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UK Tax Relief for Television

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UK Tax Relief for Television

On 1 April 2013, the Government introduced tax reliefs for high end television programmes and animated television programmes. From 1st April 2015 the reliefs have been extended to children's programming, the minimum UK expenditure requirement has been reduced to 10% and a proposal has been made to modernise the cultural test.

These tax reliefs were heavily modelled on the enormously successful UK's film tax credit regime. The television production company is entitled to enhanced tax losses which it can either surrender for a payable cash tax credit or use such losses to mitigate UK corporation tax liabilities. The payable tax credit is in an amount equal to 25% of qualifying expenditure (being the lower of 80% of total core expenditure or actual UK expenditure). As is the case with the film tax relief, television programmes will only be able to benefit from the new tax reliefs provided they satisfy a cultural test or qualify as British under the terms of an official co-production treaty and meet certain other eligibility criteria.

The tax reliefs are designed to not only encourage the production of high end television programmes and animated television programmes in the UK, but also to encourage inward investment from overseas.



Who can claim relief?

The relief is only available to “television production companies” within the charge to UK corporation tax. It is claimed through the company’s corporation tax return.

A television production company is the company that:

- is responsible for pre-production, principal photography and post production and delivery of the programme;
- is actively engaged in planning and decision making during the pre-production, principal photography and post production; and
- directly negotiates contracts and pays for rights goods and services in relation to the programme.

In relation to television programmes produced pursuant to an international co-production treaty to which the UK is a party (“Qualifying Co-Productions”), the television production company does not have to meet these requirements but is only required to be a co-producer which makes an effective creative, technical and artistic contribution to the programme. Five of the UK’s bilateral co-production treaties (with each of, Australia, Canada, New Zealand, Israel and Palestine) provide for television co-productions.

What types of television programme are eligible for relief?

The tax relief is only available for a television programme with or without sounds which is:

- produced wholly or partly to be seen on television;
- consists of moving or still images or of legible text or of a combination of those things; and
- is a drama, documentary, an animation or a children’s programme.

A television programme which is a drama or documentary must additionally have a slot length of greater than 30 minutes and an average core expenditure (see page 6 for the definition of core expenditure) per hour of slot length of not less than £1 million. These requirements with regard to slot length and minimum expenditure do not apply to animation or children’s programmes.

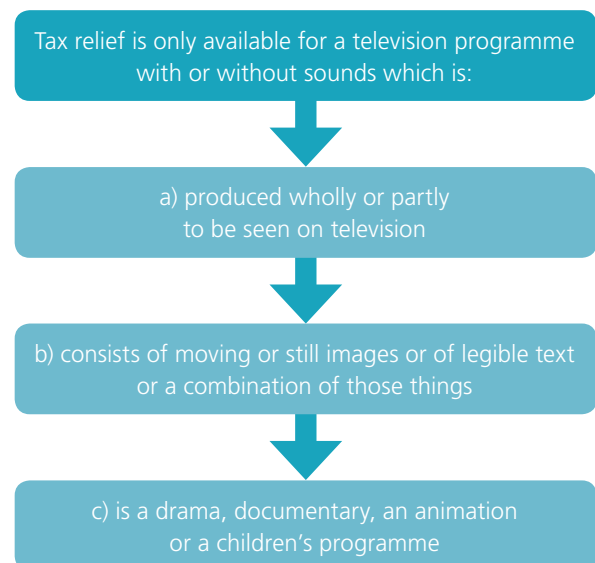
A television programme will constitute a drama if it (i) consists wholly or mainly of a depiction of events, (ii) the events are depicted (wholly or mainly) by one or more persons performing and (iii) the whole or a major proportion of what is done by the person or persons

performing, whether by way of speech, acting, singing or dancing involves the playing of a role. For these purposes, drama includes comedy. A drama or documentary that includes animation will be treated as animation if the core expenditure on animation is at least 51% of the total core expenditure.

A programme will be deemed to be a children’s programme if, at the commencement of production activities, it is reasonable to expect that the programme’s primary audience will be under the age of 15. It is the intended audience that is determinative, not the actual audience. If the actual audience is predominantly adults then the programme will still qualify for the tax relief. Notwithstanding the definition of excluded programmes (see below) game shows and competitions aimed at audiences under 15 will qualify as children’s programmes and be eligible for the tax relief provided the total prize does not exceed £1,000.

