



HM Treasury

# Audio-visual tax reliefs: consultation

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November 2022



# Audio-visual tax reliefs: Consultation

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# Foreword

The UK's film, television and video games industries are genuinely world-class, projecting our values and influence around the world.

The audio-visual tax reliefs play a key role in supporting them, and in 2021-22 alone, provided £972 million of support.

It is encouraging to see the recent report on the impact of the film and television tax reliefs, published alongside this consultation, which shows strong evidence that they have made the UK a more attractive filming and production location than would be otherwise.

Looking ahead, I want to see us build on the success of the audio-visual reliefs, and go further to support the growth of these highly skilled and innovative industries. The package of reforms proposed in this consultation aims to simplify and modernise the reliefs and ensure they boost growth in the audio-visual sectors whilst remaining fiscally sustainable.

I thank you in advance for your engagement.

Victoria Atkins MP

A handwritten signature in blue ink that reads "Victoria Atkins". The signature is written in a cursive, flowing style.

# Chapter 1

## Introduction

- 1.1 There are 8 creative industry tax reliefs covering film, animation, high-end TV, children's TV, video games, theatre, orchestra and museums and galleries.
- 1.2 Within these 8 reliefs, there are 5 audio-visual reliefs: film tax relief (FTR), animation tax relief (ATR), high-end TV tax relief (HETV tax relief), children's TV tax relief (CTR) and video games tax relief (VGTR). This consultation focusses on the five audio-visual tax reliefs.
- 1.3 The audio-visual reliefs have a key role in incentivising the production of culturally British content and provide support to ensure that these highly skilled industries thrive in the UK. They help ensure that the UK's audio-visual subsectors remain world-class, projecting our values and influence around the world.
- 1.4 In 2021-22 alone the audio-visual reliefs provided £972 million in support to the film, TV and video games industries. Whilst this reflects a drop from the previous year due to the impact of the Covid-19 pandemic, we have seen the industries bounce back and expect them to flourish into 2023 and beyond.
- 1.5 An independent report on the impact, appropriateness, proportionality and the claims process of FTR, ATR, HETV tax relief and CTR shows strong evidence that all four tax reliefs have made the UK a more attractive filming and production location and led to more productions taking place in the UK than would have otherwise occurred in the absence of the reliefs. Inward investors highlighted how the reliefs complemented the UK's other advantages, such as high-quality screen industry infrastructure and talented cast and crew, whilst a survey of predominantly domestic production companies claiming FTR suggested that 38% of productions would not have taken place without this relief. The importance of ATR and CTR to these industries was also highlighted: some ATR claimants argued that the relief has been vital to the survival of the animation industry in the UK and smaller domestic producers of animation and children's television commented that, without the reliefs, they would not be able to make the types of more culturally niche or innovative productions they wanted to focus on.
- 1.6 Much has changed since the introduction of the original film tax relief in 2007. Since then, the creative industries have rapidly evolved with new cutting-edge technology and demands from the public for ever higher quality content. The government is seeking to build upon the success of the reliefs and go further to support the growth of the audio-visual sectors.

- 1.7 The government has in recent years made incremental reforms to the reliefs to keep up with the evolution of these industries. For example, at Autumn Budget 2021 the government announced that legislation would be amended to enable film production companies to claim FTR on films that meet the HETV tax relief criteria where the release plans have changed during production, in response to evolving distribution models. The government recognises the need to provide certainty about the future of the regime to industry and that the tax reliefs have been introduced on a piecemeal basis over the 2010s.
- 1.8 The government has also listened to the concerns of industry stakeholders, including those regarding whether the reliefs meet the OECD definition of qualified refundable tax credits.
- 1.9 The government is therefore launching a review of audio-visual reliefs to ensure that they remain world-leading and continue to best serve the needs of creative companies.
- 1.10 The objectives of the review are to ensure that:
- The UK has modern audio-visual tax reliefs that enhance the UK's audio-visual industries;
  - The reliefs maximise the contribution of the audio-visual industries to the growth of the UK economy;
  - The reliefs remain affordable, with additional costs of the reforms are consistent with the government's fiscal rules and commitment to sustainability in the public finances.
  - The reliefs are straightforward to administer and that the reformed audio-visual tax reliefs should not significantly increase administrative burdens for businesses or HMRC;
  - Current and future commercial needs are anticipated without significant future changes being required;
  - The reforms do not create additional avoidance opportunities.
- 1.11 Reforms proposed in the consultation include simplifying the film and TV reliefs (FTR, ATR, HETV tax relief and CTR) by merging them into one tax credit scheme, modernising the criteria for HETV tax relief and defining a documentary in legislation. It covers the EU legacy requirements currently embedded in VGTR and the reform of all of the audio-visual reliefs to above the line, refundable expenditure credits.
- 1.12 The 'cultural' subset of the creative industry tax reliefs (for orchestra, theatre, and museums and galleries exhibitions) are not included in this consultation. The government keeps the cultural tax reliefs under review and may undertake a more detailed review of the cultural reliefs in due course.
- 1.13 The Government is interested in feedback from a wide range of sources including individuals, companies, representative and professional bodies. The Government especially invites comments from production companies. The Government also particularly welcomes the assessment of accountants, tax



