Theatre Tax Relief Update

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In November and December last year we ran workshops on the new Theatre Tax Relief ("TTR"). Our key speaker, Sean Egan, took Members' questions back to HMRC and the responses he has received so far are as follows:

Are "Scratch" performances public performances for TTR?

Since HMRC's principal basis of determining when running expenses start being incurred is the date of the first public performance this is a key date. Some companies run scratch performances for which they charge admission. In principle therefore all expenses of the production incurred on and after this date are running expenses and therefore not qualifying expenditure. There are exceptions such as closing costs and substantial (i.e. exceptional) recasting or set costs. If you subsequently develop a production beyond the scratch performance stage you would need to argue (for TTR purposes) that the further expenditure was on a separate production as the performances after the scratch performances would not have been committed to or scheduled at the time of the scratch performances. I suspect sometimes this may be relatively easy to demonstrate and sometimes it will not. If in doubt then it may be worth considering whether the additional income from charging for scratch performances is outweighed by the potential loss of TTR.

When a subsidiary production company is set up for TTR purposes does it need to open a bank account which receives or makes payments?

Whilst HMRC have confirmed that having an account is not necessary in order to make a claim the company does need to be a trading entity. Having a functioning bank account generally establishes the "trading" nature of a company.

Who can claim TTR for a co-production?

For a co-production one of the co-producing partners needs to be the main production company for TTR purposes and only one entity can make a claim. If a subsidiary is the production company for TTR purposes HMRC have suggested that this subsidiary, rather than the parent company, should sign any co-production agreement.

NT Live income and other broadcast income.

HMRC have confirmed that income from live recordings will be treated as income for the purposes of TTR calculation, likewise the costs of the broadcast are in principle treated as expenditure.

Turnaround of claims

HMRC seek to turnaround claims within 28 days of submission. They have been made aware that there is likely to be a disproportionately high number of claims in the months following the year end of 31 March, so we hope that they will be prepared to deal with the extra workload.

Making a claim

HMRC form CT600 needs to be used and I have received confirmation that it is not due to be amended in the near future. Also, accompanying the form is the statutory accounts (i.e. those submitted to Companies House) plus the computation of the claim for TTR – there is no prescribed format for this computation. In practice the schedule setting out this computation is the key document and members' accountants are likely to have their own form of schedule into which the relevant figures can be inserted.

HMRC guidance

We are still waiting for formal guidance from HMRC, which is unlikely to be issued before late March. If it follows the form of existing guidance for film tax relief the guidance is likely to be basic and may not answer all your questions. It is worth making telephone enquiries of the dedicated unit (03000 510191) if there are specific questions. If you would prefer such questions to be collated by ITC, I am very happy to submit more questions on a no-names basis.

Sean also has some reminders for ITC members about the process:

1. Is a subsidiary company essential? Some charities have the impression that they must set up a subsidiary company in order to make a claim and because they have not done so for current productions, they are precluded for making a claim this year. This is not the case. It is perfectly possible for a charitable theatre company to make a claim this year and it will probably be able to claim the same amount of TTR as if it had used a subsidiary company.
2. How many subsidiary companies? Companies run for profit who may take in investors for productions will be working in a way that most closely mirrors how the Film Tax Relief works (which is the basis on which TTR is drafted) and as a result should be the easiest to run. Generally speaking I would expect members to set up a subsidiary company for each production – this will work well for investors who want transparency in accounting for that production. The production company is funded by investors and contracts all elements of the show. It is clearly the production company for TTR purposes and will be the entity making the corporation tax return and receiving the Theatre Tax Credit. Some shows have already received the TTR payment from HMRC. This is because the financial year end can often be altered to end on the first day of public performance and therefore to enable a claim for the majority of the qualifying expenditure of the production at the earliest point and without waiting for the production to close. The key consideration is that the subsidiary company needs to be in place before the commencement of the production. HMRC will not define when the production phase commences but is clear that come what may it is considered to have commenced no later than the commencement of rehearsals. In this first year of operation of TTR this is important for two particular reasons – first, the subsidiary must be in place and in charge of the production by commencement of rehearsals (at the latest) and in order to qualify rehearsals need to have started no earlier than 1 September 2014 – the date when TTR came into effect.
3. Charities and subsidiary companies: A claim for TTR is dependent on a company submitting a corporation tax return. Only limited companies pay corporation tax. Whilst charitable companies do not as a rule pay corporation tax they are eligible to pay it and therefore eligible for TTR. A theatre company that is a charity and produces work will in principle be the production company for the purposes of TTR as it is in control and directs all aspects of the production. There have been some perceived disadvantages of a charity making a claim rather than using a subsidiary. HMRC has appeared to encourage charities to make claims through subsidiaries partly because this is closer to what they are used to with films but also because the accounting is likely to be easier. HMRC accept that when using a subsidiary all income from the show need not go through the subsidiary and so this helps ensure that in TTR terms the subsidiary will make a loss and therefore be eligible to claim the tax credit (which is a payment from HMRC like a rebate) rather than apply any amount by way of reducing corporation tax otherwise due. I would, though, advise subsidised companies to use one subsidiary rather than to set up one per production. This will not only avoid being overloaded with the administration of several companies but also mean that you can aggregate the theatrical trades across a year. This means that one incredibly financially successful show will be set off against other loss-making shows. Also do note that expenditure can include recharges of staff time working on the production. Each show is different and so each member's calculations will differ but most members are unlikely to have production years that are 'profitable' when the TTR calculation is done.
4. Grant income and TTR: HMRC have confirmed that grants that are not connected to productions will not be treated as income for the purposes – so this will apply to NPO and other funding.
