

High-end television tax relief

Who is likely to be affected?

Companies within the charge to corporation tax that are directly involved in the production of high-end television.

General description of the measure

The measure will enable eligible companies to claim tax relief for qualifying high-end television production expenditure.

Policy objective

The measure aims to promote the sustainable production of culturally relevant high-end television productions in the UK.

Background to the measure

The Government announced at Budget 2012 the introduction of corporation tax reliefs for animation, high-end television and video games production. A consultation on the design entitled *Consultation on creative sector tax reliefs* was published on 18 June 2012 and closed on 10 September 2012.

Detailed proposal

Operative date

Subject to State aid approval by the European Commission this measure will have effect for qualifying expenditure incurred on or after 1 April 2013.

Current law

There are currently no targeted reliefs for this sector. However, the new high-end television tax relief is based on the successful film tax relief (FTR) and some television companies who have made films and documentaries intended for theatrical release may have in the past benefited from the FTR. Since its introduction in January 2007, the FTR has supported £5.5 billion of investment into 825 British films which have received approximately £800 million in relief.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to introduce the new tax relief for the production of high-end television.

The high-end television tax relief will allow eligible companies engaged in the production of qualifying high-end television productions to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit. Both the additional deduction and the payable credit are calculated on the basis of UK core expenditure up to a maximum of 80 per cent of the total core expenditure by the qualifying company. The additional deduction is 100 per cent of qualifying core expenditure and the payable tax credit is 25 per cent of losses surrendered.

Productions must be certified by the Department of Culture, Media & Sport (DCMS) as culturally British in order to be eligible for relief.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	-5	-25	-45	-60	-70
	These figures are set out in Table 2.1 of the Autumn Statement and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Statement.					
Economic impact	This measure is expected to have a positive impact on the high-end television industry, but is not expected to have significant wider macroeconomic impacts.					
Impact on individuals and households	The relief would be available to companies producing high-end television and so is unlikely to impact on individuals and households.					
Equalities impacts	The Government has carefully considered whether this measure impacts on people with protected characteristics and has not identified any equalities impacts.					
Impact on business including civil society organisations	The high-end TV tax relief will allow qualifying companies to claim a payable tax credit, supporting the production of culturally high-end TV programmes. This measure is expected to have a significant impact on those businesses. There are approximately 50 high-end television production companies in the UK that may benefit from the relief.					
	Eligible companies may face some one-off and ongoing administrative costs in order to qualify for this relief. There will be negligible one-off costs associated with familiarisation with new legislation, processes and requirements. The ongoing costs include costs of claiming the relief and fulfilling the requirement to pass a cultural test for each production. It is estimated that on average companies will make one claim per year. Estimates of compliance costs are shown in the table below, including an estimate of total costs for a five year period at present value.					
	This measure is expected to have no impact on civil society organisations.					
		Cost		Time Period (yrs)		
	Compliance Costs					
	One-off Costs	negligible		N/A		
	Average Annual Costs	£0.5m-£0.8m		5		
	Total Costs (PV)	£2.4 m-£3.7m		N/A		
	Compliance Benefits					
	One-off Benefit	N/A		N/A		
	Average Annual Benefit	N/A		N/A		
	Total Benefit (PV)	N/A		N/A		
	Net Benefit (NPV)	- £2.4 m-£3.7m		N/A		
	Impact on Administrative Burden (included in Net Benefit)					
	Increase	Decrease		Net Impact		
£0.5m-£0.8m	£0		£0.5m-£0.8m			

Operational impact (£m) (HMRC or other)	<p>The estimated annual cost to HM Revenue & Customs of administering all three new creative industry tax credit regimes is £500,000. Training and familiarisation with the new legislation will be required. DCMS may also require additional resource to administer a cultural test. Additional resource will have to come out of existing departmental budgets, which may impact on resource allocation elsewhere.</p>
Other impacts	<p><u>Small firms impact test:</u> this measure is not expected to have a significant impact on small firms.</p> <p><u>Competition assessment:</u> introducing this sector specific tax relief is likely to be of particular benefit to larger television production companies with the necessary resources to reach the minimum spend threshold. The overall effect on competition is not expected to be significant, given the overall size of the high-end television sector. There should not be any significant impact on competition with other business sectors.</p> <p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

The new reliefs will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

Further advice

If you have any questions about this change, please contact Kerry Pope on 020 7147 2617 (email: kerry.pope@hmrc.gsi.gov.uk) or contact Des Ryan on 020 7147 0818 (email: des.ryan@hmrc.gsi.gov.uk).

