Creative Industry Tax Relief

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SOLUTIONS

Creative Tax Relief Explained

What are Creative Tax Reliefs?

Creative Tax Reliefs is a blanket term used to describe:

- ✓ Film Tax Relief
- ✓ High End TV Tax Relief
- ✓ Children’s TV Tax Relief
- ✓ Animation Tax Relief
- ✓ Video Games Tax Relief
- ✓ Orchestra Tax Relief
- ✓ Theatre Tax Relief
- ✓ Museums and Galleries Tax Relief

For companies that meet the qualifying requirements, the creative industry tax reliefs are a blanket term for 8 Corporation Tax reliefs. Each relief is designed to assist companies producing different types of creative content in the UK.

How they function is through increasing a company’s allowable expenditure – should you make a loss, you may have the option to surrender the loss and convert the loss into a payable tax credit.

Who can apply?

The eight individual reliefs have specific qualifications tailored to specific industries or creative formats. They do have a shared base level of requirements your company must meet to be eligible to claim these tax reliefs for creative industries.

These requirements are that your company must be liable to Corporation Tax and must also be directly responsible for the development and production of any of the following creative products.

- ➢ Films
- ➢ High-end television and children’s television programmes
- ➢ Animated television programmes
- ➢ Video games
- ➢ Orchestral performances
- ➢ Theatrical productions
- ➢ Museum and gallery exhibitions

The specifics of what you can benefit from each tax relief and what makes an individual production or company eligible or ineligible for relief will be summarised in the rest of the booklet.

If your company claims one of these creative industry tax reliefs, you will be subject to special tax rules as a result. Below is a list of the types of company that these rules could apply to:

- Production companies producing limited-budget films
- Production companies producing television programmes that fall into categories of: children's TV, animated programmes, and high-end television.
- Museums or art galleries hosting an eligible exhibition
- Theatre production companies, both touring and non-touring
- Touring or performing orchestras
- Video game studios, developers, or testers

Do I need BFI certification?

These tax reliefs are designed to be incentives for productions that originate from, or are made primarily in the UK. There exists a cultural test to certify them as being British in origin and thus eligible for the reliefs.

The British Film Institute, working with the government (specifically the Department for Digital, Culture, Media and Sport), issues certification for

- ✓ Films,
- ✓ TV programmes,
- ✓ Video games and
- ✓ Animated material.

Works in progress can receive a temporary certification which is re-evaluated and potentially re-issued upon the completion of production.

A production must meet the BFI's criteria – which measures the piece's cultural merit on whether it contributes (whether significant or minuscule) to the culture of the UK at large, the involvement of artists/practitioners and judgement on the production's content.

The BFI scores submissions based on content, contribution, hubs and practitioners. Each relief has its own conditions to meet but broadly if the following points are obtained then the production should obtain BFI Certification.

- ✓ Film Tax Relief - 18 of a possible 35
- ✓ Animation Tax Relief - 16 of a possible 31
- ✓ Children's TV Tax Relief - 18 of a possible 35
- ✓ High End TV Tax Relief - 18 of a possible 35
- ✓ Video Games Tax Relief - 16 of a possible 31

Within the creative tax relief remit there are some notable exemptions to the cultural test – theatre productions, orchestra performances/concerts and museum/gallery exhibitions can all bypass the process of cultural testing.

Is the relief State Aid?

The creative tax reliefs are a form of State Aid. Where restrictions apply to the amount of State Aid a company can obtain during the year, the relief achieved as a result of Creative Tax Relief claim will also be considered.

What can and can't be included in the claim?

It is important to note that these tax reliefs are aimed at and tailored towards companies directly involved in the production of work.

Only costs that are directly connected to the production process of a piece of work itself may be included in claims – each tax relief has differences on the intricacies of this, but all of them share this as an underlying rule.

In most cases the relief applies only to the pre-production stages, that is the costs incurred prior to the first performance, or display of the final product. Consequently, costs incurred such as ongoing marketing cannot be included.

The Benefit of Creative Tax Relief

What makes these reliefs beneficial to you as a business owner?

The reliefs can help you to re-coup some of the costs invariably involved in producing creative content on a professional level.

