

Creative tax reliefs: Guidance in relation to the temporary increase in tax credits introduced by Autumn Budget 2021

The purpose of this guidance note is to provide a summary of what HMRC considers to be the commencement of the production phase and therefore whether a production is potentially in scope of the rate uplift introduced by Autumn Budget 2021.

This note applies to Theatre Tax Relief, Orchestra Tax Relief and Museums and Galleries Exhibition Tax Relief. Although the note uses the term 'production phase', this term has the same meaning as the similar terms used in some of the reliefs (the 'production process' or 'pre-performance' phase).

This note also explains the treatment of orchestral concert series that HMRC will accept in relation to concert series where production spans 27 October 2021. The content of this note will be published online in HMRC's online guidance manuals.

Any queries about the content of this note or regarding individual examples should be sent to creative.industries@hmrc.gov.uk.

Production Phase

The production phase involves all the activities necessary to turn the developed idea for a production into an actual theatrical production, orchestral concert or museum exhibition that is ready to be performed or displayed to the public. Such activities may include, but are not limited to: production team meetings, casting, script-readings, rehearsals, costume design, set construction, venue preparation, exhibit hire. The production phase is broadly defined for the tax reliefs and includes activities often referred to as pre-production.

The production phase begins when the project has been 'green lit' – this is when there is a definite commitment to going ahead. Any expenditure incurred prior to this would be part of the development phase, which is where a project progresses from the initial concept to the point at which a decision can be taken as to whether or not it proceeds as a concert/theatrical production/exhibition.

There is some blurring between development and production. While a venue might be booked or performers contracted far in advance, this does not necessarily signify that the production phase has started if nothing else has happened to give certainty to the project. Ticket sales are also not necessarily indicative that a project will go ahead or that the production phase has commenced.

The latest possible date that the production phase could commence for a theatrical production or a concert is at the start of rehearsals. However, it may start earlier. For example, if a project has contracted the cast and commissioned props and costumes for a specific production, then it is likely to have already started the production phase.

The separate trade commences at the earliest of either the start of the production phase, or the first receipt of any income from the production. If expenditure on the production is incurred prior to the start of the trade, the pre-trading expenditure may be transferred to the trade and treated as incurred on the date the trade commences. The commencement of the trade does not necessarily indicate that the production phase has also commenced.

Orchestra Tax Relief: Elections for a concert series

An orchestral production company may have elected for multiple concerts to be treated as a concert series as per s1217QA CTA 2009. The production phase (or pre-performance phase) for a concert series commences in line with the production phase of the first concert included in that series.

It may be that if these concerts were not included in an election and were instead claimed for separately, the concerts might still start the production phase at the same time. For example, if the concerts feature the same repertoire, or where rehearsals cover multiple concerts.

However, it is possible that if taken separately, the concerts included in a concert series might start the production phase at different times. This is more likely when concerts feature different performers or there is a significant break between concert dates.

It may be the case that some concerts may be ineligible for the temporary rate uplift because they have been included as part of a concert series, even when the production phase for that specific concert begins on or after 27 October 2021. Where this is the case, HMRC will allow companies to include such concerts in a new election or to be claimed for individually.

When submitting a claim in relation to the original election, the company should make clear any concerts that it no longer wishes to claim for as part of that election, and the parts of the election it wants HMRC to disregard.

If the company wishes to submit a new election, normal rules apply as to the procedure and timing. Companies should indicate if any of the listed concerts have ever been included in an election previously.

When submitting a claim for a concert, either individually or as part of a new concert series, companies should indicate if the concert has ever been a part of an election.