

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 36 and Schedule 4: Tax Relief for Theatrical Production

Summary

1. Section 36 and Schedule 4 introduce a relief from Corporation Tax for theatrical productions.

Details of the Schedule

2. Schedule 4 introduces a new relief for theatrical productions, and provides for the consequential amendments to other parts of the Taxes Acts and for the commencement of the new relief.
3. Part 1 of the schedule introduces amendments to the Corporation Taxes Act (CTA) 2009, Part 2 introduces the consequential amendments to other parts of the Taxes Acts, and Part 3 contains the commencement provisions.

Part 1: Introduction

4. New section 1217F sets out the scope and an overview of the legislation.
5. New section 1217FA defines what is meant by a “theatrical production”, “dramatic production”, “dramatic piece”, and “live”.
 - Plays, opera, musicals or other dramatic pieces are theatrical productions if the playing of roles is the whole or major part of what is done by persons performing and, each performance is live to an audience before whom the performers are actually present.
 - A ‘dramatic piece’ may include a show performed by a circus. For example, where the performance is scripted, the performers play roles as opposed to something like a pure high-wire trapeze performance which is generally regarded as more of an indoor sport.
 - Any ballet is a theatrical performance, whether or not there is also a dramatic production. This allows for contemporary ballet productions where there may not be a dramatic narrative but the production incorporates elements of classical ballet and classical ballet technique.
6. New section 1217FB(1) sets out what productions are not to be regarded as a theatrical production.

These include:

- Advertisements.
- Competitions and contests.

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- Productions of a sexual nature.
 - Where the making of a recording or broadcasting is the main object in relation to the production.
 - Productions containing ‘wild animals’.
7. New section 1217FB(3) provides for what is to be regarded as a production of a sexual nature.
 8. New section 1217B(4) defines what a relevant recording is.
 9. New section 1217B(5) defines “broadcast”, “film” and “wild animal”.
 10. New section 1217FC(1) sets out the general rule that governs whether a company is a theatrical production company in relation to a theatrical production. The company must be responsible for: producing, running and closing the theatrical production as well as making an effective creative, technical and artistic contribution to the production. The company must be actively engaged in planning and decision taking during those stages of a production; and it must directly negotiate, contract and pay for rights, goods and services.
 11. New section 1217FC(2) provides that there can be only one production company in relation to a theatrical production. Partnerships are therefore not eligible.
 12. New section 1217FC(3) recognises that there may be more than one company meeting the conditions of 1217FC(1) and provides that where this is the case, the company most directly engaged in the activities referred to in 1217FC(1) is the theatre production company in relation to the theatrical production.
 13. New section 1217FC(4) makes it clear that it is possible that there may be no theatrical production company in relation to the production.
 14. New section 1217G provides for how a company qualifies for relief. A company must be the production company, satisfy a commercial purpose condition and a minimum EEA expenditure condition.
 15. New section 1217GA sets out the commercial purpose condition. At the beginning of the production phase the company must intend that the performances will be to paying members of the general public so events held in private will not be eligible unless those attending are charged for the entertainment (and there is a view to making a profit). Performances for educational purposes do not have to be before the general paying public. This allows, for example a charitable theatrical production company, whose main charitable aim is educational to present to schools. Where a performance is for educational purposes the company must not be associated with those who may benefit from the performance or be connected with the beneficiaries (an example is by being their employer).
 16. New section 1217GB sets out the minimum European Economic Area spend required by the production company to qualify for the relief. At least 25% of the core expenditure (see 1217GC) must be on goods or services that are provided from within the EEA. For example if costumes are commissioned and paid for in the UK that expenditure may be eligible.
 17. New section 1217GC provides that core expenditure means expenditure on the activities directly involved in producing the production, such as the costs of costumes, closing the production, and the final striking of the set. Core expenditure will not include indirect expenditure such as marketing the production, financing, associated finance costs, legal fees, accountancy fees or storage of sets. Ordinary running costs incurred on or after the date of the first performance of the production to the paying general public (for example ongoing salary costs) will only qualify as core expenditure in the

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‘running phase’ of a production if incurred in connection with a substantial recasting or a substantial redesign of the set. Development expenditure that precedes production will not be eligible if the production does not get ‘green lit’ (see also new section 1217IE). The intention is to separate speculative expenditure from expenditure undertaken in the knowledge that the decision has been taken to go ahead with the production.

