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CREATIVE SECTOR TAX RELIEFS FILM TAX RELIEF

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

A film production company (FPC) may also be eligible for Film Tax Relief (FTR). This relief can increase the amount of expenditure that is allowable as a deduction for tax purposes and, if the company makes a loss, allow some or all of that loss to be surrendered for a payable tax credit.

The government announced in the Spring Budget 2023 that the current FTR – along with various other creative sector tax reliefs - will be replaced with a single audio-visual expenditure credit. This new scheme will operate in a similar way to the research and development expenditure credit, providing a taxable credit which is calculated with reference to qualifying expenditure. This new scheme is due to be available for accounting periods ending on or after 1 January 2024. The current FTR will remain open to new productions until 31 March 2025, with productions starting before 1 April 2025 able to continue using the current regime until 31 March 2027.

Film production companies

An FPC is a company responsible for the pre-production, principal photography, post-production and delivery of a film. There can, importantly, only be one FPC in relation to a particular film.

An FPC must have an active involvement in the decision making process during the various stages listed above, and it must negotiate and pay for rights, goods and services in relation to the film. It can engage third parties to undertake some of these activities on its behalf but it cannot entirely relinquish its involvement in any of these.

Qualifying production

In order for a film to qualify for FTR it must meet the following conditions:

- It must be intended for “theatrical release”;
- It must be certified as British; and
- It must have a certain amount of UK expenditure.

Theatrical release

Theatrical release means exhibition to the paying public at a commercial cinema.

A film is not regarded as intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained from cinema exhibition. HMRC accepts that 5% should be taken as significant for these purposes.

Where there is doubt as to the intention, HMRC suggest that the following factors might indicate that a film is intended for theatrical release:

- There is a financial plan written on the basis that the film will be released theatrically;
- The film is a full-length or short feature film of a type commonly shown at cinemas; and
- The film is made in a format suitable for theatrical showing at a commercial cinema.

Certified as British

The film must be formally certified as “British” by the Secretary of State for Digital, Culture, Media and Sport, on the advice of the British Film Institute (BFI) Certification Unit.

UK expenditure

To be eligible for FTR, not less than 10% of the “core expenditure” on the film must be “UK expenditure”. Core expenditure is expenditure on the pre-production, principal photography, and post-production of a film. It does not include expenditure on development, distribution, or non-production activities. Core expenditure is UK expenditure if it is incurred on goods or services “used or consumed” in the UK.

CREATIVE SECTOR TAX RELIEFS - FILM TAX RELIEF

How is tax relief given?

An FPC's activities in relation to a particular film will be treated as a separate trade for tax purposes, meaning that the costs of production of the film will be deductible from the total income from the film.

FTR then provides two elements in respect of qualifying films:

- An additional allowable deduction in calculating trading profits; and
- A payable tax credit.

Additional tax deduction

The FPC is eligible for an additional deduction in calculating taxable profits of the film trade equal to the lower of:

- 80% of the total core expenditure; and
- 100% of the core expenditure that is UK expenditure.

Where production of a film spans a number of years, FTR operates on a cumulative basis, meaning the level of the additional deduction is calculated by reference to the total expenditure incurred to date, less additional deductions given in earlier years.

Payable tax credit

After calculating the additional deduction, the FPC can ascertain whether a loss arises which can in turn be surrendered for a payable tax credit.

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

- The trading loss for the period (taking account of the additional deduction); and
- The additional deduction for that period.

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

Example

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

Total income	£80m	
Total expenditure	£(60m)	
Pre-film tax relief profit		£20m
80% of core expenditure	£48m	
UK expenditure	£50m	
Additional deduction (lower of 80% of total core expenditure and UK expenditure)		£(48m)
Post-tax relief loss		£(28m)

This FPC can surrender any amount up to £28m of losses, being the lower of the trading loss of £28m and the additional deduction of £48m. This loss can be surrendered for a payable tax credit at a rate of 25%, thereby creating a payable credit of £7m.

How can Moore Kingston Smith assist?

This document provides only a brief summary of the issues surrounding film tax relief. If you would like to discuss your particular circumstances or the relief in more detail, please do not hesitate to contact us.

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