HM Treasury

Theatre tax relief:

consultation

March 2014

Theatre Tax Relief: Consultation

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Correction made to page 23, Table A.1 Example treatment for a limited budget film

Change:

A FPC produces a film with total expenditure of £11m, £10m of which is core expenditure and it is all UK expenditure. The film was commissioned by an unrelated distributor, which pays £9m for it.

Total income[1]	£9m
Total expenditure	(£11m)
Pre-FTR profit/ (loss)	(£2m)
Enhanceable expenditure (core expenditure of £10m x 80 per cent)	£8m
Additional deduction (100 per cent rate of enhancement)	(£8m)
Post-FTR profit/ (loss)	(£10m)

The surrenderable loss is the lesser of:

- The post-FTR trading loss of £79m; and
- The enhanceable expenditure of £80m.

The FPC can surrender any amount up to £79m of losses.

The amount of credit due is the payable credit rate for a large budget film of 20 per cent multiplied by the loss surrendered. So assuming the maximum of £79m is surrendered:

20 per cent x £79m = £15.8m

So the FPC can claim a payment of £15.8m from HMRC. This is equal to 15.8 per cent of total core expenditure. This more than covers the £15m gap between the total income and total expenditure. The FPC can use the additional £800,000 for any legal purpose[2]

[1] Income from the film is any receipts by the FPC in connection with making or exploiting the film including: receipts from the sale of the film or rights in it; royalties or other payments for use of the film or characters or music or other aspects of the film; payments for rights to produce games or other merchandise; and receipts by way of a profit share agreement.

Again, instead of the FPC surrendering £79m of losses for a payable tax credit, the FPC can carry forward the loss to offset against profits of the same film trade of a future accounting period. These losses cannot be relieved against profits of a different trade.

To:

A FPC produces a film with total expenditure of £11m, £10m of which is core expenditure and it is all UK expenditure. The film was commissioned by an unrelated distributor, which pays £9m for it.

Total income[3]	£9m
Total expenditure	(£11m)
Pre-FTR profit/ (loss)	(£2m)
Enhanceable expenditure (core expenditure of £10m x 80 per cent)	£8m
Additional deduction (100 per cent rate of enhancement)	(£8m)
Post-FTR profit/ (loss)	(£10m)

The surrenderable loss is the lesser of:

- The post-FTR trading loss of £10m; and
- The enhanceable expenditure of £8m.

The FPC can surrender any amount up to £8m of losses.

The amount of credit due is the payable credit rate for a limited budget film of 25 per cent multiplied by the loss surrendered. So assuming the maximum of £8m is surrendered:

25 per cent x £8m = £2m

So the FPC can claim a payment of £2m from HMRC. This is equal to 20 per cent of total core expenditure.

Again, instead of the FPC surrendering £8m of losses for a payable tax credit, the FPC can carry forward the loss to offset against profits of the same film trade of a future accounting period. These losses cannot be relieved against profits of a different trade.

[2] The commissioning producer may reduce the amount paid to the FPC or if the commissioning producer is the parent company of the FPC, the FPC could pay out a dividend to return the cash.

[3] Income from the film is any receipts by the FPC in connection with making or exploiting the film including: receipts from the sale of the film or rights in it; royalties or other payments for use of the film or characters or music or other aspects of the film; payments for rights to produce games or other merchandise; and receipts by way of a profit share agreement.

HM Treasury

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Foreword

The UK is home to some exciting and innovative theatre companies producing ground breaking new productions. It's crucial that these continue to thrive across the UK.

I want to make sure our theatre producers and performing arts can continue to entertain and capture audience’s imaginations, not just in London’s West-End but in our regional theatres.

Following the Autumn Statement 2013 announcement that the government will introduce a new tax relief for theatre productions we have been working closely with the sector and its supporters to design an effective and well targeted policy.

At Budget 2014 I announced that I am extending the idea behind our successful creative sector reliefs to theatre productions. This relief will encourage theatre production across the whole of the UK, and provide a strong incentive for touring productions.

Theatre tax relief will be available at 25% for qualifying touring productions and 20% for other qualifying productions from September 2014. Relief will be available for a wide range of theatre and performance, supporting plays, musicals, opera, ballet and dance.

Our creative sector reliefs have shown how targeted support can make a real difference not only in terms of promoting economic activity, but also in terms of promoting British culture and the way the UK is viewed internationally. These schemes have been highly successful. Investment in the UK film production sector reached over £1 billion in 2013 and, in the last nine months, over £276 million of investment was made in high-end television and animation programmes.

Like the other creative sector reliefs our aim is to provide a generous support that encourages investment in production in a way that ensures the sustainability of our theatre and live performance in the UK.

George Osborne
Chancellor of the Exchequer

1 Introduction

Background

1.1 The Chancellor announced at Autumn Statement 2013 that the government will introduce a new tax relief for theatre productions. The UK is home to exciting and innovative theatre companies producing ground breaking productions and this new relief will recognise the unique cultural value that the theatre sector brings to the whole of the UK.