The relief is not available for the following types of excluded television programmes:

- advertisements or promotional programmes;
- news, current affairs or discussion programmes;
- quiz shows, games shows, panel shows, variety shows, chat shows, or similar entertainment;
- a competition or contest (or the results thereof);
- a broadcast of a live event or of a theatrical or artistic performance given otherwise than for the purpose of being filmed; and
- a programme produced for training purposes.





Television programme must be certified as British

To qualify for the relief a television programme must be certified as British.

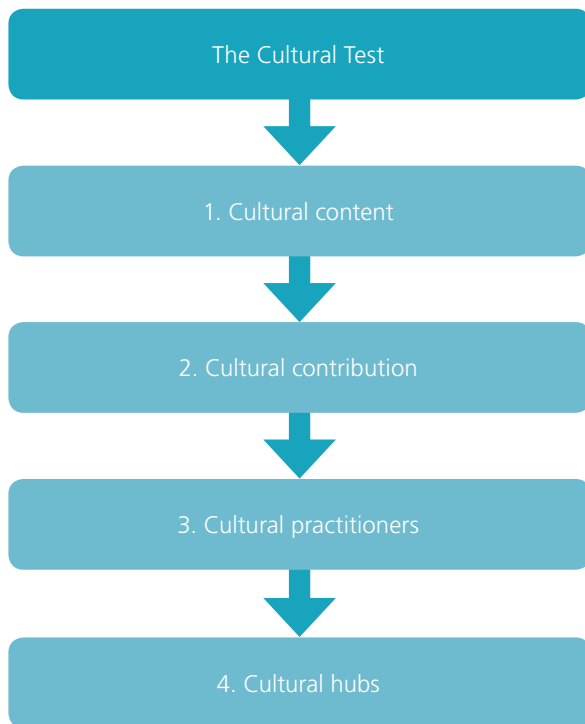
The Government has issued separate cultural tests for dramas & documentaries, animation and children's programmes (see Appendices 1, 2 and 3), each of which set out the conditions which must be met before the relevant programme can be certified as British. Subject to the "golden points rule" and the "undetermined locations rule" (see below), in order to pass the applicable cultural test, dramas & documentaries and children's programmes need to obtain 18 out of a possible 35 points available and animated projects need to obtain 16 out of a possible 31 points.

Under each of the tests, there are four categories of points covering cultural content, cultural contribution, cultural hubs and cultural practitioners attracting up to 18, 4, 5 and 8 points respectively for dramas & documentaries and children's programmes and 16, 4, 3, and 8 points respectively for animated projects. Cultural content measures the subject matter of the programme, cultural contribution measures the contribution of the programme to British culture, cultural hubs measures the use of the UK's production facilities and cultural practitioners measures the use of personnel with creative input. Points are awarded in the cultural content and cultural practitioners' categories for European rather than simply British content and practitioners.

Where a television programme is awarded all the points in the cultural hubs and cultural practitioners' categories and all the language points in the cultural content category, it will not pass the cultural test unless it is awarded at least two points for the setting or characters or all four points for story in the cultural content category. This is called the "golden points rule".

Helpfully, for animation and children's programmes, points are awarded for settings in, and characters from, "undetermined locations" such as outer-space. If the programme is set in an undetermined location, in order to qualify for the points under the cultural test related to setting and characters, under the "undetermined points rule" the programme in question must be awarded at least one point for story, language or cultural contribution. The "undetermined points rule" is applied before the "golden points rule" (see above).

Television programmes which are Qualifying Co-Productions, and certified as such, are automatically British and do not additionally have to pass the cultural test.



Television programme must be intended for broadcast

A television programme must be “intended for broadcast” to the general public at the time the television production activities (including development activities) commence.

This condition will still be met if this intention subsequently ceases to be held but will not be met if the intention only arises after television production activities commence.

No definition of “broadcast” is contained in the legislation. HMRC has provided guidance on this point, confirming that ‘broadcast’ means being broadcast on television, or via the internet, to the general public.

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Author

Minimum UK expenditure requirement

Not less than 10% of the core expenditure incurred by the television production company or, in the case of a Qualifying Co-Production, all the co-producers must be UK expenditure. This figure was reduced from 25% with effect from 1 April 2015.

Core expenditure means expenditure on the pre-production, principal photography and post production of the television programme. Expenditure on development and distribution and the costs of raising and servicing finance are excluded. However, the "used or consumed" test (see below) does allow some development expenditure to be brought into account as core expenditure.

