



**HM Revenue
& Customs**

Film Tax Relief: Unused Losses

Draft Legislation and Explanatory Note
9 December 2009

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Introduction

This document provides draft legislation and explanatory notes for changes to legislation relating to Film Production Companies making films whose production spends are over two or more accounting periods.

The proposed changes were announced at the 2009 Pre- Budget Report to take effect from the date of that announcement. Draft legislation detailing the changes is contained below and comments are invited. These should be made by 12 February 2010, and addressed to –

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Chapter 1 – Draft Legislation

The draft legislation is on the following page.

1 Film tax credit: unused losses

- (1) Section 1201 of CTA 2009 (film tax credit claimable where company has surrenderable loss) is amended as follows.
- (2) In subsection (2) –
 - (a) in the opening words, for “any period” substitute “an accounting period”, and
 - (b) in paragraph (a), for “the company’s loss” substitute “the company’s available loss”.
- (3) After that subsection insert –

“(2A) The company’s available loss for an accounting period is given by –
L + RUL
where –
L is the amount of the company’s loss for the period in the separate film trade, and
RUL is the amount of any relevant unused loss of the company.

(2B) The “relevant unused loss” of a company is so much of any available loss of the company for the previous accounting period as has not been –
 - (a) surrendered under section 1202(1), or
 - (b) carried forward under section 393(1) of ICTA and set against profits of the separate film trade.”.
- (4) In subsection (4), in the definition of “S”, for “surrendered in previous periods” substitute “previously surrendered”.
- (5) After that subsection insert –

“(5) If a period of account of the separate film trade does not coincide with an accounting period, any necessary apportionments shall be made by reference to the number of days in the periods concerned.”.
- (6) In section 1202(4) of that Act (company’s loss reduced by amount surrendered), for “loss in the separate film trade” substitute “available loss”.
- (7) The amendments made by this section have effect in relation to accounting periods ending on or after 9 December 2009.
- (8) In relation to those accounting periods the amendments, and corresponding amendments of paragraphs 6 and 11 of Schedule 5 to FA 2006, are to be treated as always having had effect).

Chapter 2 –Explanatory Note

This section contains the draft Explanatory Note based on the current draft of the legislation for Film Tax Relief: Unused Losses.

SUMMARY

1. The clause amends the provisions in section 1201 of the Corporation Tax Act 2009 (CTA) that set out how a surrenderable loss is calculated.
2. The amendment will apply to accounting periods ending on or after 9 December 2009 and will be treated as always having had effect in relation to these.

DETAILS OF THE CLAUSE

3. Subsection (1) provides that section 1201 of CTA is to be amended.
4. Subsection (2) amends two terms in section 1201(2) of CTA, including introducing the concept of the company’s “available loss”, defined in new subsection (2A) of section 1201.
5. Subsection (3) introduces two new subsections (2A) and (2B) in section 1201 of CTA after subsection (2).
6. New subsection (2A) defines the available loss as the sum of the loss of the period and any relevant unused loss.
7. New subsection (2B) defines the relevant unused loss as that part of a loss neither surrendered for tax credit nor carried forward under section 393(1) of the Income and Corporation Taxes Act 1988 (ICTA) and set against profits of the film trade.
8. Subsection (4) amends the definition of S, the losses previously surrendered, in section 1201(4) of CTA.

9. Subsection (5) introduces a new subsection (5) in section 1201 of CTA providing a method of apportionment between periods of account and accounting periods based on the number of days in the periods.
10. Subsection (6) amends section 1202(4) of CTA by substituting the new “available loss” as the amount to be reduced by an amount surrendered.
11. Subsection (7) provides that the changes have effect for accounting periods ending on or after 9 December 2009
12. Subsection (8) provides for the amendments to have always had effect in relation to those periods.

BACKGROUND NOTE

13. Film Tax Relief was introduced from 1 January 2007 to support the production of culturally British films.
14. The relief allows an additional deduction based on UK expenditure by companies on the production of films qualifying as culturally British. Losses sustained in production can be surrendered for a payable tax credit.
15. The amendments ensure that, as intended, the amount of film tax credit available is the same regardless of the profile of the UK expenditure.
16. Film Tax Relief is a State Aid and has been approved by the European Commission.