1.2 At Budget 2014 the Chancellor set out that this relief will support plays, musicals, opera, ballet and dance and will offer two rates; 25 per cent for touring productions and 20 per cent for other theatre productions. This new relief will be available from September 2014.

Aim of the consultation

1.3 The government is grateful for the significant level of engagement with the sector since the Autumn Statement announcement, which has helped to develop the proposal now being consulted on.

1.4 This formal consultation sets out details of the proposed corporation tax relief for theatre production, and seeks views on the design of the relief. Views are invited from a wide range of respondents including individuals, companies, and representative and professional bodies.

1.5 The government especially invites comments from theatre production companies and those working directly in the performing arts sector. The government will take all responses into account before confirming the final policy design.

Policy aim

1.6 The policy aim of the new relief is to encourage and support UK theatre producers to continue to develop and to specifically incentivise touring productions.

1.7 This new relief recognises the important cultural role that theatre has played in the UK and its continued cultural and economic importance.

Policy context

1.8 The government is committed to supporting the creative industries, which were identified in the *Plan for Growth*[1] as having the potential to drive significant growth in the UK. This includes providing targeted support for the creative industries through specific spending and tax measures.

1.9 In 2011-12 the film tax relief provided more than £200 million of support to around 200 films. Since its introduction in 2007, direct employment within the sector has almost doubled and 1,050 film productions have made 1,900 claims, for a total £1.1bn. With the aim of building on the success of the film tax relief, the Chancellor set out new corporation tax reliefs

[1] *Plan for Growth*, March 2011, HM Treasury and BIS (http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf).

for the animation, high-end television and video games industries at Budget 2012. These creative sector tax reliefs aim to promote the sustainable production of culturally relevant products. This relief develops this model to provide targeted support for theatre production.

Structure of the document

1.10 The remainder of the document is set out as follows:

- Chapter 2 explains the criteria that the government intends to use to evaluate the new proposed relief
- Chapter 3 sets out details of the proposed tax relief
- Chapter 4 includes details on other relevant issues
- Chapter 5 explains the consultation process
- Annex A sets out how the current film tax relief model works, as the new relief will adopt a similar approach. Annex B provides an impact assessment for the relief and a call for further evidence. Annex C summarises the consultation questions posed in this document. Annex D sets out the planned timeline for implementation. Annex E sets out the general code of practice for consultation.

Stage of consultation

1.11 The proposals in this document are at stage 2 (determining the best option and developing a framework for implementation including detailed policy design) of the government's tax consultation framework.

Planned timeframe

1.12 This consultation will run from 27 March to 8 May 2014. At 6 weeks, this is shorter than the standard consultation time to enable legislation in Finance Bill 2014 as a report stage amendment. Further detail is set out in Annex C.

How to respond

1.13 Please send comments by 8 May 2014 to: Theatre Tax Relief Consultation, Enterprise and Property Tax Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. Email: theatretaxrelief@hmtreasury.gsi.gov.uk

2 Principles and criteria for theatre tax relief

2.1 The criteria that the government will use in evaluating the proposal to provide support to theatre are set out below.

2.2 In deciding how best to proceed it will be necessary for the government to consider and balance these, sometimes competing, factors:

Box 2.A: Criteria for theatre tax relief

- Effectiveness. Any proposed policy change must be effective in supporting the theatre sector to deliver cultural and economic benefits to the UK, and encourage the sector to continue to develop, both in the London West End and across the UK and incentivise touring productions (including regional access to theatre).
- Affordability. The proposed relief must be affordable, in line with the government's objective for long term sustainability in the public finances, and represent value for money to the taxpayer.
- Simple and straightforward to administer. The government is committed to simplifying the tax system. Any proposed change should not result in unnecessary administrative burdens for companies, individuals or for the administration of the tax system.
- Sustainable. Any proposed change must, as far as possible, be designed to fit both the current and the future theatre sector.
- Not open to abuse. Tax reliefs should not create substantial additional avoidance opportunities; and
- Compliance with EU law. Any proposed change must be consistent with the principles of the Single Market and will need to be achievable in the context of EU rules on State aid.

Question 1: Do you agree with the proposed criteria for assessing options to provide support to the theatre sector? Please provide any comments as appropriate.

3 Theatre tax relief

What theatre tax relief might look like

3.1 In this consultation the government is proposing a model of tax relief, as set out below. Respondents are encouraged to respond with views on how effective this model would be at meeting the government's objectives in Chapter 2. If respondents believe an alternative model for a theatre tax relief could be more effective, the government welcomes these suggestions.

Model

3.2 The government proposes that the new theatre tax relief adopts a similar model to the current film tax relief (FTR), a model that meets the criteria outlined in Chapter 2. Annex A provides a more detailed explanation of how the current FTR works.