UK expenditure means expenditure on services performed in the United Kingdom or goods used or consumed in the United Kingdom. The used or consumed test ignores the supplier of goods and services and instead focuses on the recipient of those goods and services. Application of the test is simple in the case of services supplied during principal photography because it is clear where they are used or consumed. All costs paid to actors, the director and crew form part of the UK expenditure where they relate to principal photography in the United Kingdom but do not form part of UK expenditure where they relate to principal photography in other countries. The nationality or residence of the actors, director or crew is irrelevant.

In the case of services which are not linked to principal photography (for example the services of scriptwriters and composers), the application of the used or consumed test is more complicated because the services will be used or consumed in more than one way. In the case of the scriptwriter the script will be used during development for preparation of the budget and schedule, during pre-production and principal photography to give actors words to speak during rehearsals and shooting and during post-production if used for voiceovers. Expenditure on the script can be apportioned on a fair and reasonable basis between these activities and, to the extent such activities take place in the UK, such expenditure will be UK expenditure. To the extent such expenditure is incurred during pre-production, principal photography and/or post production it also qualifies as core expenditure and therefore for the new relief.

How is the relief calculated and claimed?

The television production company is entitled to enhanced tax losses which can be used to mitigate UK corporation tax liabilities or surrendered for a payable tax credit.

The enhanced losses are in an amount equal to that part of the core expenditure which is UK expenditure ("Qualifying Expenditure") but the amount is capped at 80% of the core expenditure. If the losses are surrendered, the payable tax credit is 25% of those losses. Assuming the maximum losses are surrendered, the benefit to a television programme will be 25% of the Qualifying Expenditure.

Claims for the tax relief are made through the company's tax return for the relevant accounting period. Any claim must be accompanied by a certificate confirming the television programme is a Qualifying Co-Production or is certified as British pursuant to the relevant cultural test.

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Jacqueline Hurt is 'one of the most knowledgeable, commercially aware film finance lawyers'.

Chambers & Partners 2015



Jacqueline Hurt, Cliona Kirby and Victoria Gaskell have each been recognised by Thomson Reuters in its 2014 London Super Lawyers lists.

Super Lawyers 2014



About CMS

CMS' Film and Television practice is recognised as being home to many of the industry's foremost legal experts. Our lawyers have extraordinary knowledge of these sectors and all of the issues film-makers and television producers face from development to production and through to distribution. They are consistently ranked in the top tier for their area of practice by legal directories such as Chambers and Partners, The Legal 500 and Juve.

With the backup of the rest of our Media sector group on related rights and licensing issues, as well as our corporate, tax, intellectual property, litigation and competition lawyers, we offer a truly focussed service to companies throughout these industries.

The CMS Film and Television team regularly contributes to the hot topics discussed in the industry. This includes participations in panels, hosting of lectures and industry events and publications on legal issues.

Appendix 1

Cultural Test – Drama & Documentaries

Cultural Content: Maximum 18 points	Cultural Contribution: Maximum 4 points	Cultural Hubs: Maximum 5 points	Cultural Practitioners: Maximum 8 points
<p>Percentage of drama/documentary set in the UK/EEA: 75% - 4 points 66% - 3 points 50% - 2 points 25% - 1 point</p> <p>Number of characters from UK/EEA: If more than 3 characters in total, 4 points if 2 or 3 leads are from UK/EEA or if only 1 of 3 leads is from UK/EEA 2 points if first or second lead or 1 point if third lead. If only 3 characters in total, 4 points if 2 or 3 are from UK/EEA or if only one is from UK/EEA, 2 points if first or second lead or 1 point if third lead. If only 2 characters in total, 4 points if both from UK/EEA, 2 points if only from UK/EEA. If only 1 character in total, 4 points if from UK/EEA</p> <p>Based on British story or story relating to EEA state: 4 points</p> <p>Percentage of original dialogue in English language or recognised regional/minority language: 75% - 6 points 66% - 4 points 50% - 2 points 25% - 1 point</p>	<p>Contribution to promotion, development and enhancement of British culture: Up to 4 points</p>	<p>At least 50% if any of principal photography, visual effects and special effects (in case of drama) or shooting, visual effects R&D and special effects (in case of documentary) takes place in UK: 4 points At least 50% if any of performing and recording musical score, audio post production and picture post production takes place in the UK: 1 point</p>	<p>Director: 1 point 1 of 3 lead scriptwriters: 1 point 1 of 3 lead producers: 1 point 1 of 3 lead composers: 1 point 1 of 3 lead actors/participants: 1 point At least 50% of cast/participants: 1 point 1 of heads of department: 1 point At least 50% of crew: 1 point Provided they are EEA citizens or residents.</p>

