Theatre Tax Relief: Frequently Asked Questions

This guidance is based on our knowledge of tax law, VAT law and company law at the time of writing, we are still waiting for HMRC's formal guidance on how Theatre Tax Relief will work. Please share your queries and experiences with us so that we continue to build on this knowledge base to help ITC members.

We're not a registered company, can we claim Theatre Tax Relief?

No, your organisation must be eligible for Corporation Tax to qualify for Theatre Tax Relief ("TTR"), even though you may never pay it. Corporation Tax is only paid by registered limited companies.

We're a charitable company, can we claim TTR?

TTR, despite its name, is a stand-alone payment that does not have to be offset against tax due or paid. This means that even if you never pay Corporation Tax, because you make no profit or because you are a charity that only does primary purpose trading, you can still qualify for TTR.

Do we need to set up a separate company to claim TTR?

- The legislation refers to a "separate trade relating to the theatrical production" but it is important to note that this does not mean that you need to set up a separate company to claim TTR.
- Many organisations may, nonetheless, find it useful to set up a "Special Purpose Vehicle" ("SPV") company to handle the "core expenditure" for productions i.e: the expenditure on activities involved in producing and closing the production, but not running costs.
- Working through an SPV may be beneficial just because HMRC is used to working in this way with other creative industry tax reliefs where SPVs are standard.
- An SPV can also make calculating a TTR claim easier. An SPV that only handles core expenditure is almost always going to show a loss at the end of each project, this loss is the starting point for calculation of the "surrenderable loss" on which the tax credit will be calculated. Where productions are budgeted to make a loss though, there won't be this need for a separate company to identify the loss. Subsidised companies whose production income only consists of grants and donations will effectively be making a loss in the context of TTR so, again, there may be no corporation tax advantage for them in using an SPV.
- If you do chose to go down this route one SPV should be sufficient. You should not need to set up new companies for every production but accounts should be kept on a production by production basis.

How does an SPV work?

Board membership & conflicts of interest:

- It is a good idea to link the parent company and the SPV by having some Directors in common but identical membership of both Boards could mean conflicts of interest that hinder decision making so this should be avoided, whether the parent company is a charity or not.
- Charities, additionally, will have to bear in mind that their Articles of Association will usually state that "employment or remuneration of a Director includes the engagement or remuneration of any firm or company in which the Director is a director or a shareholder" so each decision by the parent company to commission the SPV to work on productions should always be discussed and minuted.
- The parent company itself can be a corporate Director of the SPV (and will be represented by one of its Board members) but

there must also be at least one live Director.

How does a charitable company fund its SPV?

The simplest relationship is for the parent company to commission services from the SPV. This gets round the fact that there are many restrictions on charities making donations, loans or investments. The SPV should invoice the charity for a production services fee that equals the production costs of the SPV (so that a profit is not created). This can be done in instalments. An initial instalment will enable the SPV to meet the criteria of being actively in control of the production process i.e. paying its bills as they arise. The charity should recharge the SPV for use of staff and facilities.

What happens to the TTR income?:

- If the parent company is a charity it is likely to be most tax efficient for the SPV to gift this money to the parent company as a covenant, no special paperwork is required to do this.
- If the tax credit is not itself treated as taxable income, it can be retained, which will effectively reduce the 'investment' of the charity in future productions.
- If the parent company is not a charity it is best if the SPV keeps the TTR for future production funding otherwise this money could be liable to Corporation Tax twice.

What about the VAT implications?

Some technical advice from ITC's Finance Manager Kevin Dunn:

- If the SPV charges the charity fees plus VAT this will enable full recovery of input VAT charged to the SPV. This is VAT neutral.
- However, within the charity (assuming cultural exemption of box office income) the SPV fees VAT is partially recovered as the income generated from this expenditure is exempt box office and standard rated recharges for staff and facilities. It may be advantageous to use a standard rate override method for production VAT recovery. There will also be the added bonus of increasing the overhead VAT recovery percentage from the inclusion in the partial exemption calculations of the additional standard rated recharge fees.
- Other things to consider are additional accounting/audit fees for the SPV. There would still be a VAT gain but this may be smaller and offset by additional costs

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