Box 3.A: Key features of theatre tax relief

Theatre tax relief will:

- Provide a per production tax relief giving an additional deduction for corporation tax purposes that can also be surrendered for a payable tax credit.
- Support plays, musicals, dance, ballet and opera but exclude sexual entertainment, and shows with a competition element.
- Offer the payable tax credit at a rate of relief of 25% for qualifying touring productions and 20% for other qualifying theatre productions

3.3 Box 3.A below sets out an illustrative example of how this would work; further examples are provided in Annex A.

Box 3.B: Illustrative example of how the proposed model would apply to theatre

The following is a simple worked example to illustrate how a tax credit could be calculated for a theatre production company.

A company produces a non-touring theatre production. The total expenditure incurred is £4.5m of which £4m is all core expenditure.

Total income	£3.5m	
Total expenditure	(£4.5m)	
Pre-tax relief profit/ (loss)		**(£1m)**
Enhanceable expenditure (qualifying expenditure of £4m x 80 per cent)	£3.2m	
Additional deduction on enhanceable expenditure (100 per cent rate of enhancement x £3.2m)		(£3.2m)
Post-tax relief profit/ (loss)		**(£4.2m)**

The surrenderable loss is the lesser of:

- The post-tax relief trading loss of £4.2m; and
- The enhanceable expenditure of £3.2m.

The theatre production company can surrender any amount up to £3.2m of losses. The amount of credit due based on a payable credit rate of 20 per cent[1] multiplied by the loss surrendered (assuming the maximum of £3.2m is surrendered) is: 20 per cent x £3.2m = £0.64m

Qualifying conditions

3.4 To qualify for the relief the business must be incorporated and engaged in the production of theatre (as defined in box 3.B below). In addition, at least 25 per cent of the core expenditure incurred must relate to expenditure in the EEA.

3.5 To help design a suitable and workable scheme for theatre tax relief, the specific qualifying conditions that the government is consulting on are: definitions of theatre, theatre production, touring and qualifying expenditure. These are discussed in the remainder of this chapter.

Definition of theatre

3.6 Relief under the new theatre tax relief will be available for the costs of producing theatre. To create an effective scheme, the government will need a definition that is workable in legislation and is recognised in the theatre industry. The government is therefore seeking views on the proposed definition of theatre.

3.7 The government wants to provide a broad definition that will capture the range and diversity of theatre productions but is not subject to abuse and does not adversely impact on other creative sector reliefs.

3.8 Theatre for these purposes should include: plays, musicals, dance, ballet and opera but not include sexual entertainment, competitions or productions whose sole purpose is for advertising or productions intended solely for broadcast.

Box 3.C: Proposed definition of theatre for the purposes of theatre tax relief

Performance of a play or a performance of dance in a licensed premises.

"Performance of a play or a performance of dance" is based on the definition in the Licensing Act 2003:

a "performance of a play" means a performance of any dramatic piece, whether involving improvisation or not:

(a) which is given wholly or mainly by one or more persons actually present and performing, and

(b) in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role

In addition to the above, the premises must hold a valid Premises Licence for Regulated Entertainment consisting of a performance of a play or a performance of dance, as such terms are defined in the Licensing Act 2003, or the equivalent legislation for other devolved territories or countries.

Exclusions

- Sexual entertainment; relevant entertainment in venues that are regulated under paragraph 2A, Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, or the equivalent legislation for countries
- Entertainment shows with a competition element.
- Productions whose sole purpose is for advertising
- Productions intended solely for broadcast

Question 2: Would adopting the definition of theatre production as outlined above be an effective way of meeting the government's objectives set out in Chapter 1?

Question 3: Is there an alternative definition of theatre that would more accurately reflect the full range of types of theatre being produced? If so, please provide details

Question 4: Is this the most appropriate way to exclude sexual entertainment? If not, what solutions do you propose to exclude this from the relief?

Definition of touring

3.9 The government proposes to offer a higher rate of relief for production costs related to a touring production. The "intention to tour" will need to be demonstrated by evidence of plans to present at least 14 performances in two or more different licensed premises or performances in at least 12 or more different licensed premises.

Question 5: Is there an alternative definition of 'touring' that would more accurately reflect the nature of these types of productions? If so, please provide suggestions.

Eligible production companies

3.10 Only companies within the charge of UK corporation tax, who are directly involved in theatre productions will be able to qualify for relief. "Directly involved" means the company is responsible for actually producing the content of the production and is actively involved in the decision making process to deliver it.

Question 6: Would the requirement to be incorporated affect current funding or subsidies that are received by some theatre companies? If so, please explain in what way.

Qualifying 'core expenditure'

3.11 In order to qualify, expenditure must be directly incurred in the theatre production and integral to the production process. Qualifying expenditure can be incurred in any country, although, as mentioned above, a qualifying condition for the production is that at least 25 per cent of the core expenditure incurred must relate to expenditure in the EEA.

3.12 Indirect expenditure, such as costs of marketing or financing are not eligible. In addition, qualifying expenditure will change depending on the stage of production, with no qualifying expenditure in the running period. Box 3.D sets out the production periods and provides examples of qualifying expenditure in each stage.