advisors and lawyers as to whether the proposals in this consultation effectively respond to concerns raised by stakeholders about the implication of the OECD Pillar Two model rules.

- 1.14 The views of those involved in this process will be important in helping shape the final proposal, which we will ensure is compliant with international obligations and the Subsidy Control Act 2022.<sup>1</sup> The Subsidy Control Act 2022 has a requirement for public authorities to consider the subsidy control principles before making a subsidy scheme and must not make the scheme unless it is of the view subsidies provided by the scheme are consistent with those principles. Schedule 1 of the Act lists the subsidy control principles.
- 1.15 Public authorities will need to ensure a subsidy scheme is consistent with the subsidy control principles when designing a subsidy scheme unless an exemption applies. For example, when designing a subsidy scheme a public authority may need to consider the length of the scheme and the aid intensity.
- 1.16 We expect reforms to the audio-visual reliefs to be implemented in Spring 2024. We will confirm the timing of implementation after the consultation has ended.

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<sup>1</sup> Subsidy Control Act 2022: <https://www.legislation.gov.uk/ukpga/2022/23/enacted>. Statutory guidance on the Subsidy Control Act 2022: <https://www.gov.uk/government/publications/uk-subsidy-control-statutory-guidance>

# Chapter 2

## Background

### Current administration of the audio-visual reliefs

- 2.1 There are two main components of the UK audio-visual reliefs: an additional deduction and a tax credit. The following steps are taken to calculate a claim for an audio-visual tax relief:
- a) An additional deduction of up to 80% of the company's qualifying production costs is applied to its taxable profit/loss.<sup>2</sup>
  - b) If the additional deduction results in a loss for tax purposes, the entity can choose to carry this loss forward or surrender it for the tax credit.
  - c) The loss can be surrendered up to a maximum of the amount of the additional deduction in the year plus any additional deduction in prior years which has not already been surrendered, for a payable tax credit at a rate of 25% of the loss being surrendered.
  - d) When the loss is carried forward, that amount of loss can be surrendered as a credit in a later year, to the extent it hasn't been offset against taxable profits.
  - e) Productions must be certified as culturally British by the British Film Institute (BFI). They must pass a cultural test or qualify through an internationally agreed co-production treaty.
- 2.2 Criteria for each of the individual tax reliefs are listed in **Annex A**.

### Scope of the consultation

- 2.3 This consultation will cover:
- Simplifying the reliefs through merging FTR, ATR, HETV tax relief and CTR into a single tax credit scheme;
  - Modernising HETV tax relief by updating the legislation that sets the minimum slot length and by defining a documentary in legislation;
  - Modernising EU legacy conditions in Video Games Tax Relief by reforming qualifying expenditure and the subcontracting limit

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<sup>2</sup> For FTR, ATR, HETV tax relief and CTR, the additional deduction will be the lower of either 80% of total core costs or the amount of UK core costs. For VGTR, the additional deduction will be the lower of either 80% of total core costs or the amount of core costs of goods or services that are provided from within the UK and the European Economic Area (EEA).

- Reforming the audio-visual reliefs to expenditure credits.