A benefit can be obtained regardless of if the company is profitable or loss making.

With broadly the same calculation of potential benefit across the creative tax relief spectrum.

It is necessary to identify several cost categories:

- ✓ UK/EEA Core expenditure
- ✓ Total Core expenditure
- ✓ Qualifying expenditure

The rates of both enhancement and any payable tax credit are determined by the level of total core expenditure incurred.

Typically, a company utilising one of these tax reliefs will receive around 15-20% cash back on money spent on UK core production; a film produced within the guidelines that spends £400,000 on UK core production will see the company receive between £60,000 to £80,000.

Calculating the relief

In order to calculate your payable tax credit or enhanced deduction, it is important to be aware of what costs fall into the categories of either core or qualifying expenditure.

Core expenditure: this is defined as being the total of all costs that are directly incurred from producing work. For example, for a film this would comprise the costs of hiring cast and crew, renting or buying equipment, buying props, hiring out locations etc.

Qualifying expenditure: this is defined as referring to the costs of goods and services. An important qualifier to note is that for the Film, High-End TV, Children's TV and Animation tax reliefs, these costs must have been incurred in the UK, whereas for the remaining tax credits - Museum and Gallery Exhibition, Video Game, Theatrical and Orchestral – this geographical limit is expanded to the European Economic Area (EEA).

How much your company can claim in relief depends on the core expenditure of the production.

How and when to claim

Any claims for relief under one of the eight tax reliefs detailed in this guide are claimed on your Company Tax Return, and you will have a maximum of two years after the conclusion of the expenditure's accounting period in which to make your claim.

If you miss the deadline HMRC are unlikely to be lenient with claims.

If your production or your company is subject to the cultural test, it is essential that you have received the certificate before any claims can be made.

Claims can be made whilst your unfinished production holds a temporary BFI certification, however this application process must be completed upon finishing the production or you may be liable to repay relief to HMRC.

Explanations of each relief

Film Tax Relief

Aimed at film production companies operating in the United Kingdom, the [Film Tax Relief](#) allows the production company to claim back on average 20% of qualifying expenditure. For film production, what counts as qualifying expenditure typically refers to the costs of the following stages:

- ✓ Pre-production: the development stage of a film
- ✓ Principal photography: shooting footage on set or location with full cast and crew
- ✓ Post-production: the stage where the film undergoes editing, colour-grading, sound-mixing and adding visual effects.

Through the lens of tax law, HMRC defines a film as being '...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'.

This definition applies to a wide range of different types of film, beyond the most obvious cinematic feature-length text, and includes documentary feature-lengths as well as series of short films that are comprised of less than 26 individual shorts and have a total combined running time of under 26 hours.

HMRC's definition of 'film' also does not limit the term to the traditional literal definition of images recorded on 8mm/16mm/35mm film stock and is more centred on the notion of a 'film' referring to a mode of media as opposed to a technical format.

An important requirement that must be met for the FTR is that the film must be produced for theatrical release – that is, it will be shown in commercial cinemas whether the film is given a limited or wide release, or must be produced for television broadcasting.

Children's Television Tax Relief

With the expansion of legislation in 2015 (the Finance Act 2015), Children's Television Tax Relief enables producers of children's television may now also take advantage of similar tax reliefs to producers of high-end television and of animated programming, so long as certain criteria are met.

HMRC considers a programme to fall under the moniker of 'children's television' if its core audience demographic is under 15 – or, at the very least, that this is the intent of the production company and broadcaster.

Broadly, content and format are largely without restriction. However, any children's television programming that is either formatted as a game/quiz show or contains a key element of competition is only eligible if the cash amount or value of goods presented as prizes comes under £1000.