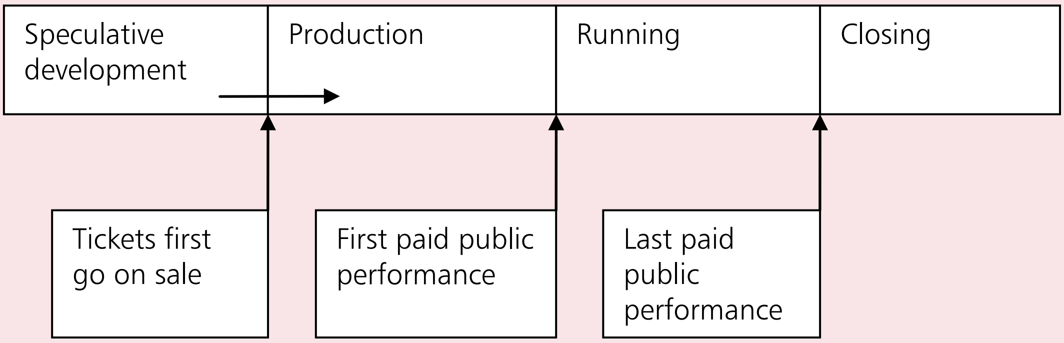
3.13 The first period is defined as **'speculative development'**. There may be some early costs that relate to speculative expenditure that does not result in an end product. Whilst the government does not wish to exclude all early stage costs from the scope of the scheme, it will be necessary to separate speculative expenditure from early stage expenditure on a project with an identifiable end product. Therefore costs in the speculative development stage will only qualify if they are directly related to a production and after tickets have gone on sale.

3.14 The second period, between the tickets going on sale and the first paid public performance, is **'production'.** Exclusions in this period are indirect costs that are excluded throughout such as marketing, advertising and costs of financing.

3.15 The third period, from the first to the last public paid performance is **'running'.** This will include costs relating to substantive recasting or changes to stage sets. During this time, ongoing costs such as the rent, salaries and moving costs will not be included.

3.16 The final production period, from the last public paying performance is **'closing'** and in this stage qualifying expenditure includes the costs of removing the physical production. A company can choose to cease the trade at any stage.

Box 3.D: Production stages and qualifying core expenditure



Production Stage	Costs qualifying for super deduction	Costs not qualifying for super deduction
Speculative development	None	Speculative development costs if the production doesn't enter the next stage
Production	Expenditure directly incurred in theatre production and integral to the production process e.g. Script fees and development Casting Rehearsal costs • Theatre costs / rent • Cast and crew wages • Travel and subsistence • Direction and development Labour and materials • Props • Sets and backdrops • Costumes • Equipment hire Visual and sound effects	Expenditure indirectly incurred in theatre production e.g. Marketing / advertising Costs of financing Fees (Legal, Accounting) Speculative development Entertaining
Running	Further development • Substantive recasting • Substantive changes to stage sets	Marketing / advertising Costs of financing Fees (Legal, Accounting) Speculative development Entertaining Running costs • Cast and crew fees • Direction and production • Theatre costs / rent • Maintenance • Moving costs • Travel and subsistence • Administration
Closing	Closing costs • Striking the set	Administration Costs of financing Fees (Legal, Accounting) Entertaining

Question 7: Which costs are integral to the production process itself and should therefore be eligible for relief? Please explain your choices.

Question 8: Do the production periods accurately reflect theatre production in practice? If not, please explain and provide alternative suggestions.

Question 9: Are there alternative rules that would be simpler or more effective to ensure that speculative expenditure and ongoing running costs do not qualify for relief?

Separate trades

3.17 The government proposes that each production will need to be treated as a separate trade from any other activities of the company, including any activities in relation to any other productions. If a company is making more than one production, each one would need to be considered as a separate trade. The company would need to separately identify the income receivable and expenditure incurred in connection with each production and calculate the profits and losses for each production separately. It is not necessary for businesses to set up subsidiary companies or special purpose vehicles for each of those trades. Businesses are free to organise their own affairs as they prefer to meet commercial needs as long as separate trades are maintained.

3.18 A company can have more than one separate trade, but for any one theatre production there can only be one theatre production company. If there is more than one company satisfying the requirements, the qualifying company is the one more directly engaged in the activities. If there is no company satisfying the requirements in respect of a theatre production, no relief may be claimed.

3.19 The current FTR model uses the concept of a separate trade for each film and more detail of this can be found in Annex A.

3.20 The intention is that only those productions qualifying for the regime will be subject to these rules.

Question 10: Does the requirement to be incorporated and operate separate trades within the company cause significant administrative burdens for theatre producers? Please explain in what way.

Question 11: Are there any other specific design points which need to be addressed?

Other issues

3.21 Chapter 4 provides details of other more technical issues that are relevant for the relief; including proposals on commencement; State aid; how to claim the tax relief; the treatment of expenditure incurred but unpaid; and openness to abuse. It should be read in conjunction with this chapter to complete the proposal that the government is consulting on for the new theatre tax relief.