Appendix 2

Cultural Test – Animation

Cultural Content: Maximum 18 points	Cultural Contribution: Maximum 4 points	Cultural Hubs: Maximum 5 points	Cultural Practitioners: Maximum 8 points
<p>Percentage of animation set in the following locations: 75% in UK/EAA - 4 points 66% in UK/EAA/undetermined location - 3 points 50% in UK/EAA/undetermined location - 2 points 25% in UK/EAA/undetermined location - 1 point</p> <p>Number of characters from UK/EAA/undetermined location If more than 3 characters in total, 4 points if 2 or 3 leads are from UK/EAA/undetermined location or if only 1 of 3 leads is from UK/EAA/undetermined location 2 points if first or second lead or 1 point if third lead. If only 3 characters in total, 4 points if 2 or 3 are from UK/EAA/undetermined location or if only one is from UK/EAA/undetermined location , 2 points if first or second lead or 1 point if third lead. If only 2 characters in total, 4 points if both from UK/EAA/undetermined location, 2 points if only from UK/EAA/undetermined location. If only 1 character in total, 4 points if from UK/EAA/undetermined location.</p> <p>Based on British story or story relating to EEA state: 4 points</p> <p>Percentage of original dialogue in English language or recognised regional/minority language: 75% - 4 points 66% - 3 points 50% - 2 points 25% - 1 point</p>	<p>Contribution to promotion, development and enhancement of British culture: Up to 4 points</p>	<p>At least 50% if any of shooting, visual design, layout and storyboarding, visual effects and special effects takes place in UK: 2 points</p> <p>At least 50% if any of voice recording, audio post production and picture post production takes place in the UK: 1 point</p>	<p>Director: 1 point 1 of 3 lead scriptwriters: 1 point 1 of 3 lead producers: 1 point 1 of 3 lead composers: 1 point 1 of 3 lead actors/ participants: 1 point At least 50% of cast/ participants: 1 point 1 of heads of department: 1 point At least 50% of crew: 1 point Provided they are EEA citizens or residents.</p>

Appendix 3

Cultural Test – Children’s television programmes

Cultural Content: Maximum 18 points	Cultural Contribution: Maximum 4 points	Cultural Hubs: Maximum 5 points	Cultural Practitioners: Maximum 8 points
<p>Percentage of animation set in the following locations: 75% in UK/EAA - 4 points 66% in UK/EAA/undetermined location - 3 points 50% in UK/EAA/undetermined location - 2 points 25% in UK/EAA/undetermined location - 1 point</p> <p>Number of characters from UK/EAA/undetermined location If more than 3 characters in total, 4 points if 2 or 3 leads are from UK/EAA/undetermined location or if only 1 of 3 leads is from UK/EAA/undetermined location 2 points if first or second lead or 1 point if third lead. If only 3 characters in total, 4 points if 2 or 3 are from UK/EAA/undetermined location or if only one is from UK/EAA/undetermined location , 2 points if first or second lead or 1 point if third lead. If only 2 characters in total, 4 points if both from UK/EAA/undetermined location, 2 points if only from UK/EAA/undetermined location. If only 1 character in total, 4 points if from UK/EAA/undetermined location.</p> <p>Based on British story or story relating to EEA state: 4 points Percentage of original dialogue in English language or recognised regional/minority language: 75% - 6 points 66% - 4 points 50% - 2 points 25% - 1 point</p>	<p>The Programme demonstrates British creativity, British Heritage and/or diversity Up to 4 points</p>	<p>At least 50% if any of principal photography, visual effects and special effects (in case of drama) or shooting, visual effects R&D and special effects (in case of documentary) takes place in UK: 4 points At least 50% if any of voice recording, audio post production and picture post production takes place in the UK: 1 point</p>	<p>Director: 1 point 1 of 3 lead scriptwriters: 1 point 1 of 3 lead producers: 1 point 1 of 3 lead composers: 1 point 1 of 3 lead actors/ participants: 1 point At least 50% of cast/ participants: 1 point 1 of heads of department: 1 point At least 50% of crew: 1 point Provided they are EEA citizens or residents.</p>



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