18. New section 1217H sets out how a company may claim for the additional deduction. A company that makes a claim for relief must treat each qualifying theatrical production as a separate trade. A 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.
19. New section 1217I provides an introduction to new sections 1217IA and 1217IF.
20. New section 1217IA sets out how the profits and losses of the separate theatrical trade are calculated for the first period of account and any subsequent periods.
21. New section 1217IB sets out what is income for the purposes of the calculation of the profits or losses of the separate theatrical trade. Income includes: receipts from the sale of tickets or of rights in the theatrical production, royalties or other payments for use of other aspects of the production such as characters or music, rights for merchandise and receipts by the company by way of any profit share agreements.
22. New section 1217IC sets out that for the purpose of the calculation of the profits or losses of the separate theatrical trade, costs incurred by the company will be those direct costs in developing, producing, running and closing the production. Capital expenditure is treated as being of a revenue nature where it is on the creation of the production.
23. New section 1217ID sets out the rules of when costs are taken to have been incurred for the purposes of the relief. For example that costs are incurred when they are represented in the state of completion of the work in progress or do not include any amount that has not been paid unless it is the subject of an unconditional obligation to pay. Costs which remain unpaid by four months after the end of a period of account are ignored for that period.
24. New section 1217IE outlines the circumstances in which pre-trading expenditure, including expenditure on developing the production before it was ‘green-lit’, may be treated as expenditure of the separate theatrical trade.
25. New section 1217IF provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must take into account all relevant circumstances.
26. New section 1217J provides that a company may claim an additional deduction based on its qualifying expenditure. For the first period of account in which the separate theatrical trade is carried on, the additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure, or 80 per cent of the total amount of qualifying expenditure. For subsequent periods of account, the amount of additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure or 80 per cent of the total amount of qualifying expenditure minus any additional deductions given for previous periods.
27. New section 1217JA defines “qualifying expenditure” and also provides that where relief has been given for R&D tax credits on the same expenditure under the SME R&D scheme then relief is not available for theatrical relief. Nor is relief available if a company is entitled to relief under Chapter 6A of Part 3.
28. New section 1217K provides that where a theatrical production company has a surrenderable loss then that company may claim a tax credit for the period. The whole or part of the loss may be surrendered.

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29. New subsection 1217K(4) sets out the two rates for theatre tax relief. For touring productions it is 25% and 20% for other non-touring productions.
30. New subsection 1217K(6) defines what a 'touring production' is. At the beginning of the production stage a company must intend that it either will present performances in 6 or more separate premises or, it will present performances of the production in at least two separate premises and that the number of the performances must be more than 14.
31. New section 1217KA defines a surrenderable loss and a relevant unused loss, and sets out how the available loss and any loss carried forward are to be calculated. The surrenderable loss is the lesser of the trading loss and the available qualifying expenditure.
32. New section 1217KB provides that where a company is entitled to a theatre tax credit for a period, and it claims that credit, the Commissioners for Her Majesty's Revenue and Customs will pay the credit to the company.
33. New section 1217KC sets out that for State aid purposes the total amount of any theatre tax credits for each undertaking must not exceed 50 million euros per year. "Undertaking" must be interpreted within the context of the General Block Exemption Regulation.
34. New section 1217LA sets out that a company does not qualify for relief where the main or one of the main purposes of the arrangements to claim the tax credit or otherwise benefit from the relief is to obtain a tax advantage.
35. New section 1217LB sets out that where a transaction is attributable to arrangements entered into otherwise for genuine commercial reasons to inflate the amount of a claim then that transaction is disregarded when computing the additional deduction.
36. New section 1217M sets out the application of the new section 1217MA to 1217MC.
37. New section 1217MA provides that losses made before the completion period of a separate trade are only available to be carried forward to be set against the profits of the separate theatrical trade.
38. New section 1217MB provides for how losses are to be treated in the completion period.
39. New section 1217MC provides for how terminal losses are to be treated and the circumstances in which terminal losses can be transferred.
40. New section 1217N sets out the conditions for claiming provisional relief, such as, a company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for the period, a statement of the planned amount of EEA expenditure and that amount of expenditure meets the condition in 1217GB
41. New section 1217NA allows for the clawback of provisional relief where it subsequently appears the EEA condition will not be met. It sets out what a company must do if it no longer qualifies for relief and also what to do when it ceases to carry on the theatrical trade.
42. New sections 1217O to OB concern the interpretation of various terms within the Schedule.

Part 2: Consequential Amendments

43. **Part 2** contains consequential amendments to the Taxes Act.
44. Paragraph 2 covers the necessary consequential amendments to ICTA 1988.
45. Paragraphs 3 to 6 cover the necessary consequential amendments to FA 1998.
46. Paragraphs 7 covers the necessary consequential amendments to CAA 2001.

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47. Paragraph 8 covers the necessary consequential amendments to FA 2007.
48. Paragraphs 9 to 13 cover the necessary consequential amendments to CTA 2009.
49. Paragraph 14 covers the consequential amendments to FA 2009.
50. Paragraph 15 covers the necessary consequential amendments to CTA 2010.

Part 3: Commencement

51. Paragraphs 16 and 17 set out that the commencement date of the new relief is for accounting periods beginning on or after 1 September 2014. Where a company has an accounting period starting before the 1 September 2014 and ending after that day i.e. it straddles the date of commencement, for the purposes of the relief there will be a deemed accounting period ending on 31 August 2014 and another commencing on 1 September 2014.

Background Note

52. The new tax relief for theatrical productions will allow qualifying companies engaged in the production of theatre to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.
53. Both the additional deduction and the payable credit are calculated on the basis of UK core expenditure up to a maximum of 80% of the total core expenditure by the qualifying company. The additional deduction is 100% of qualifying core expenditure and the payable tax credit is 25% of losses surrendered for touring productions and 20% for all other theatrical productions.
54. The credit is based on the company's qualifying expenditure on the production of a qualifying theatrical production of which at least 25% of the qualifying expenditure must be on goods or services that are provided for from within the European Economic Area.
55. The aim of this new relief is to encourage and support UK theatre producers to continue to develop, and to incentivise touring productions.
56. In March 2014 a Stage 2 consultation document: 'Theatre tax relief' was published giving more detail on the design proposals.