Animation tax relief

Who is likely to be affected?

Companies within the charge to corporation tax that are directly involved in the production of animation.

General description of the measure

The measure will enable eligible companies to claim tax relief for qualifying animation production expenditure.

Policy objective

The measure aims to promote the sustainable production of culturally significant animation productions in the UK.

Background to the measure

The Government announced at Budget 2012 the introduction of corporation tax reliefs for animation, high-end television and video games production. A consultation on the design entitled *Consultation on creative sector tax reliefs* was published on 18 June 2012 and closed on 10 September 2012.

Detailed proposal

Operative date

Subject to State aid approval by the European Commission, this measure will have effect for qualifying expenditure incurred on or after 1 April 2013.

Current law

There are currently no targeted reliefs for this sector. However, the new animation tax relief is based on the successful film tax relief (FTR) and some animation companies who have made films intended for theatrical release may have in the past benefited from the FTR.

Since its introduction in January 2007, the FTR has supported £5.5 billion of investment into 825 British films which have received approximately £800 million in relief.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to introduce the new tax relief for the production of animation.

The animation tax relief will allow eligible companies engaged in the production of qualifying animated productions to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit. Both the additional deduction and the payable credit are calculated on the basis of UK core expenditure up to a maximum of 80 per cent of the total core expenditure by the qualifying company. The additional deduction is 100 per cent of qualifying core expenditure and the payable tax credit is 25 per cent of losses surrendered.

Productions must be certified by the Department of Culture, Media & Sport (DCMS) as culturally British in order to be eligible for relief.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	-	-5	-10	-15	-15
	This measure is part of the package on Creative Sector Tax Reliefs. These figures were set out in the consultation issued on 18 June 2012 and have been certified by the Office for Budget Responsibility at Budget 2012.				
Economic impact	This measure is expected to have a positive impact on the animation industry, but is not expected to have significant wider macroeconomic impacts.				
Impact on individuals and households	The relief would be available to companies producing animation and so is unlikely to impact on individuals and households.				
Equalities impacts	The Government has carefully considered whether this measure impacts on people with protected characteristics and has not identified any equalities impacts.				
Impact on business including civil society organisations	The animation tax relief will allow qualifying companies to claim a payable tax credit, supporting the production of culturally British animation. There are approximately 50-100 animation companies in the UK that may benefit from the relief.				
	Eligible companies may face some one-off and ongoing administrative costs in order to qualify for this relief. There will be negligible one-off costs associated with familiarisation with new legislation, processes and requirements. The ongoing costs include costs of claiming the relief and fulfilling the requirement to pass a cultural test for each production. It is estimated that on average companies will make one claim per year. Estimates of compliance costs are shown in the table below, including an estimate of total costs for a five year period at present value.				
	This measure is expected to have no impact on civil society organisations.				
		Cost		Time Period (yrs)	
	Compliance Costs				
	One-off Costs	negligible		N/A	
	Average Annual Costs	£50k-£130k		5	
	Total Costs (PV)	£230k-£600k		N/A	
	Compliance Benefits				
	One-off Benefit	N/A		N/A	
	Average Annual Benefit	N/A		N/A	
	Total Benefit (PV)	N/A		N/A	
	Net Benefit (NPV)	-£230k -£600k		N/A	
	Impact on Administrative Burden (included in Net Benefit)				
	Increase	Decrease		Net Impact	
£50k-£130k	£0		£50k-£130k		

Operational impact (£m) (HMRC or other)	The estimated annual cost to HM Revenue & Customs of administering all three new creative industry tax credit regimes is £500,000. Training and familiarisation with the new legislation will be required. DCMS may also require additional resource to administer a cultural test. Additional resource will have to come out of existing departmental budgets, which may impact on resource allocation elsewhere.
Other impacts	<p><u>Small firms impact test:</u> the Government recognises that there may be some increase in administration impacts on small businesses. However, overall the tax relief will impact positively on qualifying small companies. There will also be a specialist unit set up to help facilitate claims.</p> <p><u>Competition assessment:</u> this relief is targeted at a specific sector. All companies in this sector are eligible, so introduction is unlikely to affect competition within the sector. There should not be any significant impact on competition with other business sectors.</p> <p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

The new reliefs will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

Further advice

If you have any questions about this change, please contact Kerry Pope on 020 7147 2617 (email: kerry.pope@hmrc.gsi.gov.uk) or contact Des Ryan on 020 7147 0818 (email: des.ryan@hmrc.gsi.gov.uk).