2.4 This consultation will not cover:

- The 'cultural' subset of the creative industry tax reliefs (orchestra, theatre, and museums and galleries);
- Other government creatives interventions, for example grants;
- The introduction of new creative industry tax reliefs.

## **Who should respond to the consultation?**

2.5 The government is interested in receiving representations from all interested parties and stakeholders. We are especially interested in responses from:

- Businesses in the sectors covered by the audio-visual reliefs
- Business groups and trade associations
- Accountants and accountancy bodies

# Chapter 3

## Modernising the film and TV sector reliefs

### Merging film and TV sector into a single scheme

- 3.1 The production process for a high-end TV programme and a film is now often of a similar standard in relation to funding and scale. There is also a high degree of overlap between the eligibility requirements and legislation for FTR, ATR, HETV tax relief and CTR, which is the result of these reliefs being introduced individually over the years.
- 3.2 The government is interested in the views of stakeholders on merging FTR, ATR, HETV tax relief and CTR into a single tax credit. All production activities will be qualifying costs for the credit, in line with the rules on expenditure in the existing regimes. No changes to the existing criteria that companies must meet to access the tax reliefs are proposed.
- 3.3 The government wishes to understand any unintended consequences that may arise from the merger. Areas of interest include anywhere the implementation of a single scheme could cause issues with the Cultural Test and issues that may arise if the point at which the broadcast/theatrical intention must be met is aligned across the reliefs.

### Modernising HETV tax relief

#### Background

- 3.4 HETV tax relief was introduced in April 2013 with the aim to incentivise production of culturally British and European HETV programmes.
- 3.5 HETV tax relief has been successful: since its introduction in 2013, companies have made claims for 925 programmes, with UK expenditure of £10.9 billion. In 2022 HETV tax relief accounted for 38% of the total amount of creative industry tax relief, while FTR for 35%. This is the first time that the amount of HETV tax relief has exceeded FTR.
- 3.6 The TV landscape has changed dramatically since the introduction of HETV tax relief in 2013. Streaming services are now producing their own original content and production budgets have increased due to audiences' expectations for high quality programming as well as by increased global demand for the best.

## Minimum expenditure threshold

- 3.7 As the costs of TV production have increased, an increasing number of mid-range TV programmes have been pushed over the minimum £1 million expenditure threshold.
- 3.8 The minimum expenditure threshold has not been increased since 2013 and no longer reflects current production costs. Rising production costs have meant that several productions which the government expects would have been commissioned regardless of existence of HETV tax relief have become eligible.
- 3.9 To ensure HETV tax relief remains fiscally sustainable by targeting programmes that would not have been commissioned in its absence, the government is considering increasing the minimum expenditure to better reflect current production costs and budgets. This will mean that fewer productions will qualify, but will ensure the relief continues to deliver on its objective to incentivise high end TV.

## Minimum slot length

- 3.10 HETV tax relief legislation requires programmes to have a minimum slot length of 30 minutes.<sup>3</sup> This was intended to apply on a per-episode basis i.e. each episode of a series must be at least 30 minutes long. The legislation does not work as intended, however, as it does not refer to individual episodes, but to the length of the 'programme', which is defined as all the programmes that are commissioned together. This means that the slot length of all the episodes of a show that are commissioned together can be added up to find the programme length e.g. two 20 minute episodes would have a slot length of 40 minutes and would qualify.
- 3.11 This piece of legislation is inconsistently interpreted by industry, leading to confusion and deterring companies from making eligible programmes. It is the government's aim to give clarity to industry about the eligibility of programmes.
- 3.12 The government is considering two options:
- a) Amending the legislation so that it applies on an 'episode by episode' basis as intended, but with a reduced minimum slot length to 20 minutes.
  - b) Removing the minimum slot length requirement.
- 3.13 If the government proceeds with removing the minimum slot length requirement, necessary additions to the list of exclusions currently embedded in HETV tax relief legislation will be considered to ensure that the reformed relief continues to target high end dramas and documentaries. An example of a potential additional exclusion would be idents (short pieces of footage shown between programmes to identify the channel they are being broadcast on).

