



Creative Reliefs (Films, television programmes, video games etc)

Clauses 3-7 & Schedules 2-6

Executive Summary

This legislation usefully consolidates tax reliefs for films, television programmes and video games.

Changes to Theatre Tax Relief include further restrictions on what type of production will qualify for the relief. We are concerned that HMRC is narrowing the definition down to only those productions which tell a story or stories, which could remove eligibility for the relief from, in particular, more experimental forms of drama and dance, as well as presenting tax tribunals with some tricky judgments.

We also identify two areas where it would be helpful if the minister could provide clarification during the debate on these clauses and schedules.

1. General points

- 1.1. Generally the charitable organisations that claim reliefs such as Theatre Tax Relief and Museums and Galleries Exhibition Tax Relief do not have huge amounts of resources. The reliefs and their boundaries need to be made clearer to make such organisations less reliant on professional advisers to claim the relief and to help them understand how much relief will be available when they are budgeting.
- 1.2. All changes create a lack of certainty. Once these changes have been made it is important that they are committed to for a substantial period of time to allow businesses and charities to plan effectively. Projects like animation and films have long lead times and chopping and changing tax reliefs will lessen their effectiveness at encouraging and supporting investment.

2. Clause 3 and schedule 2: Films, television programmes and video games produced by companies

- 2.1. Clause 3 and schedule 2 introduce a new tax relief regime for films, television programmes and video games. The Audio-Visual Expenditure Credit will replace the Film Tax Relief, High-End TV Tax Relief, Animation Tax Relief and Children's TV Tax Relief. A Video Games Expenditure Credit will replace the existing Video Games Tax Relief. The new credits will be above-the-line expenditure credits, similar to the research and development expenditure credit (RDEC).

- 2.2. The new expenditure credits will be available to claim from 1 January 2024. There will be a transition period under which existing reliefs may still be claimed in some circumstances, ending 1 April 2027.
- 2.3. Consolidating the different TV and film reliefs in this way is sensible.
- 2.4. The OBR's estimate is that this reform overall will carry a net cost of £40-50 million per year for the Exchequer. However, we will not know whether it is beneficial or otherwise to recipients overall until the rates of credit are announced.
- 2.5. Businesses will need to understand when the relief changes and close attention will need to be paid to cut off issues – especially where businesses have already budgeted for the relief as it currently stands in their business plans.

3. Clause 4 and schedule 3: Theatrical productions made by companies

3.1. Clause 4 and schedule 3 make changes to Theatre Tax Relief including:

- Clarifying the exclusion of capital expenditure
- Clarifying the exclusion of costs incidental to production
- Altering the definition of a qualifying theatrical production so that the primary focus of the play, opera, musical or dramatic piece must be the depiction of a story or stories, depicted through performers playing roles
- Excluding productions from the relief where the main purpose of audience members is not observing the performance

Qualifying productions

- 3.2. The main concern raised with us by tax advisers practising in this area is the restriction on what type of production will qualify for Theatre Tax Relief.
- 3.3. Paragraph 2 (2) (b) of Schedule 3 replaces *“the actors, singers, dancers or other performers are to give their performances wholly or mainly through the playing of roles”* in Section 1217FA of Part 15C of Corporation Tax Act 2009 with *“the primary focus of the play, opera, musical or dramatic piece is the depiction of a story, or a number of related or unrelated stories, through the playing of roles by performers (whether actors, singers, dancers or others)”*.
- 3.4. The concern is that HMRC has narrowed the definition down to only those productions which tell a story or stories.
- 3.5. The existing legislation is more inclusive, as it does not restrict plays, operas and musicals to telling a story, but only other dramatic pieces that might not qualify as one of the above.
- 3.6. The more restrictive definition included in the Finance Bill is thought to be a response to the decision in *Thursford Enterprises Limited v HMRC [2022]* where it was held that participants in a Christmas Spectacular were mainly playing roles (such as Dickensian

carollers, 1950s show members and toy soldiers) and therefore the production qualified for relief.¹

- 3.7. Apart from the scope for clogging up the tax tribunal with arguments about what constitutes a story, the proposed new definition could take eligibility for the relief away from, in particular, more experimental forms of drama and dance, which are usually smaller scale productions and often loss-making.
- 3.8. As one adviser put it to us: “Does the government really want HMRC to spend time arguing over whether *Waiting for Godot* (for example) is telling a story?”

