Creative reliefs
Clauses 16-22

Executive Summary

Clauses 16 to 22 deal with reliefs for the 'creative sector', including temporarily increasing the rate of three tax credits. These have been welcomed by the sector but advisers working with them have brought a number of concerns relating to the timing and scope of the changes to our attention:

1) **That for productions straddling the commencement date of the higher rates there is a harsh cut off where even if 99% of the production takes place after the increase takes effect it does not benefit from it (while when rates go down there is a time apportionment). This is perceived as arbitrary and unfair by those affected.**

2) **Orchestras that made a series election before the Budget (eg one made a series election in September for their whole annual season) appear to lose out on the higher rate of relief for their entire season, which again is perceived to be unfair. We would also welcome clarity as to whether this is the government's intention.**

3) **While the rate of Museum and Gallery Exhibition Tax Relief is being raised the government are not proposing to raise the cap for the relief from the current £80,000-100,000 per exhibition. As a consequence larger exhibitions will not gain any benefit from the rate increase.**

1.	**Overview**
1.1.	Clauses 16 to 22 deal with reliefs for the 'creative sector'. They temporarily increase the rate of three tax credits, clarify 'legislative ambiguities', extend eligibility for film tax relief and extend the life of museums and galleries exhibition relief.
1.2.	A summary of what each clause does follows.
1.3.	**Clause 16 - Film tax relief: films produced to be television programmes** Allows films to remain eligible for film tax relief even if they are no longer intended for theatrical release, providing they are intended for broadcast and meet the four conditions required for high-end television tax relief.

1.4.	**Clause 17 - Temporary increase in theatre tax credit** Temporarily increases the rate of theatre tax relief for theatrical productions. From 27/10/21 to 31/3/23, companies will benefit from relief at a rate of 50 or 45% (touring/non-touring productions). From 1/4/23 to 31/3/24 relief will be 35/30%. From 1/4/24, rates will return to 25/20%. Clauses 19 and 21 introduce similar temporary rate rises for orchestra tax relief and museums and galleries tax relief to support the industries as they try to recover from the pandemic.
1.5.	**Clause 18 - Theatrical productions tax relief** Clarifies several areas of legislative ambiguity within theatre tax relief, including that the intended audience must be at least five people, and that productions produced for training purposes do not qualify for the relief. Presumably this is a response to abuse of this relief or at least to recognition of the potential for abuse.
1.6.	**Clause 19 - Temporary increase in orchestra tax credit** Temporarily increases the rate of orchestra tax relief for concerts or concert series. From 27/10/21 to 31/3/23, companies will benefit from relief at a rate of 50%. From 1/4/23 to 31/3/24, the rate of relief will be 35%. From 1/4/24, the rate of relief will return to 25%.
1.7.	**Clause 20 - Orchestra tax relief** Clarifies several areas of legislative ambiguity within orchestra tax relief, including that concerts that are produced for training purposes do not qualify for relief. Again, this is presumably to deal with abuse or potential abuse of the relief.
1.8.	**Clause 21 - Temporary increase in museums and galleries exhibition tax credit** Temporarily increases the rate of museums and galleries exhibition tax relief. From 27/10/21 to 31/3/23, companies will benefit from relief at a rate of 50 or 45% (touring/non-touring productions). From 1/4/23 to 31/3/24 relief will be 35/30%. From 1/4/24, rates will return to 25/20%.
1.9.	**Clause 22 - Museums and galleries exhibition tax relief** This relief was introduced with a sunset clause and was originally due to expire on 1/4/22. This clause extends it by two years to 1/4/24. It also clarifies several areas of legislative ambiguity within the relief (including that a public display of an object is not an exhibition if it is subordinate to the use of that object for another purpose) and amends the criteria for a primary production company.
1.10.	According to the Autumn Budget Red Book Policy Decisions table these changes are expected to amount to an injection of an extra £265 million into the creative sector between 2021-22 and 2025-26. £245 million of this comes from the temporary rate increases with the remainder coming from extending the life of the Museums and galleries exhibition relief.
2.	**CIOT comments**
2.1.	The increases in the rates of these tax reliefs have understandably been welcomed by those working in the affected sectors, and by those who advise them. These sectors have been hit