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<sup>3</sup><https://www.legislation.gov.uk/ukpga/2009/4/part/15A>

- 3.14 The government expects that reforming minimum slot length legislation would also address a small boundary pushing issue of companies commissioning multiple very short videos together to in order to qualify.
- 3.15 Defining documentaries in legislation HETV tax relief is available for dramas and documentaries. While ‘drama’ is well defined in legislation, ‘documentary’ is not currently defined. This has led to boundary pushing: the government has seen an increasing number of HETV tax relief applications from programmes that are borderline reality television.
- 3.16 Industry stakeholders have repeatedly requested that the government defines a documentary in legislation. The government has listened and will take this request forward. The government expects that the definition give clarity to companies over whether productions are eligible for HETV tax relief and ensure the effective targeting of taxpayer money by addressing boundary-pushing. The government expects to use the BFI’s guidance for what constitutes a documentary as a starting point: a factual or realistic programme based on real events, places or circumstances and intended to record or inform. The government is interested in the views of stakeholders on the factors that should be considered when legislating a definition and any expected impacts a definition would have on production activity.<sup>4</sup>

## Proposals

- 3.17 The government will review the HETV tax relief minimum slot length legislation and consider legislating a definition of a documentary, which would apply to HETV tax relief.

Questions:

Question 1: What factors should the government consider when drafting legislation to merge the film and TV reliefs into as single scheme?

Question 2: If you are a claimant of HETV tax relief, how does the current legislation for a minimum slot length impact you?

Question 3: How would the removal of the minimum slot length legislation impact your production activities?

Question 4: How would your production activities be impacted if legislation reducing the minimum slot to 20 minutes, applying on an episode-by-episode basis, was introduced?

Question 5: What factors should the government consider when writing a definition for a documentary?

Question 6: Do you anticipate legislation for a definition of a ‘documentary’ leading to any negative impacts on your production activities?

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<sup>4</sup><https://www.bfi-staging.org.uk/film-industry/british-certification-tax-relief/cultural-test-high-end-television>. The BFI’s guidance states the following: a documentary is not defined in the legislation but normally it would be interpreted to mean a factual or realistic programme based on real events, places or circumstances and intended primarily to record or inform.

# Chapter 4

## Modernising Video Games Tax Relief

### Background

- 4.1 Bringing Video Games tax relief into the scope of the single tax credit proposed in Chapter 4 is less straightforward due to the specific conditions of VGTR that resulted from EU State aid rules:
- EEA expenditure (now amended to European expenditure to include the UK) is eligible for VGTR. This does not apply to the other four audio-visual tax reliefs, which require existing expenditure to be used or consumed in the UK.
  - VGTR has a subcontracting cap of £1 million per game

### Proposals

- 4.2 Now that the UK has left the EU, the government is interested in the views of stakeholders on removing these two rules. The government's objectives for this are to simplify VGTR and to refocus it on UK expenditure.
- 4.3 The government is interested in the views of stakeholders on removing the eligibility of European expenditure from VGTR and replacing this with a requirement for expenditure to be 'used or consumed' in the UK. The government will provide guidance as to how this requirement will operate if a decision is reached to implement it following this consultation.
- 4.4 The government is interested in the level of subcontracting currently undertaken, and whether companies would be likely to raise or lower their level of subcontracting if European expenditure is excluded, and if the subcontracting cap were to be raised or removed. Only subcontracting within the UK would be permitted.
- 4.5 The government will consider bringing VGTR into the scope of the single tax credit outlined in Chapter 5.

Questions:

Question 7: Would the removal of European expenditure from the qualifying costs of VGTR impact your production activities? Please describe how and include any quantitative/qualitative evidence.

Question 8: Do you anticipate any issues with the requirement of video games expenditure to be 'used or consumed' in the UK?

Question 9: Please describe your current subcontracting activities, including the proportion of work that you tend to subcontract relative to your overall production activities, the type of work you subcontract, and the cost of the activity you subcontract.

Question 10: Would the removal of European expenditure from the qualifying costs of VGTR impact your subcontracting activities? Please describe how and include any quantitative/qualitative evidence.

Question 11: Would an increase to or removal of the £1 million subcontracting limit impact your production activities? Please describe how and include any quantitative/qualitative evidence.