3.22 Annex B requests supporting evidence from external stakeholders to further inform the government's understanding of potential impacts. The government would appreciate interested parties engaging with this evidence gathering process and providing answers to the proposed questions where possible.

4 Other issues

Commencement

4.1 The new theatre tax relief will have a commencement date of 1 September 2014. Qualifying expenditure forming the basis of any claim is that which is incurred on or after this date. Where an accounting period straddles that date, expenditure arising in that period must be apportioned between the period on or before 31 August 2014 and the period on or after 1 September 2014.

State aid

4.2 This relief is intended to fall under revised General Block Exemption Regulation rules, which will allow for a State aid exemption when aid is for culture and heritage. The current draft is available at
http://ec.europa.eu/competition/consultations/2013_consolidated_gber/index_en.html

4.3 Under these rules, the maximum relief available per company is £50 million, and the maximum aid intensity should not exceed 100% of eligible costs. Aid intensity includes all sources of government funding, including for example grants and lottery funding. Companies in receipt of other funding may need to declare all sources of funding to HMRC and confirm that they do not exceed this limit. A clawback mechanism may be needed to ensure that aid intensity does not exceed 100%.

Question 12: Are there any issues with applying the rules proposed above in order to prevent aid intensity from exceeding 100%? If so, please explain.

Claiming tax relief and HMRC engagement with customers

4.4 Claims for the theatre tax relief will need to be included in a company's corporation tax return for an accounting period.

4.5 The proposed model is generally expected to provide business with enough certainty to be able to self-assess without the need for a formal clearance process.

Question 13: Are there any issues for the theatre industry in applying the same process as FTR to make claims under the new tax relief?

Interaction with other tax reliefs

4.6 Where a company claims theatre tax relief, they will not be able to claim relief under another tax credit such as film tax relief or Research and Development Tax Credit. For example, it is possible that some companies that produce theatre may also be claiming relief for research and development expenditure incurred. Companies will not be able to claim relief twice on the same research and development expenditure. It is a question of fact for the company whether the expenditure relates to theatre tax relief or Research and Development tax credits.

Expenditure incurred but unpaid

4.7 Any amount of costs incurred but unpaid within four months of the end of a period of account will not qualify for the tax relief.

Question 14: Do respondents think that this is an acceptable time scale to exclude unpaid costs?

Openness to abuse

4.8 One of the key criteria for the design of the theatre tax relief is that it should not be open to abuse. An effective strategy to prevent abuse at the outset is a key requirement to maintain the long term sustainability of this relief and to ensure that it remains effective and sufficiently targeted. The government will, in particular, consider whether rules are required to prevent:

- artificially inflated claims for tax credit;
- wrongful disclosure.

4.9 It is important for businesses as well as the government to ensure that the new tax relief does not create substantial new avoidance risks, otherwise this will create uncertainty for business as the regimes may be subject to change. In extreme situations where substantial avoidance risks are created, such as the old film tax scheme, the regime was entirely replaced.

Question 15: Can respondents suggest ways to prevent abuse of the new tax relief to ensure that it remain effective?

Question 16: Are there specific areas in addition to those mentioned above, that create the opportunity for abuse?

5 Consultation process

5.1 The closing date for this consultation is 8 May 2014.

5.2 Responses to the consultation should be sent either by post to:

Theatre Tax Relief Consultation
Enterprise and Property Tax Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Or by email to: theatretaxrelief@hmtreasury.gsi.gov.uk

5.3 This document can be found on the HM Treasury website www.gov.uk/government/consultations/theatre-tax-relief. When responding, please state whether you are responding as an individual or as part of an organisation. If responding on behalf of a representative body please make it clear who the organisation represents and, where applicable, how the members' views were assembled.

Confidentiality and disclosure

5.4 All written responses may be made public on the Treasury's website unless the author specifically requests otherwise in writing.

5.5 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regime. These are primarily the Freedom of Information Act (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004.

5.6 If you would like the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as being confidential. If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

5.7 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

5.8 Subject to the previous two paragraphs, if you wish part (but not all) of your response to remain confidential, please supply two versions one for publication on the website with the confidential information deleted, and another confidential version for use by the Treasury.

5.9 Any FOIA queries should be sent by email to:

Public.enquiries@hmtreasury.gsi.gov.uk

Or by post to:
Correspondence and Enquiry Unit, Freedom of Information Section, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

The government's Code of Practice on consultation

5.10 This consultation is being conducted in accordance with the government's Code of Practice on consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex E.

Next steps

5.11 This consultation will last for a period of 6 weeks, closing on 8 May 2014. After the consultation period has closed, the government will consider the responses to the consultation. In line with the Code of Practice for written consultations the government will publish a summary of responses to the consultation.

5.12 A period of 6 weeks is shorter than the standard consultation time, however it will allow officials to engage with the industry and consider the consultation responses before legislation in Finance Bill 2014 as a report stage amendment.