Video games tax relief

Who is likely to be affected?

Companies within the charge to corporation tax (CT) that are directly involved in the development of video games.

General description of the measure

The measure will enable eligible companies to claim tax relief for qualifying video games development expenditure.

Policy objective

The measure aims to promote the sustainable production of culturally significant video games in the UK.

Background to the measure

The Government announced at Budget 2012 the introduction of CT reliefs for animation, high-end television and video games production. A consultation on their design entitled *Consultation on creative sector tax reliefs* was published on 18 June 2012 and closed on 10 September 2012.

Detailed proposal

Operative date

Subject to State aid approval by the European Commission, the measure will have effect for qualifying expenditure incurred on and after 1 April 2013.

Current law

There are currently no targeted reliefs for this sector, although some video games companies may already benefit from the research & development tax credit regime.

The new video games tax credit is based on the successful film tax relief (FTR). Since its introduction in January 2007, the FTR has supported £5.5 billion of investment into 825 British films which have received approximately £800 million in relief.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to introduce the new tax relief for the development of video games.

The video games tax relief will allow eligible companies engaged in the production of qualifying video games to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit. Both the additional deduction and the payable credit are calculated on the basis of UK core expenditure up to a maximum of 80 per cent of the total core expenditure by the qualifying company. The additional deduction is 100 per cent of qualifying core expenditure and the payable tax credit is 25 per cent of losses surrendered.

Productions must be certified by the Department of Culture, Media & Sport (DCMS) as culturally British in order to be eligible for relief.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	-	-10	-25	-25	-25
	This measure is part of the package on creative sector tax reliefs. These figures were set out in the consultation issued on 18 June 2012 and have been certified by the Office for Budget Responsibility at Budget 2012.				
Economic impact	This measure is expected to have a positive impact on the video games industry, but is not expected to have significant wider macroeconomic economic impacts.				
Impact on individuals and households	The relief would be available to companies developing video games and so is unlikely to impact on individuals and households.				
Equalities impacts	The Government has carefully considered whether this measure impacts on people with protected characteristics and has not identified any equalities impacts.				
Impact on business including civil society organisations	The video game tax relief will allow qualifying companies to claim a payable tax credit, supporting the production of culturally British video games. There are approximately 300 video games companies in the UK that may benefit from the relief.				
	Eligible companies may face some one-off and ongoing administrative costs in order to qualify for this relief. There will be negligible oneoff costs associated with familiarisation with new legislation, processes and requirements. The ongoing costs include costs of claiming the relief and fulfilling the requirement to pass a cultural test for each production. It is estimated that on average companies will make one claim per year. Estimates of compliance costs are shown in the table below, including an estimate of total costs for a five year period at present value.				
	This measure is expected to have no impact on civil society organisations.				
			Cost	Time Period (yrs)	
	Compliance Costs				
		One-off Costs	negligible	N/A	
		Average Annual Costs	£0.8 m-£1.2m	5	
		Total Costs (PV)	£3.7m-£5.5m	N/A	
	Compliance Benefits				
		One-off Benefit	N/A	N/A	
		Average Annual Benefit	N/A	N/A	
		Total Benefit (PV)	N/A	N/A	
		Net Benefit (NPV)	-£3.7m - £5.5m	N/A	
	Impact on Administrative Burden (included in Net Benefit)				
	Increase	Decrease	Net Impact		
	£0.8 m-£1.2m	£0	£0.8 m-£1.2m		

