inheritance tax if it exceeds £5,000. Presents to children can be subject to inheritance tax if the parent who makes the gift dies within seven years of doing so.

But for downright pettiness, the benefit-in-kind rules for employees take some beating. If an employee receives a couple of bottles of wine worth more than £25 from their employer at Christmas, that gift is a taxable event, giving rise to income tax as well as employer's and employee's national insurance contributions. PAYE audits of companies generally involve a glance at the petty cash book to check for sums spent on birthday cakes, champagne and other goodwill gestures.

It is only too easy to imagine the day's takings from a PAYE audit in London yielding less than the first-class return rail fare incurred by the inspector on his journey from Cardiff. Strangely, neither of the main political parties has proposed a cost benefit analysis of the often silly and intrusive tax rules on gifts and incidental benefits.

If you think it unlikely that the Revenue would waste time inquiring into such minutiae, think again. It probably costs the Revenue much more to hunt down freebies than it raises in revenue from taxing them. But that won't stop it trying.

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