



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 15

#### FILM PRODUCTION

### CHAPTER 3

#### FILM TAX RELIEF

#### *Introductory*

#### **1195 Availability and overview of film tax relief**

- (1) This Chapter applies for corporation tax purposes to a company that is the film production company in relation to a film.
- (2) Relief under this Chapter (“film tax relief”) is available to the company if the conditions specified in the following sections are met in relation to the film—
  - (a) section 1196 (intended theatrical release),
  - (b) section 1197 (British film), and
  - (c) section 1198 (UK expenditure).
- (3) Film tax relief is given by way of—
  - (a) additional deductions (see sections 1199 and 1200), and
  - (b) film tax credits (see sections 1201 to 1203).
- (4) Sections 1204 to 1207 contain provision about unpaid costs, artificially inflated claims and confidentiality of information.
- (5) In this Chapter “the separate film trade” means the company's separate trade in relation to the film (see section 1188).

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- (6) See Schedule 18 to FA 1998 (in particular, Part 9D) for information about the procedure for making claims for film tax relief.

### *Conditions of relief*

#### **1196 Intended theatrical release**

- (1) The film must be intended for theatrical release.
- (2) For this purpose—
  - (a) “theatrical release” means exhibition to the paying public at the commercial cinema, and
  - (b) a film is not regarded as intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained by such exhibition.
- (3) Whether this condition is met is determined for each accounting period of the company during which film-making activities are carried on in relation to the film, in accordance with the following rules.
- (4) If at the end of an accounting period the film is intended for theatrical release, the condition is treated as having been met throughout that period (subject to subsection (5)(b)).
- (5) If at the end of an accounting period the film is not intended for theatrical release, the condition—
  - (a) is treated as having been not met throughout that period, and
  - (b) cannot be met in any subsequent accounting period.

This does not affect any entitlement of the company to relief in an earlier accounting period for which the condition was met.

#### **1197 British film**

The film must be certified by the Secretary of State as a British film under Schedule 1 to the Films Act 1985 (c. 21).

#### **1198 UK expenditure**

- (1) At least 25% of the core expenditure on the film incurred—
  - (a) in the case of a British film other than a qualifying co-production, by the company, and
  - (b) in the case of a qualifying co-production, by the co-producers,
 must be UK expenditure.
- (2) The Treasury may by regulations amend the percentage specified in subsection (1).

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### *Additional deductions*

#### **1199 Additional deduction for qualifying expenditure**

- (1) If film tax relief is available to the company, it may (on making a claim) make an additional deduction in respect of qualifying expenditure on the film.
- (2) The deduction is made in calculating the profit or loss of the separate film trade.
- (3) In this Chapter “qualifying expenditure” means core expenditure on the film that falls to be taken into account under Chapter 2 in calculating the profit or loss of the separate film trade for tax purposes.
- (4) The Treasury may by regulations—
  - (a) amend subsection (3), and
  - (b) provide that expenditure of a specified description is or is not to be regarded as qualifying expenditure.

#### **1200 Amount of additional deduction**

- (1) For the first period of account during which the separate film trade is carried on, the amount of the additional deduction is given by—

$$E \times R$$

where—

E is—

- (a) so much of the qualifying expenditure as is UK expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure, and

R is the rate of enhancement (see subsection (3)).

- (2) For any period of account after the first, the amount of the additional deduction is given by—

$$(E \times R) - P$$

where—

E is—

- (a) so much of the qualifying expenditure incurred to date as is UK expenditure,  
or
- (b) if less, 80% of the total amount of qualifying expenditure incurred to date,

R is the rate of enhancement (see subsection (3)), and

P is the total amount of the additional deductions given for previous periods.

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- (3) The rate of enhancement is—
- (a) for a limited-budget film, 100%, and
  - (b) for any other film, 80%.
- (4) The Treasury may by regulations amend the percentage specified in subsection (1) or (2).