Operational impact (£m) (HMRC or other)	<p>The estimated annual cost to HM Revenue & Customs of administering all three new creative industry tax credit regimes is £500,000. Training and familiarisation with the new legislation will be required. DCMS may also require additional resource to administer a cultural test. Additional resource will have to come out of existing departmental budgets, which may impact on resource allocation elsewhere.</p>
Other impacts	<p><u>Small firms impact test:</u> the Government recognises that there may be some increase in administration impacts on small businesses. However, overall the tax relief will impact positively on qualifying small companies. There will also be a specialist unit set up to help facilitate claims.</p> <p><u>Competition assessment:</u> this relief is targeted at a specific sector. All companies in this sector are eligible, so introduction is unlikely to affect competition within the sector. There should not be any significant impact on competition with other business sectors.</p> <p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

The new reliefs will be monitored and assessed alongside other measures in the Government's package of CT reforms.

Further advice

If you have any questions about this change, please contact Kerry Pope on 020 7147 2617 (email: kerry.pope@hmrc.gsi.gov.uk) or contact Des Ryan on 020 7147 0818 (email: des.ryan@hmrc.gsi.gov.uk).

1 Relief for television production and video games development

- (1) Schedule 1 contains provision about television production.
- (2) Schedule 2 contains provision about video games development.
- (3) Schedule 3 contains consequential amendments.

SCHEDULES

SCHEDULE 1

Section 1

TAX RELIEF FOR TELEVISION PRODUCTION

PART 1

AMENDMENTS OF CTA 2009

1 After Part 15 of CTA 2009 insert –

“PART 15A

TELEVISION PRODUCTION

CHAPTER 1

INTRODUCTION

Introductory

1216A Overview of Part

- (1) This Part is about television production.
- (2) Sections 1216AA to 1216AJ contain definitions and other provisions about interpretation that apply for the purposes of this Part.
See, in particular –
 - (a) section 1216AB, which explains what is meant by a “relevant programme”, and
 - (b) section 1216AE, which explains how a company comes to be treated as the television production company in relation to a relevant programme.
- (3) Chapter 2 is about the taxation of the activities of a television production company and includes –
 - (a) provision for the company’s activities in relation to its relevant programme to be treated as a separate trade, and
 - (b) provision about the calculation of the profits and losses of that trade.
- (4) Chapter 3 is about relief (called “television tax relief”) which can be given to a television production company –
 - (a) by way of additional deductions to be made in calculating the profits or losses of the company’s separate trade, or

- (b) by way of a payment (a “television tax credit”) to be made on the company’s surrender of losses from that trade.
- (5) Chapter 4 is about the relief which can be given for losses made by a television production company in its separate trade, including provision for certain such losses to be transferred to other separate trades.
- (6) Chapter 5 provides—
 - (a) for relief under Chapters 3 and 4 to be given on a provisional basis, and
 - (b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

Meaning of “television programme”, “relevant programme” etc

1216AA “Television programme”

- (1) This section applies for the purposes of this Part.
- (2) “Television programme” means any programme (with or without sounds) which—
 - (a) is produced wholly or partly to be seen on television, and
 - (b) consists of moving or still images or of legible text or of a combination of those things.
- (3) In subsection (1) “television” includes the internet.
- (4) Any television programmes that are commissioned together under the same agreement are treated as a single television programme.
- (5) A television programme is completed when it is first in a form in which it can reasonably be regarded as ready for broadcast to the general public.

1216AB “Relevant programme”

- (1) This section applies for the purposes of this Part.
- (2) A television programme is a “relevant programme” if—
 - (a) conditions A and B are met, and
 - (b) in the case of a television programme that is not animation, conditions C and D are met.
- (3) Condition A is that the programme is—
 - (a) a drama,
 - (b) a documentary, or
 - (c) animation.

For further provision about these terms, see section 1216AC.
- (4) Condition B is that the programme is not an excluded programme (see section 1216AD).
- (5) Condition C is that the slot length in relation to the programme is greater than 30 minutes.

- (6) Condition D is that the average core expenditure per hour of slot length in relation to the programme is not less than £1 million.
For the meaning of “core expenditure”, see section 1216AG.
- (7) “Slot length”, in relation to a television programme, means the period of time which the programme is commissioned to fill.