A Film tax relief model

Introduction

A.1 Film Tax Relief ('FTR') was introduced in Finance Act 2006 to encourage sustainable film production in the UK and to maintain the industry's creative and technical skills. A payable cash rebate of up to 20 per cent of UK qualifying film production expenditure can be claimed for films with core expenditure of more than £20 million. The payable cash rebate is up to 25 per cent for limited-budget films with core expenditure of £20 million or less. 'Core expenditure' means production expenditure on pre-production, principal photography and post-production. There is no cap on the amount which can be claimed, but it is only companies that are eligible 'film production companies' that can claim the FTR.

Defining a Film Production Company

A.2 Companies that meet the definition of a film production company ('FPC') are subject to special tax rules (at Part 15 of the Corporation Tax Act 2009). A FPC can qualify for FTR if certain conditions are met.

Film Production Company

A.3 A FPC is a company that is responsible for the pre-production, principal photography, and post-production of a film. It must also be engaged actively in production planning and decision-making during those stages as well as having responsibility for delivery of the completed film, negotiations, contracts and payments for rights, goods and services in relation to the film. The definition of a FPC is tightly drawn to ensure that only the actual producers of a film (rather than investors) fall within the special tax rules.

Separate film trade

A.4 For corporation tax purposes, the FPC's activities in relation to a film are treated as a trade separate from any other activities of the company, including any activities in relation to any other film. If a FPC makes more than one film, each film would be considered to be a separate trade, with profits and losses calculated separately for each film that the FPC produces. So the FPC would need to separately identify the income receivable and expenditure incurred on film-making activities in connection with each film. This would only be for tax purposes and would not affect the company's financial statements. There is no requirement to have an audited set of accounts for each separate film trade, but the FPC would have to meet audit requirements as for any other normal company.

A.5 A company can have more than one separate film trade, but for any one film there can only be one FPC (except in the case of 'qualifying co-productions'). If there is more than one company satisfying the FPC requirements, the FPC is the one more directly engaged in the activities. If there is no company satisfying the FPC requirements in respect of a film, there is no FPC for that film and therefore no relief may be claimed.

Qualifying co-productions

A.6 A 'qualifying co-production' is a film that is treated as a national film in the UK by virtue of an agreement between Her Majesty's government in the UK and any other government, international organisation or authority. A co-producer can be treated as a FPC if it makes an effective creative, technical and artistic contribution to the film. But a company that co-produces a film cannot be a FPC if it only makes a financial contribution.

Conditions for claiming FTR

A.7 The FPC may be eligible for Film Tax Relief (FTR) if all four of the following conditions are met:

- There must be a 'film'. A film includes any record, however made, of a sequence of visual images that is capable of being used as a means of showing that sequence as a moving picture. References to a film include the film soundtrack. Where there is a series, each part of a series of films is treated as a separate film trade. But the whole series is treated as a single film if the parts form a series of 26 parts or less and the combined playing time is 26 hours or less and the series constitute a self-contained work or is a series of documentaries with a common theme.
- The film must be intended for 'theatrical release'. This means exhibition to the paying public at the commercial cinema, and it is intended that a significant proportion of the earnings from the film should be obtained by such exhibition.
- The film must be certified as a 'British film' by the Secretary of State for Culture, Media and Sport. There are three ways in which a film can qualify as British. It may:
  1. satisfy the 'cultural test'[1];
  2. meet the terms of one of the UK's bilateral co-production treaties; or
  3. meet the terms of the European Convention on Cinematic Co-Production.
- At least 10 per cent of the 'core expenditure' on the film incurred by the FPC must be 'UK expenditure'. 'Core expenditure' means production expenditure on pre-production, principal photography and post-production. 'Production expenditure' means expenditure on film-making activities in connection with the film. 'UK expenditure' means expenditure on goods or services that are used or consumed in the UK.

A.8 There is no requirement for the FPC to hold any intellectual property rights in connection with the film, or for any rights to be held in the UK[2].

Calculating the FTR

A.9 To arrive at the amount of profits that are subject to corporation tax, a company deducts certain allowable expenditure from its taxable income. The FTR increases the amount of expenditure that is allowable as a deduction for corporation tax purposes which is called an 'additional deduction'. The additional deduction reduces the taxable profits of a FPC, or turns a taxable profit situation into a loss situation or increases the losses of a FPC.

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[1] Inserted into Schedule 1 to the Films Act 1985 by SI2006/3430 (the Films (Definition of a British Film) (No. 2) Order 2006).

2 Usually the FPC must hold the copyright to the script or book in order to make the film, but there is no requirement under the tax legislation to hold these rights or the rights to the film at any time.

A.10 The additional deduction is based on enhanceable expenditure. Enhanceable expenditure is the lower of:

- UK core expenditure;
- 80 per cent of total core expenditure (see paragraph A.7 for definition of core expenditure).