Connected parties

- 3.9. It has been brought to our attention that while Autumn Statement documents stated that the new legislation will require connected party transactions to use an arm’s length price, the legislation itself appears to apply only a cap on qualifying expenditure if the cost exceeds an arm’s length price (i.e. there is not a requirement to charge an arm’s length price). Our understanding is that the wording in the legislation is helpful for charities who use subsidiaries as a vehicle for relief claims as requiring an arm’s length price to be set would mean the charities having to apply a cost-plus mark-up for shared use of staff and overheads which could potentially bring those recharges within the scope of being taxable trading income for the charity.
- 3.10. It would be helpful if the minister could clarify and confirm that it is the intention of the government that a cap is only applied if the cost exceeds an arm’s length price.

Core expenditure

- 3.11. Paragraph 3 of schedule 3 amends the definition of core expenditure (ie expenditure that qualifies for the Theatre Tax Credit) to clarify that “the provision of incidental goods or services to members of the audience” should not be included in core expenditure. Presumably this includes sales of programmes and interval refreshments. This seems unobjectionable, as it relates to items sold during the running phase of a production; tax advisers have not generally considered these costs could be included in core expenditure.

UK expenditure threshold

- 3.12. Paragraphs 5-6 amend the European expenditure condition. Previously a theatrical production only qualified for relief if at least 25% of its core expenditure was provided from within the UK and/or EU. The new wording states that at least 10% of core expenditure must be expenditure on goods that are used or consumed in the UK. The change in definition appears to be more generous than the original relief for productions with UK expenditure as the percentage restriction has gone down from 25% to 10%. However, it is

¹ For a report on this tribunal decision containing additional detail see ‘Oh yes it is! Christmas Spectacular qualifies as dramatic production’, www.rossmartin.co.uk, <https://www.rossmartin.co.uk/sme-tax-news/6427-oh-yes-it-is-christmas-spectacular-qualifies-as-dramatic-production>

not clear what effect the change in emphasis from “provided” to “used or consumed” will have.

- 3.13. It would be helpful if the minister could set out what effect the government expects the change in wording from “provided” to “used or consumed” to have.

4. Clause 5 and schedule 4: Orchestral concerts produced by companies

- 4.1. Clause 5 and schedule 4 clarify the exclusion of capital expenditure for Orchestra Tax Relief. They clarify the exclusion of costs incidental to production for Orchestra Tax Relief. They amend the time limit for concert series elections to either the date of the first concert in the series or the date of the Orchestra Tax Relief claim relating to the first concert in the series, whichever is later.
- 4.2. We have no comments on these changes.

5. Clause 6 and schedule 5: Museum and gallery exhibitions produced by companies

- 5.1. Clause 6 and schedule 5 clarify the exclusion of costs incidental to production for Museums and Galleries Exhibition (MGE) Tax Relief. They require physical admission to exhibitions for Museums and Galleries Exhibition Tax Relief to be available.
- 5.2. It does not seem unreasonable to exclude wholly remote exhibitions from the relief. The legislation does not stop exhibitions also being available online so long as there is a venue where people are physically admitted.

6. Clause 7 and schedule 6: Sections 3 to 6: administration of reliefs

- 6.1. Clause 7 and schedule 6 require companies claiming any creative industry relief to submit an online information form. They confirm further changes to correct anomalies and prevent abuse. For Theatre, Orchestra & MGE Tax Reliefs, eligible expenditure will change from European to UK.
- 6.2. We have no comments on these changes.

7. The Chartered Institute of Taxation

- 8.1. The 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.

- 8.2. 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.
- 8.3. 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.

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The Chartered Institute of Taxation

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