1216AC Types of programme eligible to be relevant programmes

- (1) This section applies for the purposes of this Part.
- (2) A programme is a “drama” if—
 - (a) it consists wholly or mainly of a depiction of events,
 - (b) the events are depicted (wholly or mainly) by one or more persons performing, and
 - (c) 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,and for these purposes “drama” includes comedy.
- (3) A drama or documentary that includes animation is to be treated as animation if the core expenditure on the completed animation constitutes at least 51% of the total core expenditure on the completed programme.

1216AD Excluded programmes

- (1) For the purposes of this Part a television programme is an excluded programme if it falls within any of the Heads set out in the following subsections—
 - (a) subsection (2) (advertisements etc),
 - (b) subsection (3) (current affairs etc),
 - (c) subsection (4) (entertainment shows),
 - (d) subsection (5) (competitions),
 - (e) subsection (6) (live performances),
 - (f) subsection (7) (training programmes).
- (2) Head 1 is any advertisement or other promotional programme.
- (3) Head 2 is any news or current affairs programme or discussion programme.
- (4) Head 3 is any quiz show, game show, panel show, variety show, chat show or similar entertainment.
- (5) Head 4 is any programme consisting of or including—
 - (a) a competition or contest, or
 - (b) the results of a competition or contest.
- (6) Head 5 is any broadcast of a live event or of a theatrical or artistic performance given otherwise than for the purpose of being filmed.
- (7) Head 6 is any programme produced for training purposes.

Other interpretation

1216AE Television production company

- (1) For the purposes of this Part “television production company” is to be read in accordance with this section.
- (2) There cannot be more than one television production company in relation to a relevant programme.
- (3) A company is the television production company in relation to a relevant programme if the company (otherwise than in partnership) –
 - (a) is responsible –
 - (i) for pre-production, principal photography and post production of the programme, and
 - (ii) for delivery of the programme,
 - (b) is actively engaged in production planning and decision-making during pre-production, principal photography and post production, and
 - (c) directly negotiates, contracts and pays for rights, goods and services in relation to the programme.
- (4) A company is the television production company in relation to a relevant programme that is a qualifying co-production if the company (otherwise than in partnership) –
 - (a) is a co-producer, and
 - (b) makes an effective creative, technical and artistic contribution to the programme.
- (5) If there is more than one company meeting the description in subsection (3) or (4), the company that is most directly engaged in the activities referred to in that subsection is the television production company in relation to the relevant programme.
- (6) If there is no company meeting the description in subsection (3) or (4), there is no television production company in relation to the relevant programme.
- (7) A company may elect to be regarded as a company which does not meet the description in subsection (3) or (4).
- (8) The election –
 - (a) must be made by the company by being included in its company tax return for an accounting period (and may be included in the return originally made or by amendment), and
 - (b) may be withdrawn by the company only by amending its company tax return for that accounting period.
- (9) The election has effect in relation to relevant programmes which commence principal photography in that or any subsequent accounting period.

1216AF “Television production activities” etc

- (1) In this Part “television production activities”, in relation to a relevant programme, means the activities involved in development, pre-

production, principal photography and post production of the programme.

- (2) If all or any of the images in a relevant programme are generated by computer, references in this Part to principal photography are to be read as references to, or as including, the generation of those images.
- (3) The Treasury may by regulations –
 - (a) amend subsections (1) and (2),
 - (b) provide that specified activities are or are not to be regarded as television production activities or as television production activities of a particular description, and
 - (c) provide that, in relation to a specified description of relevant programme, references to television production activities of a particular description are to be read as references to such activities as may be specified.

“Specified” means specified in the regulations.

1216AG “Production expenditure” and “core expenditure”

- (1) This section applies for the purposes of this Part.
- (2) “Production expenditure”, in relation to a relevant programme, means expenditure on television production activities in connection with the programme.
- (3) “Core expenditure”, in relation to a relevant programme, means production expenditure on pre-production, principal photography and post production of the programme.

1216AH “UK expenditure” etc

- (1) In this Part “UK expenditure”, in relation to a relevant programme, means expenditure on goods or services that are used or consumed in the United Kingdom.
- (2) Any apportionment of expenditure as between UK expenditure and non-UK expenditure for the purposes of this Part is to be made on a just and reasonable basis.
- (3) The Treasury may by regulations amend subsection (1).