### *Film tax credits*

#### **1201 Film tax credit claimable if company has surrenderable loss**

- (1) If film tax relief is available to the company, it may claim a film tax credit for an accounting period in which it has a surrenderable loss.
- (2) The company's surrenderable loss in any period is—
- (a) the company's loss for the period in the separate film trade, or
  - (b) if less, the available qualifying expenditure for the period.
- (3) For the first period of account during which the separate film trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1200(1).
- (4) For any period of account after the first, the available qualifying expenditure is given by—

$$E - S$$

where—

E is the amount that is E for that period for the purposes of section 1200(2), and

S is the total amount surrendered in previous periods under section 1202(1).

#### **1202 Surrendering of loss and amount of film tax credit**

- (1) The company may surrender the whole or part of its surrenderable loss in an accounting period.
- (2) If the company surrenders the whole or part of that loss, the amount of the film tax credit to which it is entitled for the accounting period is given by—

$$L \times R$$

where—

L is the amount of the loss surrendered, and

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R is the payable credit rate (see subsection (3)).

- (3) The payable credit rate is—
  - (a) for a limited-budget film, 25%, and
  - (b) for any other film, 20%.
- (4) The company's loss in the separate film trade for the accounting period is reduced by the amount surrendered.

### **1203 Payment in respect of film tax credit**

- (1) If the company—
  - (a) is entitled to a film tax credit for an accounting period, and
  - (b) makes a claim,the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) must pay to the company the amount of the credit.
- (2) An amount payable in respect of—
  - (a) a film tax credit, or
  - (b) interest on a film tax credit under section 826 of ICTA,may be applied in discharging any liability of the company to pay corporation tax.  
To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.
- (3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a film tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).  
In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.
- (4) No payment need be made in respect of a film tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period—
  - (a) under PAYE regulations,
  - (b) under section 966 of ITA 2007 (visiting performers), or
  - (c) in respect of Class 1 contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (5) A payment in respect of a film tax credit is not income of the company for any tax purpose.

### *Miscellaneous*

### **1204 No account to be taken of amount if unpaid**

- (1) In determining for the purposes of this Chapter the amount of costs incurred on a film at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.

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- (2) This is without prejudice to the operation of section 1192.

### **1205 Artificially inflated claims for additional deduction or film tax credit**

- (1) So far as a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be ignored in determining for any period—
- (a) any additional deduction which a company may make under this Chapter, and
  - (b) any film tax credit to be given to a company.
- (2) Arrangements are entered into wholly or mainly for a disqualifying purpose if their main object, or one of their main objects, is to enable a company to obtain—
- (a) an additional deduction under this Chapter to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or
  - (b) a film tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.
- (3) “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

### **1206 Confidentiality of information**

- (1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to the Secretary of State for the purposes of the Secretary of State's functions under Schedule 1 to the Films Act 1985 (c. 21) (certification of films as British films for the purposes of film tax relief).
- (2) Information so disclosed may be disclosed to the UK Film Council.
- (3) A person to whom information is disclosed under subsection (1) or (2) may not otherwise disclose it except—
- (a) for the purposes of the Secretary of State's functions under Schedule 1 to the Films Act 1985,
  - (b) if the disclosure is authorised by an enactment,
  - (c) in pursuance of an order of a court,
  - (d) for the purposes of a criminal investigation or legal proceedings (whether criminal or civil) connected with the operation of that Schedule or this Part,
  - (e) with the consent of the Commissioners for Her Majesty's Revenue and Customs, or
  - (f) with the consent of each person to whom the information relates.

### **1207 Wrongful disclosure**

- (1) A person (“X”) commits an offence if—
- (a) X discloses revenue and customs information relating to a person (as defined in section 19(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11)),
  - (b) the identity of the person to whom the information relates is specified in the disclosure or can be deduced from it, and
  - (c) the disclosure contravenes section 1206(3) above.

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- (2) If a person (“Y”) is charged with an offence under subsection (1), it is a defence for Y to prove that Y reasonably believed—
- (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (4) A prosecution for an offence under subsection (1) may be brought in England and Wales only—
- (a) by the Director of Revenue and Customs Prosecutions, or
  - (b) with the consent of the Director of Public Prosecutions.
- (5) A prosecution for an offence under subsection (1) may be brought in Northern Ireland only—
- (a) by the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (6) In the application of this section—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44), or
  - (b) in Northern Ireland,
- the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

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