	hard by coronavirus. However advisers working in this sector have brought a number of concerns relating to the timing and scope of the changes to our attention and we think the committee should be aware of these.
2.2.	**Productions straddling the commencement date**
2.3.	For each relief the increased rate applies only to productions where the production stage[1] for the exhibition began on or after 27 October 2021 (Budget day – when the change was announced). So a production 'green-lit' on 26 October (or earlier) would not gain the benefit of the increased rate however long it ran for after the commencement date for the increased rate.
2.4.	However, when the rates reduce on 1 April 2023 and again on 1 April 2024 the rules of 'just and reasonable apportionment' apply. That is, theatres and other companies must treat a straddling accounting period as two separate periods, and apportion their income/expenditure between the two periods on a just and reasonable basis.
2.5.	Advisers note that it is asymmetrical that when the rates are going up there is a cut off where even if 99% of the production takes place after the increase it does not benefit from it, while when rates go down there is a time apportionment (The legislation requires a "just and reasonable" apportionment, which we expect in practice is likely to be done on some sort of time basis). They point out that giving relief in this way is highly arbitrary between different productions and different organisations and produces outcomes which feel unfair. For example, two theatres might each have a production which is planned to open in September 2022. One production is "green-lit" on 26th October 2021, one on 27th October 2021. The second production will benefit from the higher rates, the first one will not. A just and reasonable apportionment basis would allow both to claim on most if not all of their eligible expenditure. Arts organisations would like to know why the government have not applied time-apportionment at the start of the increased rates as well as at the end, which would seem fairer?
2.6.	We suspect the answer is that the Treasury consider that any projects that got the go-ahead before 27 October, having been deemed viable under the lower rates of relief, do not require the additional support of the higher rate of relief, even if they are mostly running during the period when the higher rate applies, so the Treasury can save money by not making them eligible for it. In effect, that given a trade off between fairness and cost-efficiency they have chosen the latter.
2.7.	It would be helpful if the government could set out the intention of the increased rates. The Tax Information and Impact Note for this measure indicates it is intended to have 'beneficial outcomes' for the sector. Yet there is no definition of 'beneficial outcomes'. If the intention is specifically to help stimulate new events and productions, then it is understandable that there should be a sharp cut off with productions beginning before 27 October not eligible, however harsh this might feel to some of those narrowly on the wrong side of that line.

[1] The production phase begins once the project has been developed and 'green lit' and continues until the start of the first paid public performance. It is when sets are designed and built and actors rehearse. (Source: https://www.gov.uk/hmrc-internal-manuals/theatre-tax-relief/ttr10130)

	However if the intention is to provide extra support generally to theatres, orchestras, museums and galleries in respect of their work during the period for which the higher rate applies, then this would be more effectively (and fairly) achieved by enabling productions straddling the commencement date to claim the higher rate on a time apportioned basis.
2.8.	**Orchestral tax relief – series elections**
2.9.	The second concern raised by advisers again relates to the sharp cut off of 27 October 2021, but this time in relation to series elections[2] specifically for orchestral tax relief. It is best explained through a real-life example.
2.10.	One of our members advises an orchestra who have a year end of 31 August. Their new season starts in September every year, and they make a series election for the whole of the following year. They have made a series election for the year to 31 August 2022, which is irrevocable. The legislation provides that if a series starts before 27 October 2021 the lower rate applies to that series. This means that the orchestra will not be able to claim the higher rate until the year starting 1 September 2022, and this will only apply until 31 March 2023, with the rules of apportionment then applying. Thus they will only have seven months of benefit from a higher rate intended to apply for more than 17 months.
2.11.	As our member notes, this seems inequitable, and it seems unlikely that it will apply only to one orchestra. It would appear to put orchestras that plan ahead, and take advantage of an administrative efficiency (presumably assisting HMRC as well as themselves administratively) at a disadvantage as compared to other orchestras that are either less diligent in their planning or less administratively efficient. Presumably the motivation is – once again – cost saving on the basis that the orchestra has already set out its plans for the year ahead so the government does not need to incentivise it further – understandable but again this would be at the expense of an outcome that looks arbitrary and unfair to those affected and their advisers.
2.12.	Our member has suggested that consideration could be given to allowing a series to be apportioned on a just and reasonable basis across the start date for the new rate as well as the dates when the rates are changing downwards. The series could be treated as two series, one for concert performances before 27 October and one for concert performances after that date. Alternatively the government could allow a series election to be revoked in this particular instance (though we recognise that allowing an ‘irrevocable’ election to be revoked, even in these very specific circumstances, may be regarded by some as setting a dangerous precedent, as well as creating substantial administrative difficulties[3]).
2.13.	Our member has put these points to HMRC, who have replied that they plan on producing further guidance, and have stated that “no one should be disadvantaged by making an election for any concerts which have not yet commenced the production phase.” This