1216AI “Qualifying co-production” and “co-producer”

In this Part –

- (a) “qualifying co-production” means a relevant programme that is eligible to be certified as a British programme under section 1216CB as a result of an agreement between Her Majesty’s Government in the United Kingdom and any other government, international organisation or authority, and
- (b) “co-producer” means a person who is a co-producer for the purposes of the agreement mentioned in paragraph (a).

1216AJ “Company tax return”

In this Part “company tax return” has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1)).

CHAPTER 2

TAXATION OF ACTIVITIES OF TELEVISION PRODUCTION COMPANY

Separate programme trade

1216B Activities of television production company treated as a separate trade

- (1) This Chapter applies for corporation tax purposes to a company that is the television production company in relation to a relevant programme.
- (2) The company's activities in relation to the programme are treated as a trade separate from any other activities of the company (including any activities in relation to any other television programme).
- (3) In this Chapter the separate trade is called "the separate programme trade".
- (4) The company is treated as beginning to carry on the separate programme trade—
 - (a) when pre-production begins, or
 - (b) if earlier, when any income from the relevant programme is received by the company.

1216BA Calculation of profits or losses of separate programme trade

- (1) This section applies for the purpose of calculating the profits or losses of the separate programme trade.
- (2) For the first period of account the following are brought into account—
 - (a) as a debit, the costs of the relevant programme incurred (and represented in work done) to date, and
 - (b) as a credit, the proportion of the estimated total income from the relevant programme treated as earned at the end of that period.
- (3) For subsequent periods of account the following are brought into account—
 - (a) as a debit, the difference between the amount of the costs of the relevant programme incurred (and represented in work done) to date and the corresponding amount for the previous period, and
 - (b) as a credit, the difference between the proportion of the estimated total income from the relevant programme treated as earned at the end of that period and the corresponding amount for the previous period.
- (4) The proportion of the estimated total income treated as earned at the end of a period of account is given by—

$$\frac{C}{T} \times I$$

where—

C is the total to date of costs incurred (and represented in work done),

T is the estimated total cost of the relevant programme, and
I is the estimated total income from the relevant programme.

Supplementary

1216BB Income from the relevant programme

- (1) References in this Chapter to income from the relevant programme are to any receipts by the company in connection with the making or exploitation of the programme.
- (2) This includes –
 - (a) receipts from the sale of the programme or rights in it,
 - (b) royalties or other payments for use of the programme or aspects of it (for example, characters or music),
 - (c) payments for rights to produce games or other merchandise, and
 - (d) receipts by the company by way of a profit share agreement.
- (3) Receipts that (apart from this subsection) would be regarded as of a capital nature are treated as being of a revenue nature.

1216BC Costs of the relevant programme

- (1) References in this Chapter to the costs of the relevant programme are to expenditure incurred by the company on –
 - (a) television production activities in connection with the programme, or
 - (b) activities with a view to exploiting the programme.
- (2) This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.
- (3) Expenditure that (apart from this subsection) would be regarded as of a capital nature by reason only of being incurred on the creation of an asset (the relevant programme) is treated as being of a revenue nature.

1216BD When costs are taken to be incurred

- (1) For the purposes of this Chapter costs are incurred when they are represented in the state of completion of the work in progress.
- (2) Accordingly –
 - (a) payments in advance for work to be done are ignored until the work has been carried out, and
 - (b) deferred payments are recognised to the extent that the work is represented in the state of completion.
- (3) The costs incurred on the relevant programme are taken to include an amount that has not been paid only if it is the subject of an unconditional obligation to pay.
- (4) If an obligation is linked to income being earned from the relevant programme, no amount is to be brought into account in respect of the

costs of the obligation unless an appropriate amount of income is or has been brought into account.