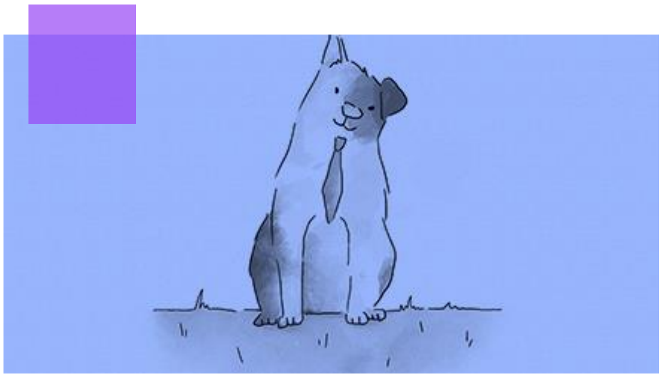
High-end Television Tax Relief

High-end television (often referred to as 'prestige television') is a term used by HMRC to refer to series that have a production budget in excess of £1 million per hour of material/or per episode, and also have an episode duration of over 30 minutes.

To be eligible to claim High End TV Tax Relief, a high-end TV production must fall into either the genre categories of drama, comedy or documentary and must also pass the BFI's cultural test.

Animation Tax Relief

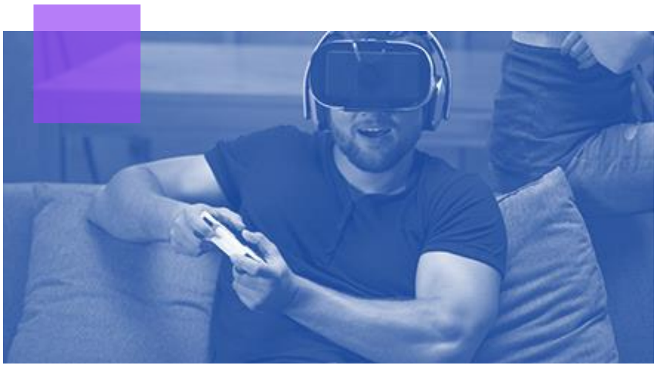
In order for an animated television programme to be eligible for Animation Tax Relief, a minimum of 51% of core expenditure must go on the actual animation itself – whether this is paying artists, software or specialised hardware such as computer equipment. As well as this, the programme must be produced for broadcast and must also pass the BFI cultural test.



There are caveats to what programmes are eligible for ATR. The characteristics that disqualify a programme can be found in the list below:

- ✓ News and current affairs programmes
- ✓ Promotional programming/advertisements
- ✓ Quiz and game shows
- ✓ Programmes consisting of a competitive / contest element
- ✓ Live events
- ✓ Programmes produced as training material
- ✓ Panel shows
- ✓ Variety shows

Video Games Tax Relief



As previously mentioned, a video game must receive certification from the BFI in order to be eligible for Video Games Tax Relief. There are no limitations on technical specifications for games such as platform (PC, console, mobile etc.) or format (digital download, mobile application or disk).

For your company to benefit from this tax relief, it must play a substantial role in the development, production and/or testing of video games. If your company qualifies, you will be able to claim on UK expenditure for the costs incurred during these processes.

However, there are two major limitations on content that will disqualify a product from the relief and that is whether the game is promotional in nature or is produced as an advertisement, and if the game could be legally classed as gambling under the Gambling Act 2005.

Museums and Galleries Exhibition Tax Relief

Museums and galleries can benefit from a specialised tax relief, however there are certain caveats and conditions that must be met.

Most importantly, this relief is not available to businesses that run galleries or museum exhibitions for profit or for commercial purposes such as art trading. Unfortunately, private or closed exhibitions are ineligible – they must be open to the general public in order to qualify.

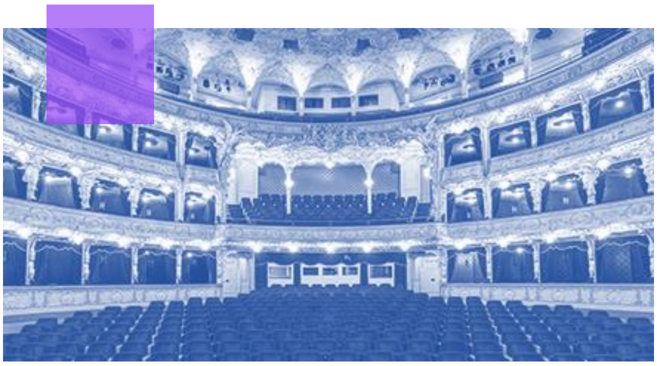
If they are managed or work with local authorities and charitable organisations (or any such off-shoot such as subsidiaries or trading subsidiaries) that are registered on the Charities Commission or are regulated by a comparable body, they may also be eligible for the Museums and Galleries Tax Relief.