A.11 Where the additional deduction creates a loss, the FPC can surrender the loss for a payable tax credit. A payable tax credit means that the FPC will receive a cash payment from HMRC. The levels of the additional deduction and payable tax credit are dependent on the size of the film's budget. For a limited-budget film (one whose core expenditure is £20m or less) the additional deduction is 100 per cent of enhanceable expenditure and the payable tax credit is 25 per cent of losses surrendered. For other films, the rates are 80 per cent and 20 per cent, respectively.

Table A.1: Example treatment for a limited budget film

A FPC produces a film with total expenditure of £11m, £10m of which is core expenditure and it is all UK expenditure. The film was commissioned by an unrelated distributor, which pays £9m for it.

Total income[3]	£9m
Total expenditure	(£11m)
Pre-FTR profit/ (loss)	(£2m)
Enhanceable expenditure (core expenditure of £10m x 80 per cent)	£8m
Additional deduction (100 per cent rate of enhancement)	(£8m)
Post-FTR profit/ (loss)	(£10m)

The surrenderable loss is the lesser of:

- The post-FTR trading loss of £79m; and
- The enhanceable expenditure of £80m.

The FPC can surrender any amount up to £79m of losses.
The amount of credit due is the payable credit rate for a large budget film of 20 per cent multiplied by the loss surrendered. So assuming the maximum of £79m is surrendered:
20 per cent x £79m = £15.8m
So the FPC can claim a payment of £15.8m from HMRC. This is equal to 15.8 per cent of total core expenditure. This more than covers the £15m gap between the total income and total expenditure. The FPC can use the additional £800,000 for any legal purpose[4]
Again, instead of the FPC surrendering £79m of losses for a payable tax credit, the FPC can carry forward the loss to offset against profits of the same film trade of a future accounting period. These losses cannot be relieved against profits of a different trade.

[3] Income from the film is any receipts by the FPC in connection with making or exploiting the film including: receipts from the sale of the film or rights in it; royalties or other payments for use of the film or characters or music or other aspects of the film; payments for rights to produce games or other merchandise; and receipts by way of a profit share agreement.
[4] The commissioning producer may reduce the amount paid to the FPC or if the commissioning producer is the parent company of the FPC, the FPC could pay out a dividend to return the cash.

How to claim the FTR

A.12 A claim for FTR must be included in a company tax return for an accounting period. It can be made in respect of any accounting period that the FPC continues the film trade. Normally a claim is made for the accounting period in which the film is completed or abandoned. A claim can also be made in a subsequent accounting period after the film is completed if in that period the FPC has trading activity. For example if the FPC has to make additional payments to the director and actors due to the success of the film.

A.13 Before an application is made, the film must be certified by the Secretary of State that the film is a British film. An interim certificate as well as a final certificate can be obtained. Interim claims are made on the assumption that the required conditions have been met. If any of the conditions are not actually met on completion of the film, the position is adjusted to reflect the outcome, including if appropriate repayment of the film tax credit to HMRC with interest. Interim claims cannot be made outside of the corporation tax company return process.

Further information

A.14 For further information please see HMRC's Film Production Company Manual. The legislation is at Part 15 of the Corporation Tax Act 2009.

B

Tax impact assessment and call for further evidence

Tax impact assessment

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	-5m	-15m	-20m	-20m	-20m
	This measure is expected to increase exchequer costs. These impacts were set out at Budget 2014.				
Economic impact	The measure is expected to have a positive impact on the theatre industry, but is not expected to have significant wider macroeconomic impacts.				
Impact on individuals and households	The relief will only be available to theatrical production companies, and so is unlikely to impact on individuals and households.				
Equalities impacts	The government has carefully considered whether this measure impacts on people with protected characteristics and has not identified any equalities impacts.				
Impact on business including civil society organisations	The tax relief for theatre production will allow qualifying companies to claim a payable tax credit, supporting the theatre sector and particularly the production of touring productions. There are approximately 325 theatre production companies in the UK that may benefit from the relief. Eligible companies may face some one-off and ongoing administrative costs in order to qualify for this relief. There will be one-off costs associated with familiarisation with new legislation, processes and requirements. The ongoing costs include costs of calculating and claiming the relief. It is expected that on average companies will make one claim per year. It is estimated that the additional ongoing administrative burden of the proposed relief will be negligible. This measure is expected to have no impact on civil society organisations.				
Operational impact (£m) (HMRC or other)	It is expected that HM Revenue & Customs will incur additional annual costs to administer the new tax relief. Training and familiarisation with the new legislation will be required.				
Other impacts	Small firms impact test: the government recognises that there may be some increase in administration impacts on small businesses. However, overall the tax relief will impact positively on qualifying small companies. There will also be a specialist unit set up to help facilitate claims. Competition assessment: this relief is targeted at a specific sector. All companies in this sector are eligible, so introduction is unlikely to affect competition within the sector. There should not be any significant impact on competition with other business sectors. Other impacts have been considered and none have been identified.				