# Chapter 5

## Reforming audio-visual tax reliefs to expenditure credits

### Background

- 5.1 In October 2021, over 130 countries in the OECD Inclusive Framework reached an agreement on a two-pillar solution (Pillars 1 and 2) to reform the international tax framework.<sup>5</sup>
- 5.2 Pillar 2 ensures that multinationals pay a minimum rate of tax, through a framework of rules known as the GloBE rules. It will require multinational enterprises (MNEs) with over EUR 750 million of annual revenue to pay a minimum rate of corporation tax on profit in each jurisdiction in which they operate. Where the tax paid in a jurisdiction falls below the minimum 15% level, the rules will then require countries to impose top-up taxes on certain entities within the group in order to bring the overall taxation of jurisdictional profit up to the minimum level.
- 5.3 At Autumn Statement 2022 the government confirmed that the UK will implement the main Income Inclusion Rule and a supplementary Qualified Domestic Minimum Tax for accounting periods beginning on or after 31 December 2023. These rules will require large groups, including those operating exclusively in the UK, to pay a top up tax where their operations have an effective tax rate (ETR) of less than 15%.
- 5.4 In calculating the ETR, the OECD Model Rules treat tax credits differently, depending on their design. Certain tax credits, such as the Research and Development Expenditure Credit (RDEC) are regarded as being equivalent to a grant, and are treated as income in the GloBE calculation. These credits do not lower the effective tax rate.
- 5.5 The government has heard concerns from stakeholders that the creative sector tax reliefs may not fully meet the requirements to be considered as income for GloBE purposes and that this uncertainty may inhibit investment in the creative industries.
- 5.6 To put the question of whether the audio-visual tax reliefs qualify as income beyond doubt, the government is considering reforming the reliefs into refundable expenditure credits. Beyond providing certainty to industries that the reliefs qualify as income for GloBE there are several additional benefits for businesses, including the following:

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<sup>5</sup>OECD statement on the a two-pillar solution: <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>

- Greater clarity for businesses about the amount of credit they can expect to receive;
  - Increased attractiveness to inward investors, as refundable credits are recorded as income included in profit;
  - Greater flexibility over production decisions, as claimants will no longer need to be loss-making to maximise the benefit of the credit.
- 5.7 The Government's aim for the expenditure credit is to increase investment in the audio-visual sectors in the UK and stimulate the production of culturally British content. The government wants an expenditure credit that is suitable for the majority of businesses producing film, TV or video games in the UK.
- 5.8 The government is therefore consulting on proposals to reform the five audio-visual tax reliefs to expenditure credits.

## Basic structure of the proposed expenditure credit

- 5.9 The new expenditure credit will be calculated directly from eligible audio-visual expenditure, instead of being an adjustment to the company's taxable profit as used under the existing regime.
- 5.10 We expect the rate for the expenditure credit to be in line with the generosity of the existing regime. The final rate for the credit will be decided following consultation.
- 5.11 All production activities will be qualifying expenditure, in line with the rules on expenditure in the existing regimes.
- 5.12 We expect that the expenditure credit for the audio-visual reliefs will broadly align with the steps embedded in Research and Development Expenditure Credit (RDEC) model. These are set out in **Annex B**, but are subject to design changes as the government develops the expenditure model for the audio-visual reliefs.

## 80% cap on qualifying expenditure

- 5.13 The government acknowledges that there is a perception that the 80% cap on qualifying expenditure encourages the more portable aspects of production, such as visual effects, to move abroad. The government will explore removing the cap but this may necessitate a lower overall credit rate to avoid a substantial additional cost to the taxpayer.
- 5.14 The removal of the cap is subject to compliance with the Subsidy Control Act 2022.

## An expenditure credit-only scheme for audio-visual tax reliefs

- 5.15 The government wants to minimise potential administrative costs to business and HMRC, and to avoid the need for businesses to carry out calculations to compare the benefits under two schemes. The government therefore expects the audio-visuals expenditure credit should be mandatory, meaning it would fully replace the existing five audio-visual tax reliefs for film, high-end television, children’s television, animation and also videogames. However, a final decision on whether the expenditure credits should fully replace the existing audio-visual reliefs will be taken following consultation.
- 5.16 The Government is currently assessing how best to help business manage the transition from the existing audio-visual reliefs to expenditure credits. It is interested in businesses’ views on possible challenges arising from the overall transition, for example where companies might need to account for both the current audio-visual reliefs and the expenditure credits in the same accounting period.

