MOORE Kingston Smith

CREATIVE SECTOR TAX RELIEFS
FILM TAX RELIEF

Background

Special tax rules apply to determine how the taxable profits of film production companies are to be calculated and how any losses may be applied.

Some films are eligible for Film Tax Relief (FTR). This relief can increase the amount of expenditure that is allowable as a deduction for tax purposes or, if the company makes a loss, can be surrendered for a payable tax credit. This can provide a 25% subsidy towards the cost of making a film.

Main features

- The relief applies to British films that are intended to be shown commercially in cinemas.
- For films where production starts on or after 1 April 2022, or ongoing productions where principal photography has not completed by 1 April 2022, film tax relief is also available for productions which meet the criteria for High-end television tax relief. The aim of this change to the legislation is to enable film production companies to claim relief where the production was originally intended to be released as a film, but during production the intention changes to an intention to broadcast the production on television.;
- To be eligible, at least 10% of the total production costs of the film must relate to activities in the UK;
- FTR only applies to a UK company or an overseas company with a UK branch or tax presence. Partnerships or individuals cannot claim the relief.

Film production companies

A film production company (FPC) is the company responsible for the pre and post production and for the delivery of the completed film.

It must have an active involvement in the decision making process during these stages of production.

The FPC will negotiate and pay for goods and services in relation to the film. The FPC can commission a third party to undertake some of these activities on its behalf. However, it cannot entirely relinquish its involvement in any of these activities.

There can be only one FPC in relation to a film.

Criteria for a film to qualify

Theatrical release or High-end television programme

For a film to qualify for FTR for a particular accounting period, it must be intended that the film will be used for theatrical release or, for films where production starts on or after 1 April 2022, or ongoing productions where principal photography has not completed by 1 April 2022, be a qualifying High-end television programme at the end of that period.

Theatrical release means exhibition to the paying public at a commercial cinema. A film does not actually need to be given a theatrical release to access the relief.

In order to determine whether a film is intended for theatrical release, HMRC have provided the following factors to consider:

- The film is a full-length or short feature film of a type commonly shown at cinemas;
- The film is made in a format suitable for theatrical showing at a commercial cinema;
- It can be demonstrated, at the end of the relevant accounting period, that there was an intention to seek a contract to present the film in a cinema.

Where the production is commissioned by a television company, this condition may not be met even if the film is shown at the cinema. For example, where episodes of a TV production are screened at a cinema prior to their transmission on television, the condition would still not be met. To qualify as a High-end television programme, a production must meet the following criteria:

- It is a drama, a documentary, an animation or a children's programme;
- It is not excluded as being within any of the following categories:
- Advertisement or promotional programmes;
- News, current affairs or discussion programmes;
- Quiz, game, chat or similar programmes;
- Programmes including a competition or contest;
- A broadcast of a live event or performance given otherwise than for the purpose of being filmed; and
- Programmes produced for training purposes.

A children's programme is not an excluded programme if it is a quiz or game show, or includes a competition or contest, and the total price does not exceed £1,000.

- The period of time that the programme is commissioned to fill is over 30 minutes.
- The average core expenditure (see below) per hour of slot length in relation to the programmes is at least £1m.

Culturally British test

The film must be formally certified as British to qualify for FTR. A film is British if it meets a "cultural test" or if it qualifies by virtue of an internationally agreed co-production treaty. The British Film Institute (BFI) administers the qualification process.

A film production company can only claim FTR if it submits a certificate from the BFI, confirming that the film is British, with its Corporation Tax return to HMRC.

A film will pass the cultural test if it is awarded 18 out of a possible 35 points. There are four categories of points:

- Cultural content (up to 18 points): this measures the British subject matter of the film;
- Cultural contribution (up to 4 points): this measures the contribution of the film to British cultural diversity, heritage and creativity;
- Cultural hubs (up to 5 points): this measures the use of the UK's filmmaking facilities;
- Cultural practitioners (up to 8 points): this measures the use of personnel with creative input.

Minimum UK expenditure requirement

To be eligible for FTR, not less than 10% of the core expenditure on the film must be UK expenditure.

Types of qualifying expenditure

Core expenditure

A FPC can claim FTR on the lower of either:

- 80% of total core expenditure; or
- The actual UK core expenditure incurred.

Core expenditure is expenditure on activities involved in pre and post production of a film, but excludes expenditure on development and distribution, and also the costs of raising and servicing finance.

HMRC have provided guidance on how to distinguish between development and pre-production expenditure. Development expenditure is speculative and undertaken with the aim of determining whether a film is commercially feasible.

Pre-production expenditure is incurred on activities undertaken in the knowledge that a decision has been taken for the film to go ahead.

When carrying out the calculations, costs qualify as core expenditure if they are paid by the FPC within four months of the end of the period of account for which the tax relief is claimed.

UK expenditure

UK expenditure means expenditure on services or goods "used or consumed" in the UK. The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies as UK expenditure. The "used or consumed" test does not focus on the supplier of goods and services but instead concentrates on the recipient or customer as the means of determining UK expenditure.

In order to determine whether an item of expenditure incurred in relation to a film should be treated as UK expenditure, it is necessary to establish:

- The nature of the specific goods or services in question; and
- The place where the recipient uses or consumes those goods and services.

How is relief given?

The costs of production of the film incurred by the FPC will be deductible from the total estimated income from the film under the normal rules for calculating the profits and losses of a FPC.

Enhanced tax deduction

The total losses can be used in one of two ways:

- The entire amount of the total losses can be set against the income of the FPC;
- A proportion of the total losses up to a maximum amount, equal to the qualifying expenditure can be surrendered to HMRC for a payable tax credit (the "surrenderable loss").

The amount of the "surrenderable loss" for any accounting period is the lesser of:

- The amount of the trading loss in the period (taking account of the additional deduction); and
- The enhanceable expenditure for that period (i.e. the lesser of core UK expenditure or 80% of total core expenditure) less any amount surrendered in previous periods.

The tax credit payable is 25% of the surrenderable loss.

Claiming tax relief during production

If it is desired, a FPC can claim the tax relief in instalments at the end of each of its accounting periods during the production of a film, rather than only on completion. This is useful for films that have long production schedules, and it may also be beneficial for cash-flow purposes.

Example - film tax relief for a FPC

To the right is an example to illustrate how a tax credit could be calculated for a film production company.

A FPC makes a film with total core expenditure of £60m, £50m of which is UK expenditure. The film was commissioned by a distributor, which pays £80m for it.

The surrenderable loss is the lesser of:

- The post-tax relief trading loss of £28m; and
- The enhanceable expenditure of £48m.

This FPC can surrender any amount up to £28m of losses. The amount of credit due based on a payable credit rate of 25% multiplied by the loss surrendered (assuming the maximum of £28m is surrendered) is 25% x £28m = £7m.

Total income	£80m	
Total expenditure	£60m	
Pre-film tax relief profit/loss		£20m
Enhanceable expenditure (total expenditure of £60m x 80%)	£48m	
Additional deduction on enhanceable expenditure (rate of enhancement applied to enhanceable expenditure = 100%)		£48m
Post-tax relief profit/tax		£28m

How can Moore Kingston Smith assist?

This document provides only a brief summary of the issues surrounding creative sector tax reliefs. If you would like to discuss your particular circumstances, contact us on 020 7566 4000 or pd@mks.co.uk.