A Guide to Film Tax Relief

The current Film Tax Relief (FTR) scheme was introduced in 2006 and applies to Film Production Companies (FPC) engaged in the making of:

- A British Film
- That is intended for theatrical release
- Where at least 10% of core expenditure relates to the UK

If the conditions are met then the FPC can claim an additional deduction in computing their taxable profits and, where this results in a loss, surrender that loss for a payable tax credit.

The claim is limited to the lower of 80% of the total core expenditure or the actual UK core expenditure.

For example if £100 is incurred on core expenditure in the UK in producing a limited-budget film, then the deduction for tax purposes could be £180 rather than £100. If this creates a loss then a payable tax credit equal to 25% of the enhanced expenditure being surrendered can be claimed rather than the enhanced deduction. Following the example given, the additional £80 of expenditure could be surrendered in return for £20.

All FPCs are subject to special rules for taxation, regardless of whether they are eligible to claim Film Tax Relief. These special rules treat each film as a separate trade and the treatment of the losses can be significantly different to those incurred by a normal trade. A FPC can elect to be subject to the normal basis of taxation.

Calculating Core Expenditure

The additional deduction is based on the amount of core expenditure, however, before calculating the additional deduction it is necessary to determine:

- the extent to which expenditure is core expenditure, and if it is,
- the extent to which it relates to services or goods ‘used or consumed in the UK’

Core expenditure is limited to costs incurred on:

- pre-production
- principal photography and
- post production

Core expenditure excludes any expenditure incurred on development, distribution or other non-production activities.

Specific activities do not always take place in a strictly sequential way, and a given item of expenditure may be attributable, in some degree, to several stages.

For example:

- the screenplay will normally be written during development. It may well continue to be reworked throughout the production, but regardless of this, it is normally used in development, pre-production (since the production is planned around it), principal photography (when the actual filming takes place) and post-production.
- a production designer might be engaged as part of development, pre-production or principal photography.
- an actor could be involved in re-recording dialogue during post-production as well as performing during principal photography and rehearsing during pre-production.

In each case it would be reasonable for the respective cost to be apportioned across the relevant stages of film-making.

The most crucial distinction is between development (which does not attract Film Tax Relief) and pre-production (which does).

What Constitutes UK Expenditure?

The amount of relief to which a film production company is entitled is determined by the amount of core expenditure which is also UK expenditure.

UK expenditure is defined as:

'…expenditure on goods and services which are used or consumed in the United Kingdom.'

The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies as UK expenditure. The 'used or consumed' test does not focus on the supplier of goods and services but instead concentrates on the recipient or customer as the means of determining UK expenditure.

In order to determine whether an item of expenditure incurred in relation to a film should be treated as UK expenditure, it is necessary to establish:

- the nature of the specific goods or services in question; and
- the place where the recipient uses or consumes those goods and services

What Expenditure is Ineligible for Film Tax Relief?

To qualify for Film Tax Relief, core expenditure must be of a kind that would be taken into account in calculating the profit/loss of the film production company's separate trade. It is not possible to give a comprehensive list of non-qualifying expenditure, but the following items are expenses typically incurred by a FPC which would not qualify for relief:

- Completion bond and other forms of insurance (insurance more directly concerned with the film-making activity itself, may qualify)
- Development costs
- Entertaining
- Publicity and promotion
- Audit fees
- Bank interest and charges (see below)

While interest itself is regarded as part of the costs of financing a film, and therefore not incurred on film-making activities, charges incurred by banks for facilities that are needed by the FPC to engage in film-making activities (e.g. charges associated with the maintenance of a current account from which suppliers, cast and crew can be paid) are part of the costs of film-making.

Summary

The above is a basic guide to the expenditure which may qualify for FTR and is based on HMRC guidance available at the time of writing (December 2016). It is important to seek professional advice before acting.

For further details and comprehensive guidance on any of the subjects mentioned above please email James Hargreaves jhargreaves@streetsweb.co.uk