Questions:

Question 12: Do you claim more than one audio-visual relief? If so, which ones?

Question 13: Do you think the expenditure credit should fully replace the existing audio-visual reliefs? If not, please explain why and what changes to the expenditure credit design might change your view.

Question 14: Do you expect the implementation of the OECD Pillar 2 model rules in the UK and globally to impact the benefit of the UK’s reliefs in their current form? And if so, how?

Question 15: Assuming the same level of overall generosity, would an expenditure credit model alter the benefit of the relief(s) to you? If so, how? Please include any expected impacts of the global implementation of the OECD Pillar 2 Rules on an expenditure credit model.

Question 16: For businesses operating internationally and advisors to businesses operating internationally, are you aware of any impact on a tax liability in another country that might follow the UK moving to an expenditure credit?

Question 17: For businesses and advisors, what challenges do you envisage encountering on taking up the expenditure credit? If necessary please provide details of any specific procedural changes and/or associated costs.

Question 18: What specific steps could the Government take to help businesses who currently claim the existing audio-visual reliefs manage the transition to claiming expenditure credits?

## **Administrative reforms to improve claimant experience and compliance**

5.17 The government is considering a number of technical changes to the administration of the audio-visual reliefs. These include reforms aimed at improving the claims process, such as mandating user-friendly digital forms. Administrative reforms will be published in due course.

## **Cross-cutting questions**

Question 19: What changes not covered in this consultation would improve the administration of the audio-visual tax reliefs?

Question 20: Is there anything within the design of the current schemes that might be lost if they were reformed?

Question 21: Do you expect the Subsidy Control Act 2022 to impact the reforms proposed in this consultation? If so, please describe how.

Question 22: What changes could be made to the reliefs to safeguard them from abuse?

# Chapter 6

## Summary of questions

Question 1: What factors should the government consider when drafting legislation to merge the film and TV reliefs into as single scheme?

Question 2: If you are a claimant of HETV tax relief, how does the current legislation for a minimum slot length impact you?

Question 3: How would the removal of the minimum slot length legislation impact your production activities?

Question 4: How would your production activities be impacted if legislation reducing the minimum slot to 20 minutes, applying on an episode-by-episode basis, was introduced?

Question 5: What factors should the government consider when writing a definition for a documentary?

Question 6: Do you anticipate legislation for a definition of a 'documentary' leading to any negative impacts on your production activities?

Question 7: Would the removal of European expenditure from the qualifying costs of VGTR impact your production activities? Please describe how and include any quantitative/qualitative evidence.

Question 8: Do you anticipate any issues with the requirement of video games expenditure to be 'used or consumed' in the UK?

Question 9: Please describe your current subcontracting activities, including the proportion of work that you tend to subcontract relative to your overall production activities, the type of work you subcontract, and the cost of the activity you subcontract.

Question 10: Would the removal of European expenditure from the qualifying costs of VGTR impact your subcontracting activities? Please describe how and include any quantitative/qualitative evidence.

Question 11: Would an increase to or removal of the £1 million subcontracting limit impact your production activities? Please describe how and include any quantitative/qualitative evidence.

Question 12: Do you claim more than one audio-visual relief? If so, which ones?

Question 13: Do you think the expenditure credit should fully replace the existing audio-visual reliefs? If not, please explain why and what changes to the expenditure credit design might change your view.

Question 14: Do you expect the implementation of the OECD Pillar 2 model rules in the UK and globally to impact the benefit of the UK's reliefs in their current form? And if so, how?

Question 15: Assuming the same level of overall generosity, would an expenditure credit model alter the benefit of the relief(s) to you? If so, how? Please include any expected impacts of the global implementation of the OECD Pillar 2 Rules on an expenditure credit model.

Question 16: For businesses operating internationally and advisors to businesses operating internationally, are you aware of any impact on a tax liability in another country that might follow the UK moving to an expenditure credit?

Question 17: For businesses and advisors, what challenges do you envisage encountering on taking up the expenditure credit? If necessary please provide details of any specific procedural changes and/or associated costs.