[2] An Orchestra Production company can elect to have a series of concerts treated as a single orchestral concert which is then treated as a separate trade for the relief. The election must be made in writing to HMRC and must be made before the first concert in the series takes place. It is irrevocable once made. (Source: https://www.gov.uk/hmrc-internal-manuals/orchestra-tax-relief/otr30020)
[3] We understand that a major orchestra can put on upwards of 70 concerts in a year. Without a series election each of those would need a separate claim.

	appears to offer a glimmer of hope for the affected orchestra and others similarly affected as it suggests that concerts within a series election, where the series has commenced production but the particular concert has not, could be intended to gain the benefit of the higher rate. However this is not, by our reading, what the legislation says and we would not advocate having guidance that contradicts the legislation. We would welcome clarification of the intention of the legislation in this regard.
2.14.	Specifically, it would be helpful if the minister could set out whether it is the government's intention that concerts which had *not* commenced the production stage before 27 October but which are within a series election which *had* commenced the production stage before 27 October should gain the benefit of the higher rate of relief. If so is it the government's belief that the current legislation enables this, or do they plan to bring forward amendments at report stage to achieve this?
2.15.	**Museums and Galleries Exhibition Tax relief (MGETR) cap**
2.16.	While the rate of MGETR is being temporarily increased the government are not proposing to raise the cap for the relief. As a consequence larger exhibitions will not gain any benefit from the rate increase.
2.17.	This is because the MGETR cap prevents claims for amounts over £80,000 for non-touring exhibitions and £100,000 for touring exhibitions. The effect of the cap can be significant given that large exhibitions can cost millions of pounds to deliver. No similar cap exists for the theatre or orchestra tax reliefs.
2.18.	This appears to be a deliberate policy decision by the government, to restrict the benefit of the increase to those museums and galleries holding smaller exhibitions. This is, of course, a reasonable position for them to take, to limit the cost of the rate increase by targeting it at smaller exhibitions, however this was not stated in the Chancellor's speech, in the Autumn Budget red book or in the Tax Information and Impact Note for the measure.
2.19.	Advisers who have contacted us feel that if the government's intention is, as the Chancellor stated in his Budget speech, that "the tax reliefs for all those sectors – from today until April 2023 – will be doubled" that this should mean the doubling of the cap as well as the rate.
2.20.	The CIOT does not take a view on whether the government are right to be limiting the extent of the MGETR rate increase by maintaining the cap at its existing levels, but we do think the committee should be aware that this is what is being done, and the minister should be asked to acknowledge that this is the government's intention.
2.21.	Additionally we note that, notwithstanding its renewal, MGETR remains a temporary relief, due to expire at the end of March 2024. However the government have stated that: "During this period, the relief will continue to be monitored, with a view to making a long-term decision regarding its future." It would be helpful to know by what criteria the relief will be judged, and whether the government plan to assess other (theoretically permanent but of course open to review and revocation as appropriate) tax reliefs by the same criteria to judge their value and, if so, whether they will publish their assessments.

3.	**The Chartered Institute of Taxation**
3.1.	The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
3.2.	The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
3.3.	The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

For further information, please contact:
George Crozier, CIOT Head of External Relations
gcrozier@tax.org.uk 020 7340 0569

The Chartered Institute of Taxation
8 December 2021