

FB 2021-22 - Cultural relief changes

Lecture P1293 – 11.03 minutes

The Government created special tax relief schemes for the arts many years ago which enable companies producing artistic output such as films, high-end TV programmes, theatre and orchestral performances to claim enhanced deductions for production costs and claim payable tax credits for losses caused by these production costs.

Each scheme has its own conditions and rules.

The Finance Bill proposes amendments to these schemes, principally to increase the rate of payable tax credits but also makes other changes.

Film Tax Relief: films produced to be TV programmes

Under Clause 16, for accounting periods ending on or after 1 April 2022, new s1196A is inserted into CTA 2009, allowing companies to claim film tax relief only when the film

- a) is intended for theatrical release (i.e. shown to the paying public at a commercial cinema);
or
- b) broadcast as a television programme to the general public if it meets conditions A to D (a 'relevant programme') in s1216AB CTA 2009.

As long as the film meets these conditions at the end of an accounting period then it is treated as meeting them throughout the period.

If it does not meet the conditions at the end of the period, it cannot be treated as meeting them in any future period (though relief would still be available for any previous period in which it met the conditions).

It also prevents companies from claiming film tax relief if television tax relief is available on the same expenditure.

If principal photography has been completed by 1 April 2022, or if the film was ineligible in a prior period due to not intending a theatrical release, the film cannot qualify for relief under the amended rules above.

This change gives flexibility to companies who have commenced production intending to show a film through commercial cinemas to change so that it is shown on television without losing previous film tax reliefs.

Temporary increase in theatre tax credit

Eligible theatre productions (plays, operas, musicals, ballets) where the performances are live and all or a high proportion will be to paying members of the public or provided for educational purposes, can claim a tax credit for losses caused by core production costs.

To qualify at least 25% of the core expenditure must be on goods and services provided in the UK or EEA (this latter point might be amended in future legislation but was not removed following the UK's withdrawal from the EU).

Core expenditure relates to producing and closing the production.

The company can claim an additional deduction against its income of the smaller of

1. 80% of the total core expenditure, or
2. The core expenditure on goods and services provided from the EEA

If this creates or augments a loss, the company can surrender the loss for a payable tax credit.

Prior to the Finance Bill, this was 20% for non-touring productions and 25% for touring productions.

Clause 17 temporarily increases these rates for accounting periods beginning on or after 27 October 2021.

The increased rates are:

Accounting period	Touring productions	Non-touring productions
Ending between 27 October 2021 and 31 March 2023	50%	45%
Ending between 1 April 2023 and 31 March 2024	35%	30%

Where the accounting periods straddle these dates the period before and the period after are considered to be two separate accounting periods. Losses must be apportioned on a just and reasonable basis to establish the losses eligible for the increased rates of tax credit.

Theatrical productions tax relief

The qualifying conditions are extended to include the fact that each performance is intended to be given to an audience of at least five individuals.

A 'dramatic production' is currently worded as a play, opera, musical or 'other dramatic piece'. This phrase is replaced by the term 'relevant dramatic piece' as is now defined as a 'dramatic piece (other than a play, opera or musical) that tells a story or number of related or unrelated stories'.

Under Clause 18, a production that is produced for training purposes is not now considered to be a theatrical production so cannot qualify for tax relief.

Commercial purposes condition

The 'commercial purposes' condition in s1217GA CTA 2009 is extended by inserting three new paragraphs after Para 2.

New Para 2A requires that the performance be separately ticketed and that a significant proportion (which is not defined) of earnings from the performance should be obtained from this ticketing.

New Para 2B allows the ticket to cover incidental items as well (such as programmes and food consumed during the performance) if the ticket price can be reasonably apportioned.

New Para 2C defines what is meant by a performance being provided 'for educational purposes' (s1217GA(1)(b)) – that is where it is provided mainly for the purpose of educating the audience.

Core expenditure

New s1217GC(3) CTA 2009 clarifies that where the production phase begins on or after 1 April 2022, expenditure by an educational body (defined in s71 CTA 2009) on teaching or training participants in a production is expenditure on a matter not directly involved in producing the production, except to the extent that the teaching or training takes place as part of a rehearsal for the production.

As such, it does not qualify as core expenditure.

Temporary increase in orchestra tax relief

A company can claim Orchestra Tax Relief if it is a qualifying orchestral production company putting on a qualifying orchestral concert.

A qualifying orchestral concert is one which:

1. is performed by an orchestra, ensemble, group or band consisting wholly or mainly of instrumentalists who are the primary focus of the concert;
2. consists of a minimum of 12 instrumentalists;
3. all or the majority of the instruments are not electronically amplified;
4. is intended to be performed live for the paying public or for educational purposes;
5. at least 25% of core expenditure is on goods or services provided from within the European Economic Area (EEA).

Core expenditure does not include expenditure on the actual performance.

The company must also be:

- responsible for putting on the concert from start to finish, including employing or engaging the performers;
- actively engaged in planning and decision-making;
- directly negotiate, contract and pay for rights, goods and services.