Question 18: What specific steps could the Government take to help businesses who currently claim the existing audio-visual reliefs manage the transition to claiming expenditure credits?

Question 19: What changes not covered in this consultation would improve the administration of the audio-visual tax reliefs?

Question 20: Is there anything within the design of the current schemes that might be lost if they were reformed?

Question 21: Do you expect the Subsidy Control Act 2022 to impact the reforms proposed in this consultation? If so, please describe how.

Question 22: What changes could be made to the reliefs to safeguard them from abuse?

# Chapter 7

## How to respond

This consultation will run from 17 November to 9 February.

Responses should be sent by email to:

**[audiovisualtaxreliefs@hmtreasury.gov.uk](mailto:audiovisualtaxreliefs@hmtreasury.gov.uk)**

We are unable to respond to letters sent in the post at the moment. Please use the email address provided above to ensure your response is taken into account.

When responding, please say if you are making a representation on behalf of a business, individual or representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

# Chapter 8

## Processing of personal data

This notice sets out how HM Treasury will use your personal data for the purposes of inviting views on potential reforms to the UK's audio-visual tax reliefs regime and explains your rights under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA). For the purposes of the UK GDPR, HM Treasury is the data controller for any personal data you provide in response to this consultation.

### **Data subjects:**

This privacy notice relates to the use of personal data of any individuals identifiable from information provided in the consultation responses.

### **The data we collect (data categories):**

Personal data will be collected through email submissions to a mailbox. Personal data collected is likely to include; individuals' names, email addresses, job titles, and employers, as well as their opinions. It is possible that respondents may also volunteer additional information which identifies them or third parties.

### **Legal basis of processing:**

Article 6(1)(e) UK GDPR – the processing of this personal data is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation, this task is consulting on departmental policies or proposals and obtaining opinion data in order to develop effective government policy.

### **Special category data:**

HM Treasury will not ask you to provide any special category data as part of your response to this consultation.

### **Purpose:**

The personal data is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

HM Treasury will use your personal data to record your comments and views and take your reply into account – as far as possible with all other replies – when decisions are being made following the consultation process. Collection of your personal data is necessary as we may need to contact you to discuss your response to the consultation.

### **Who we share your responses with:**

Within HM Treasury, personal data you provide will only be available to teams working on this consultation. For the purposes of the audio-visual tax reliefs consultation, your



personal data will be shared with officials from HM Revenue and Customs (HMRC) who are working on the consultation alongside HM Treasury. This is because HMRC is the lead department for tax issues and a policy partnership between HMRC and HM Treasury is a key relationship in the design and delivery of tax policy.

HM Treasury will be sharing consultation responses in full with HMRC to; ensure continued dialogue between the HMRC and HM Treasury over its preferred approach to regulating the retail investment market and to facilitate discussion about the regulatory approaches which respondents may propose. In some instances, HMRC might need to contact you to ask questions about your consultation response.

As the personal data is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for the purposes of the consultation and in fulfilment with the contractual obligations they have with us.

HM Treasury will publish a summary of responses but this will not include any personal data.

**How long we will hold your data (Retention):**

Information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958. HM Treasury will not include any personal data when publishing information in response to this consultation. Personal data in responses will be retained for three calendar years after the consultation has concluded.

**Your data protection rights:**

You have the right to request information about how your personal data are processed and to request a copy of that personal data.

You have the right to request that any inaccuracies in your personal data are rectified without delay.

You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.

You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.

You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

**How to submit a Data Subject Access Request (DSAR):**

To request access to personal data that HM Treasury holds about you, contact:

The Information Rights Unit

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

[dsar@hmtreasury.gov.uk](mailto:dsar@hmtreasury.gov.uk)

## Complaints

If you have any concerns about HM Treasury's use of your personal data, please contact our Data Protection Officer via this mailbox: [privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)  
If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner's Office (ICO), the UK's independent regulator for data protection.