There are also caveats concerning what can be claimed under the MGETR. Specifically, the relief does not cover the day-to-day operational costs of a museum, art gallery or similar such organisation but instead is targeted towards non-permanent or touring exhibitions. Incidentally, touring exhibitions may only claim a maximum repayable credit of £80,000, whilst non-touring exhibitions may claim £100,000 – however, touring exhibitions may in fact claim a higher rate of tax relief over non-touring.

For HMRC, it is important that an organisation wishing to benefit from the relief must fulfil operational criteria related to their involvement with the exhibition as listed below:

- ✓ Maintenance of an exhibition site – such as a museum, art gallery, garden containing sculptures.
- ✓ Maintenance of a library
- ✓ Direct contribution with an aspect of the exhibition whether technical or creative
- ✓ Involvement in the management of the exhibition
- ✓ Direct involvement in the contracting of artworks and the payment of goods and services related to the exhibition
- ✓ Having a leading role in the production of the exhibition

Theatre Tax Relief



The broad term of 'theatre' in the context of tax relief includes: companies producing live performances such as plays, musical theatre, dances such as ballets and other forms of dramatic performance – this may include performance art depending on the specific nature of the piece. Theatre Tax Relief can be utilised on eligible productions to help companies reclaim costs incurred over the course of a production, however HMRC regards this production process to have four key parts which will be explained in more detail below as this can affect what costs you can claim relief for.

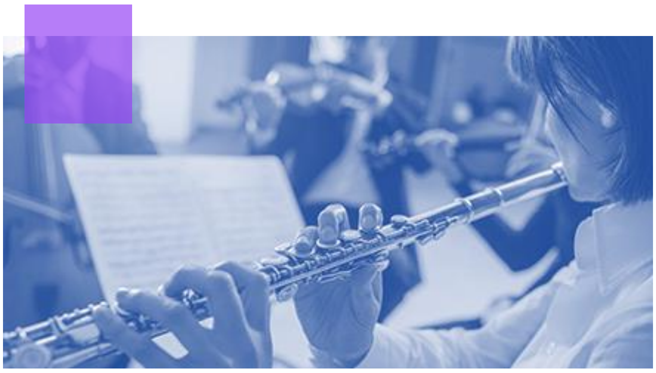
The breakdown of the four key stages of a theatrical production, and the costs involved with each, is as follows:

- ✓ Development: the commissioning of a play, script-writing, etc.
- ✓ Production: casting actors, rehearsing, planning technical set-ups, set design, acquisition of props and costumes.
- ✓ Running: the actual performance(s) in the venue to a live audience.
- ✓ Closing: the process of deconstructing the set and resetting the performance space and seating area.

As the most cost-intensive stages of a theatrical production, costs incurred in the stages of production and closing are eligible for an enhanced deduction over the others. There is also the potential to retroactively reclassify costs incurred in development as falling under the production phase. However, what is not eligible to be covered by TTR is any costs relating to legal issues (venue insurance, risk insurance), marketing (posters, web content, social media), financing, and the storage of goods and equipment.

Similar to the Museum and Gallery Exhibition Tax Relief, touring theatre productions are eligible for an increased rate of relief over non-touring productions due to the increased costliness. Additionally, as TTR is available for the entire financial year, a production company may claim back costs for multiple productions if they are all performed in said financial year.