A qualifying orchestral company can claim an additional deduction of the lower of either:

1. 80% of total core expenditure; or
2. the amount of UK core expenditure.

If the (enhanced) core production costs create or augment a loss, the loss caused by the enhanced core expenditure can be surrendered for a payable tax credit. The rate of tax credit has been 25%.

Clause 19 temporarily increases the rate where the production process began on or after 27 October 2021.

The increased rates are:

Accounting period	Rate
Ending between 27 October 2021 and 31 March 2023	50%
Ending between 1 April 2023 and 31 March 2024	35%

Where the accounting periods straddle these dates the period before and the period after are considered to be two separate accounting periods. Losses must be apportioned on a just and reasonable basis to establish the losses eligible for the increased rates of tax credit.

The rate of tax credit reverts to 25% from 1 April 2024.

Orchestra tax relief (Clause 20)

Under Clause 20, an orchestral concert that is produced for training purposes can no longer qualify for tax relief.

Commercial purposes condition

The 'commercial purposes' condition in s1217RA CTA 2009 is extended by inserting three new paragraphs after Para 2.

New Para 6A requires that the performance be separately ticketed and that a significant proportion (which is not defined) of earnings from the performance should be obtained from this ticketing.

New Para 6B allows the ticket to cover incidental items as well (such as programmes and food consumed during the performance) if the ticket price can be reasonably apportioned.

New Para 6C defines what is meant by a performance being provided 'for educational purposes' (s1217GA(1)(b)) – that is where it is provided entirely or mainly for the purpose of educating the audience.

Core expenditure

New s1217RC(4) CTA 2009 clarifies that where the production phase begins on or after 1 April 2022, expenditure by an educational body (defined in s71 CTA 2009) on teaching or training participants in a production is expenditure on a matter not directly involved in producing the production, except to the extent that the teaching or training takes place as part of a rehearsal for the production.

As such, it does not qualify as core expenditure.

Temporary increase in museums and galleries exhibition tax credit

A charitable company which maintains a museum or gallery or a company wholly owned by a charity or local authority.

To qualify for relief, a primary company must:

1. make an effective creative, technical or artistic contribution;
2. be actively engaged in planning and decision-making;
3. directly negotiate, contract and pay for rights, goods and services;
4. be responsible for producing and running the exhibition at a venue.

If the exhibition is held at more than one venue, the primary company must be responsible for at least the first of those venues. If the exhibition is held at two or more venues, there may be secondary production companies.

A secondary production company must be responsible for producing and running the exhibition at a venue and be actively engaged in decision-making in relation to that venue. It is possible to have more than one secondary production company in relation to an exhibition.

A qualifying exhibition is a curated public display of an organised collection of objects or works considered to be of scientific, historic, artistic or cultural interest. This can be of a single object, but the exhibition must have at least 25% of core expenditure spent on goods or services that are provided from within the European Economic Area (EEA).

Core expenditure is spent on producing the exhibition and uninstalling and closing the exhibition if it only open for up to one year.

An additional deduction is available, which is the smaller of:

1. 80% of total core expenditure ;
2. the amount of core expenditure on goods or services that are provided from the EEA.

Losses caused by core expenditure can be surrendered for a payable tax credit which has been 20%, or 25% for touring exhibitions.

A touring exhibition is one where:

1. the exhibition is held at more than one venue;
2. at least 25% of the objects or works displayed at the first venue are displayed at every subsequent venue;
3. there is no more than 6 months between uninstalling at a venue and installation at the next;
4. there is a primary production company for the exhibition, which is within the charge to Corporation Tax;
5. the primary production company intended that the exhibition would be touring from the planning stage;

Clause 17 temporarily increases these rates where the production stage begins on or after 27 October 2021.

The increased rates are:

Accounting period	Touring exhibitions	Non-touring exhibitions
Ending between 27 October 2021 and 31 March 2023	50%	45%
Ending between 1 April 2023 and 31 March 2024	35%	30%

For accounting periods beginning 1 April 2024, the rates revert to 20% (non-touring) and 25% (touring).

Where the accounting periods straddle these dates the period before and the period after are considered to be two separate accounting periods. Losses must be apportioned on a just and reasonable basis to establish the losses eligible for the increased rates of tax credit.

Museums and galleries exhibition tax relief (Clause 22)

Clause 22 inserts Para 3A in s1218ZAA CTA 2009 to clarify that a display of an object or work is not an exhibition to the extent that the public display of the object or work is subordinate to the use of the object or work (or of anything of which it forms part) for another purpose.

For touring exhibitions, the primary company now needs only to be responsible for the exhibition at one or more locations (instead of being responsible for the first exhibition).

Para 6A is inserted in s1218ZCA to clarify that company that is responsible for an exhibition does not, of itself, mean that the company has to maintain a museum or gallery.

These changes apply where the production stage begins on or after 1 April 2022.

This relief was due to expire on 1 April 2022 but it is now extended by two years and will expire on 1 April 2024.