The ICO can be contacted at:  
The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

0303 123 1113  
[casework@ico.org.uk](mailto:casework@ico.org.uk)

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

# Chapter 9

## Annexes

### Annex A: Criteria for individual audio-visual tax reliefs

#### Cultural test

To qualify for creative industry tax reliefs, all audio-visual reliefs must be certified as British. The film must pass a cultural test or qualify through an internationally agreed co-production treaty.<sup>6</sup>

#### **Video Games relief**

A company can claim Video Games Tax Relief if the video game is:

- certified as British by the BFI
- intended for supply to the general public

A company must also:

- be actively engaged in planning and decision-making
- directly negotiate, contract and pay for rights, goods and services
- spend at least 25% of its 'core costs' on goods or services provided from within the UK or European Economic Area (EEA)

A company cannot claim Video Games Tax Relief if the game is produced for:

- advertising or promotional purposes
- the purposes of gambling

#### **Film relief**

A company can claim Film Tax Relief on a film if:

- the film is certified as British by the BFI
- it's intended for theatrical release
- at least 10% of the 'core costs' relate to activities in the UK

Core costs are what's spent on pre-production, principal photography and post-production.

A company must be responsible for:

- pre-production

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<sup>6</sup> <https://www.bfi.org.uk/apply-british-certification-tax-relief>

- principal photography
- post-production
- delivery of the completed film

A company must also:

- be actively engaged in planning and decision-making
- directly negotiate, contract and pay for rights, goods and services

### **High end TV relief**

A company can claim High-end Television Tax Relief on a programme if:

- the programme is certified as British by the BFI
- the programme is intended for broadcast to the general public — this includes streaming online
- the programme is a drama, comedy or documentary
- at least 10% of the total core costs relate to activities in the UK
- the average core costs are at least £1 million per hour of slot length
- the slot length in relation to the programme is greater than 30 minutes

Core costs are what's spent on pre-production, principal photography and post-production.

A company must also:

- be actively engaged in planning and decision-making
- directly negotiate, contract and pay for rights, goods and services
- be responsible for pre-production, principal photography, post-production, and delivery of the programme

Programmes commissioned together are treated as one programme.

### **Animation relief**

A company can claim Animation Tax Relief on an animation programme if:

- the programme is certified as British by the BFI
- the programme is intended for broadcast — this includes streaming online
- at least 51% of the 'core costs' on animation
- at least 10% of the 'core costs' relate to activities in the UK

Core costs are what's been spent on pre-production, principal photography and post-production.

A company must be responsible for:

- pre-production
- principal photography
- post-production
- delivery of the completed programme

A company must also:

- be actively engaged in planning and decision-making
- directly negotiate, contract and pay for rights, goods and services

Animation programmes commissioned together are treated as one programme.

### **Children's TV relief**

Children's Television Tax Relief is an extension of high-end television and animation relief but is specifically for the producers of children's television programmes.

A company can claim Children's Television Tax Relief on a programme if:

- the programme is certified as British by the BFI
- the programme is intended for broadcast — this includes streaming online
- the primary audience for the programme is expected to be under the age of 15
- at least 10% of the 'core costs' relate to activities in the UK

Core costs are what is spent on pre-production, principal photography and post-production.

Quizzes, game shows, and other programmes including an element of competition or contest may qualify if the prize total does not exceed £1,000.

Programmes commissioned together are treated as one programme.

A company must be responsible for:

- pre-production
- principal photography
- post-production
- delivery of the completed programme

A company must also:

- be actively engaged in planning and decision-making
- directly negotiate, contract and pay for rights, goods and services

## **Annex B: Current steps to calculate Research and Development Expenditure Credit**

- 1 The expenditure credit discharges the Corporation Tax liability for the accounting period to which the expenditure credit claim relates.
- 2 If the amount of credit remaining after step 1 exceeds the net value of the credit (gross credit minus the notional main Corporation Tax rate), you must use the net value of the credit in step 3. The remainder is carried forward for use in future accounting periods.
- 3 The credit must not be higher than your company's total expenditure on your workers' PAYE and NICs for the accounting period. Amounts in excess of the cap can be carried forward for use in future periods.
- 4 The remaining amount is used to discharge any outstanding Corporation Tax liabilities for any accounting periods.
- 5 The credit can be surrendered in whole or part to any group member.

- 6 The credit can be used to discharge any other company liabilities
- 7 The final amount can be paid to your company.

## HM Treasury contacts

This document can be downloaded from [www.gov.uk](http://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  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 5000

Email: [public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)