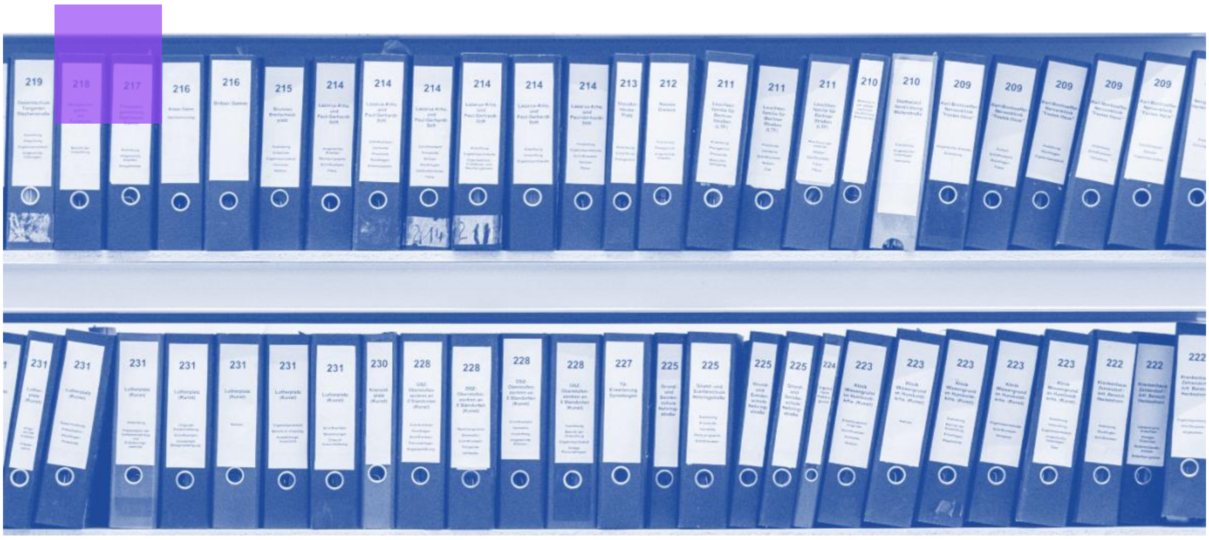
Orchestra Tax Relief



Possibly the most specialised of the creative industry tax reliefs, Orchestra Tax Relief is particularly advantageous for orchestras as there is no requirement to pass the BFI's cultural test, saving organisations the time incurred by this process. If found eligible, an orchestra may be entitled to a repayment of expenditure involved with putting on concerts/performances.

In order to qualify, an orchestra must meet HMRC's standards in that it must perform to live audiences in concert and it must consist of at least 12 performers – specifically instrumentalists excluding the conductor. There are no requirements or limitations in terms of the music that can be performed, the venue, or the format/presentation of the performance.

Example Calculation: Profitable Company & Touring Production Calculation



Variables assumed

- ✓ Business made a profit for the year of £600k
- ✓ Business incurred £300k of UK core expenditure
- ✓ Enhancement Relief is 100%

	£	£
Income		600k
Expenditure	(300k)	
Trading Profit Before Relief		300k
Enhanced Expenditure (80% of core expenditure)	(240k)	
Revised Trading Profit		60k

Without Relief, the company would have been liable to pay corporation tax of £57,000 (19% x the pre-Relief profit of £300k).

Relief reduces the corporation tax liability to £11,400 (19% x the profit of £60k), gaining a benefit of £45,600.

Resulting in a payment of £45,600. This is equal to 15.2% of the core expenditure.

Example calculation: Loss Making Company & Loss-Making Touring Production Calculation – Tax Credit

Variables assumed

- ✓ Business made a loss for the year of £100k
- ✓ Business incurred £1m of UK core expenditure
- ✓ Surrender credit 25% of enhanced R&D costs

	£	£
Income		900k
Expenditure	(100k)	
Trading Profit Before Relief		(100k)
Enhanced Expenditure (80% of core expenditure)	(800k)	
Revised Trading Loss		(900k)

The loss available to surrender for cash is, the lesser of

- ✓ the trading loss: £900k and
- ✓ the enhanced expenditure for period: £800k.

The amount of credit due is:

- ✓ the payable credit rate: 25%
- ✓ multiplied by the loss surrendered: £800k

Resulting in a payment of £200k. This is equal to 20% of the core expenditure.

Questions?

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Laura Duggan is a qualified Accountant and Tax Adviser and Director of R&D Tax Solutions. She has been a key team member in both regional and international tax planning teams over the past 15 years, focusing heavily on R&D Tax Relief and Creative Tax. Laura is a member of HM Revenue & Customs' (HMRC) R&D Consultative Committee. Laura has handled several hundred successful claims and has achieved in excess of £50m of tax refunds for clients.

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