FILMS TAX RELIEF

Films Tax Relief ("FTR") is a tax relief available for film production companies.

The relief provides an enhanced tax deduction on expenditure for corporation tax relief and, potentially, a repayable tax credit. FTR is available to film production companies engaged in the making of:-

- A British film;
- That is intended for theatrical release; and
- Where at least 10% of the core expenditure is incurred on goods or services used or consumed in the UK.

What is a film?

For these purposes a film is '…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 image'. The definition is not limited to cinema films or, indeed, to films made using traditional film stock or video tape, and in particular includes productions made for television.

However, to qualify for FTR a film must be intended for theatrical release.

'Theatrical release' means exhibition to the paying public at the commercial cinema. It is intended that a significant proportion of the earnings from the film should be obtained by such exhibition. The phrase significant proportion is not statutorily defined; its level will depend on the facts in each case, but HMRC normally accept that 5% of total estimated income is a significant proportion in this context.

What is a British film?

Only films that have been certified as a British films are eligible FTR. To be certified it must pass the cultural test. The certification process is operated by the BFI. Further details can be found at http://www.bfi.org.uk/supporting-uk-film/british-certification-tax-relief/cultural-test-filmIn addition at least 10% of the total production costs must relate to activities in the UK.

Which companies qualify?

In order to qualify as a Film Production Company ("FPC") in relation to a film, a company must be responsible for the:-

- Principal photography;
- Post production and;
- Delivery of the film on completion;
- Be actively engaged in production planning and decision-making during the pre-production, principal photography and post production stages of the film; and
- Directly negotiate, contract and pay for rights, goods and services relating to the film.

Whilst an FPC might also have responsibility for the development, marketing and distribution of the film, there is no requirement that it does so. The rules are slightly different in the case of co-productions.

An FPC need not be directly responsible for every aspect of every one of these activities, nor is a third party prevented from undertaking some of these activities on behalf of an FPC. It is standard industry practice to commission third parties to deliver specific elements of film production such as set construction, special effects or location work.

Where there is the case, a company will not be prevented from being treated as the FPC for tax purposes. However, an FPC must have some involvement in each of these categories; it cannot simply commission the entire production of the film from someone else without having any active engagement itself.

Core expenditure

Qualifying expenditure must be "core expenditure" in relation to the film. This is limited to expenditure on:-

- Pre-production;
- Principal photography; and
- Post production.

Core expenditure excludes any expenditure incurred on development, distribution or other nonproduction activities.

Non-qualifying development expenditure is essentially speculative. It relates to those activities undertaken with the aim of determining whether the film is a commercially feasible project. Qualifying pre-production expenditure, in contrast, is not speculative. It is incurred on those activities undertaken in the knowledge that a decision has been taken for the film to go ahead. .

Calculation of relief

A claim is made under corporation tax self-assessment. A FPC can claim FTR on its enhanceable expenditure which is the lower of:-

- 80% of total core expenditure; and
- The actual core expenditure incurred in the UK.

The amount of FTR repayable in respect of the surrenderable loss for any accounting period is 25% of the lower of:-

- The amount the company's available loss for the accounting period; and
- The enhanceable expenditure for that period.

Example	£
Income in year	-
Qualifying costs (all in UK)	(100,000)
Other costs	(50,000)
Loss	(150,000)
Enhanced expenditure (80% uplift)	180,000
Revised tax loss	(230,000)
Amount available for tax credit surrender lower of:	
Enhanced expenditure (80% uplift)	180,000
Tax loss	230,000
Loss in year	(230,000)
Surrendered for tax credit	180,000
Loss carried forward	(50,000)
Tax credit receivable (25%)	45,000

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