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Theatre Tax Relief: An introduction

The Theatre Tax Relief, part of the Finance Act 2014 ("the Act"), came into effect on Monday, 1 September 2014. It is hoped that it will boost the live performing arts economy in the way that a similar tax relief has already helped the film industry. We are still waiting for full detail of how the Act will work. This will be set out in Her Majesty's Revenue & Customs ("HMRC") Regulations, which are still being drafted. Whilst the legislation has now been implemented it will not affect production companies directly until the end of the tax year, by which time the details should be clearer.

Which tax?

The first thing to note is that the relevant tax is corporation tax, a tax registered companies pay on their profits at the year end. Whilst many ITC members do not pay this tax (either because they do not make any profit or because they are charities only doing primary purpose trading) the fact that they qualify for Corporation Tax means that they are eligible. The tax credit is a stand-alone payment, it does not have to be offset against tax due or paid.

Who gets the tax break?

To qualify the company must be a "production company" carrying on a "separate trade relating to the theatrical production". Only one company can be the "production company" for the purposes of claiming this tax credit, co-producers will need to consider which company is most directly engaged in the activities listed below and that will be the "production company".

A production company

A production company:

- is responsible for producing, running and closing the theatrical production,
- is actively engaged in decision-making during the production, running and closing phases,
- makes an effective creative, technical and artistic contribution to the production, and
- directly negotiates for, contracts for and pays for rights, goods and services in relation to the production.

A separate trade

A separate trade is defined in the Act as when the company's activities in relation to the theatrical production are treated for corporation tax purposes as a trade separate from any other activities of the company (including activities in relation to any other theatrical production). The company is treated as beginning to carry on the separate trade when the production phase begins or, if earlier, at the time of the first receipt by the company of any income from the theatrical production.

A theatrical production

A theatrical production is defined in the Act defines as a dramatic production (this can include circus) or a ballet (and any ballet is therefore a theatrical production, whether or not it is also a dramatic production).

A "dramatic production" means a production of a play, opera, musical, or other dramatic piece (whether or not involving improvisation) in relation to which the following conditions are met:

- the actors, singers, dancers or other performers are to give their performances wholly or mainly through the playing of roles,
- each performance in the proposed run of performances is to be live, and
- the presentation of live performances is the main object, or one of the main objects, of the company's activities in relation to the production.

A dramatic production or ballet is not regarded as a theatrical production if:

- the main purpose, or one of the main purposes, for which it is made is to advertise or promote any goods or services,
- the performances are to consist of or include a competition or contest,
- a wild animal performs or is shown in any performance,
- the production is of a sexual nature (i.e: the performances include any content the nature of which is such that, ignoring financial gain, it would be reasonable to assume the content to be included solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- the making of a relevant recording is the main object, or one of the main objects, of the company's activities in relation to the production. "Relevant recording" means a recording of a performance— (a) as a film (or part of a film) for exhibition to the paying general public at the commercial cinema, or (b) for broadcast (including tv, radio or the internet)to the general public.

What further qualifications are there?

Commercial Purpose Condition

The commercial purpose condition is intended to ensure that only professional theatrical productions qualify for relief. A commercial purpose is defined as an intention by the company, at the beginning of the production phase, that all, or a high proportion of, the live performances it proposes to present will be to paying members of the general public, or provided for educational purposes.

EEA Expenditure Condition

The EEA expenditure condition is that at least 25% of the core expenditure on the theatrical production incurred by the company is expenditure on goods or services that are provided from within the European Economic Area.

Core expenditure

Core expenditure means expenditure on the activities involved in (a) producing the production, and (b) closing the production, it does not include matters not directly involved in producing the production e.g: financing, marketing, legal services or storage; or expenditure on the ordinary running of the production; but could cover instances such as a substantial recasting or a redesign of the set during the run.

Qualifying Expenditure

Qualifying expenditure this is the same as the "core expenditure" referred to above i.e it does not include matters not directly involved in producing the production e.g: financing, marketing, legal services or storage; or expenditure on the ordinary running of the production; but could cover instances such as a substantial recasting or a redesign of the set during the run.

Surrenderable Loss

Theatre tax credit is claimable if company has surrenderable loss the Act provides substantial detail on how to calculate this. For touring productions 25% of the amount of the loss surrendered can be claimed and 20% for other productions. Touring productions are where a company will present performances of the production in 6 or more separate premises or in at least two separate premises with a minimum of 14 performances.

The tax credit is made either as an additional corporation tax deduction or as a payable tax credit.

The technical bits

How to calculate profits or losses of separate theatrical trade

(1) For the first period of account during which the separate theatrical trade is carried on, the following are brought into account:

- as a debit, the costs of the theatrical production incurred (and represented in work done) to date;
- as a credit, the proportion of the estimated total income from the production treated as earned (i.e: do not include grant income) at the end of that period.

(2) For subsequent periods of account the following are brought into account:

- as a debit, the difference between the amount ("C") of the costs of the theatrical production incurred (and represented in work

done) to date and the amount corresponding to C for the previous period, and
- as a credit, the difference between the proportion (“PI”) of the estimated total income from the production treated as earned at the end of that period and the amount corresponding to PI for the previous period.

(3) The proportion of the estimated total income treated as earned at the end of a period of account is: C/T x I

where:

- C is the total to date of costs incurred (and represented in work done);
- T is the estimated total cost of the theatrical production;
- I is the estimated total income from the theatrical production.

(4) Income from the production includes:
- receipts from the sale of tickets or of rights in the theatrical production;
- royalties or other payments for use of aspects of the theatrical production (for example, characters or music);
- payments for rights to produce merchandise;
- receipts by the company by way of a profit share agreement.

(5) A payment in respect of a theatre tax credit is not income of the company for any tax purpose.

(6) The company’s surrenderable loss in the accounting period is:

- the company’s available loss for the period in the separate theatrical trade or
- if less, the available qualifying expenditure for the period.

(7) The company’s available loss for an accounting period is L + RUL where—

- L is the amount of the company’s loss for the period in the separate theatrical trade, and
- RUL is the amount of any relevant unused loss of the company

NB: Each production should have a schedule of management accounts as separate trades, using a job code for each production will make it easier to fill in the claim form.

If you want to read the legislation in full it can be found at:
http://www.legislation.gov.uk/ukpga/2014/26/schedule/4/enacted (http://www.legislation.gov.uk/ukpga/2014/26/schedule/4/enacted)