Question 17: Do you have any comments or evidence to further support the impacts identified, particularly our assessment of the impact of these proposals on administrative burdens?

Request for further supporting evidence

B.1 The government is grateful for the evidence already provided by the industry which has supported the policy development to date. The government now asks for interested parties to provide further evidence requested below where possible. This information is requested on all types of theatre in scope of the relief; plays, musicals, dance, ballet and opera, in both the commercial and the not for profit sectors, and for both touring and non-touring productions.

B.2 This evidence will only be used for analytical purposes to assist in further refining the policy design and examining the expected impact of the policy, both in terms of impact on the industry and the costs to the exchequer. This information will not be disclosed publically.

Supporting evidence request

1 Existing production and behavioural effects

Please provide information for both touring and other productions on:

- Any industry wide estimate for the total size of theatre production in the UK (i.e. total direct expenditure on developing theatre productions). This will help provide a better picture of the current size of the sector as well as how it may grow in response to the implementation of the tax relief
- The annual direct expenditure for theatre productions, broken down by individual projects and by stage of production; speculative development, production, running and closing

2 Production case studies

Please provide individual case studies, including information on:

- Funding sources, including a breakdown and any input from co-production partners and details of any overseas tax incentives accessed;
- Timing of production expenditure showing when and how much expenditure takes place during the production process;
- Expenditure that is incurred outside of the UK

3 Administrative burdens

It is envisaged that the administrative burden of applying for this new relief will be similar to the burden of applying for film tax relief. If you have previously claimed the film tax relief, please estimate the administrative cost to your business of applying for the relief (including the cost of providing information in order to pass the cultural test).

The Government appreciates that the necessary detail may not be available for companies that have not previously applied for film tax relief to estimate the cost of administering the new tax relief.

C Summary of consultation questions

Chapter 2: Criteria for theatre tax relief

Question 1: Do you agree with the proposed criteria for assessing options to provide support to the theatre sector? Please provide any comments as appropriate**?**

Chapter 3: Theatre tax relief

Question 2: Would adopting the definition of theatre production as outlined be an effective way of meeting the government's objectives set out in Chapter 1?

Question 3: Is there an alternative definition of theatre that would more accurately reflect the full range of types of theatre being produced? If so, please provide details

Question 4: Is this the most appropriate way to exclude sexual entertainment? If not, what solutions do you propose to exclude this from the relief?

Question 5: Is there an alternative definition of 'touring' that would more accurately reflect the nature of these types of productions? If so, please provide suggestions.

Question 6: Would the requirement to be incorporated affect current funding or subsidies that are received by some theatre companies? If so, please explain in what way.

Question 7: Which costs are integral to the production process itself and should therefore be eligible for relief? Please explain your choices.

Question 8: Do the production periods accurately reflect theatre production in practice? If not, please explain and provide alternative suggestions.

Question 9: Are there alternative rules that would be simpler or more effective to ensure that speculative expenditure and ongoing running costs do not qualify for relief?

Question 10: Does the requirement to be incorporated and operate separate trades within the company cause significant administrative burdens for theatre producers? Please explain in what way.

Question 11: Are there any other specific design points which need to be addressed?

Chapter 4: Other issues

Question 12: Are there any issues with applying the rules proposed above in order to prevent aid intensity from exceeding 100%? If so, please explain.

Question 13: Are there any issues for the theatre industry in applying the same process as FTR to make claims under the new tax relief?

Question 14: Do respondents think that this is an acceptable time scale to exclude unpaid costs?

Question 15: Can respondents suggest ways to prevent abuse of the new tax relief to ensure that it remain effective?

Question 16: Are there specific areas in addition to those mentioned, that create the opportunity for abuse?

Annex B: tax impact assessment?

Question 17: Do you have any comments or evidence to further support the impacts identified, particularly our assessment of the impact of these proposals on administrative burdens?

D Planned timetable for implementation

5 December 2013 (Autumn Statement)	The government announced the intention to introduce a new tax relief for theatre productions
January to July 2014	HM Treasury, HM Revenue and Customs and Department for Culture Media and Sport work with sector and a focused working group to develop the policy
19 March 2014 (Budget)	The government set out the detail of the policy, including rates, scope and implementation date
27 March to 8 May	Formal 6 week consultation to test the proposal with industry
June 2014	Draft legislation will be published
July 2014	Legislation will be taken forward in Finance Bill 2014
August 2014	HMRC guidance will be published
I September 2014	The new tax relief will take effect

E The code of practice on consultation

E.1 This consultation is being conducted in line with the Code of Practice for written consultation, which sets down the following criteria:

- Formal consultation should take place at a stage when there is scope to influence the policy outcome;
- Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- Consultation document should be clear about the consultation process, what is being proposed, the scope of influence and the expected costs and benefits of the proposals;
- Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation; and
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

E.2 If you feel that this consultation does not fulfil these criteria, please contact:

Consultation Coordinator, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
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1 Horse Guards Road
London
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Tel: 020 7270 5000

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