1216BE Pre-trading expenditure

- (1) This section applies if, before the company began to carry on the separate programme trade, it incurred expenditure on development of the relevant programme.
- (2) The expenditure may be treated as expenditure of the separate programme trade and as if incurred immediately after the company began to carry on that trade.
- (3) If expenditure so treated has previously been taken into account for other tax purposes, the company must amend any relevant company tax return accordingly.
- (4) Any amendment or assessment necessary to give effect to subsection (3) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

1216BF Estimates

Estimates for the purposes of this Chapter must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

CHAPTER 3

TELEVISION TAX RELIEF

Introductory

1216C Availability and overview of television tax relief

- (1) This Chapter applies for corporation tax purposes to a company that is the television production company in relation to a relevant programme.
- (2) Relief under this Chapter (“television tax relief”) is available to the company if the conditions specified in the following sections are met in relation to the programme –
 - (a) section 1216CA (intended for broadcast),
 - (b) section 1216CB (British programme), and
 - (c) section 1216CE (UK expenditure).
- (3) Television tax relief is given by way of –
 - (a) additional deductions (see sections 1216CF and 1216CG), and
 - (b) television tax credits (see sections 1216CH to 1216CJ).
- (4) But television tax relief is not available in respect of any expenditure if –
 - (a) the company is entitled to an R&D expenditure credit under Chapter 6A of Part 3 in respect of the expenditure, or
 - (b) the company has obtained relief under Part 13 (additional relief for expenditure on research and development) in respect of the expenditure.

- (5) Sections 1216CK to 1216CN contain provision about unpaid costs, artificially inflated claims and confidentiality of information.
- (6) In this Chapter “the separate programme trade” means the company’s separate trade in relation to the relevant programme (see section 1216B).
- (7) See Schedule 18 to FA 1998 (in particular, Part 9D) for information about the procedure for making claims for television tax relief.

“Intended for broadcast”

1216CA Intended for broadcast

- (1) The relevant programme must be intended for broadcast to the general public.
- (2) Whether this condition is met is determined when television production activities begin, so that –
 - (a) where a relevant programme is originally intended for broadcast, this condition continues to be met even if that ceases to be the intention, and
 - (b) where a relevant programme is not originally intended for broadcast, this condition is not met even if that becomes the intention.

British programmes

1216CB British programme

- (1) The relevant programme must be certified by the Secretary of State as a British programme.
- (2) The Secretary of State, with the approval of the Treasury, may by regulations specify conditions which must be met by a relevant programme before it may be certified as a British programme. These conditions are known as the “cultural test”.
- (3) Regulations under subsection (2) may –
 - (a) specify different conditions in relation to different descriptions of relevant programme,
 - (b) provide that specified descriptions of programme may not be certified as a British programme, and
 - (c) enable the Secretary of State to direct that any provision made by virtue of paragraph (b) does not apply to a programme that meets specified conditions.

“Specified” means specified in the regulations.
- (4) Regulations under subsection (2) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.

- (6) Sections 1216CC and 1216CD contain further provision about certification of programmes as British programmes, including provision about applications for, and withdrawal of, certification.

1216CC Applications for certification

- (1) An application for certification of a relevant programme as a British programme is to be made to the Secretary of State by the television production company.
- (2) The application may be for an interim or final certificate.
- (3) An interim certificate is a certificate that –
- (a) is granted before the programme is completed, and
 - (b) states that the programme, if completed in accordance with the proposals set out in the application, will be a British programme.
- (4) A final certificate is a certificate that –
- (a) is granted after the programme is completed, and
 - (b) states that the programme is a British programme.
- (5) The applicant must provide the Secretary of State with any documents or information which the Secretary of State requires in order to determine the application.
- (6) The Secretary of State may require information provided for the purposes of the application to be accompanied by a statutory declaration, made by the person providing it, as to the truth of the information.
- (7) The Secretary of State may by regulations make provision supplementing this section, including –
- (a) provision about the form of applications,
 - (b) provision about the particulars and evidence necessary for satisfying the Secretary of State that a programme is a British programme for the purposes of this Part, and
 - (c) provision that any statutory declaration which is required by subsection (6) to be made by any person may be made on the person's behalf by such person as is specified in the regulations.
- (8) Regulations under subsection (7) are to be made by statutory instrument.
- (9) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of the House of Commons.

1216CD Certification and withdrawal of certification

- (1) If the Secretary of State is satisfied that the requirements are met for interim or final certification of a relevant programme as a British programme, the Secretary of State must certify the programme accordingly.
- (2) If the Secretary of State is not satisfied that those requirements are met, the Secretary of State must refuse the application.

- (3) An interim certificate –
 - (a) may be given subject to conditions, and (unless the Secretary of State directs otherwise) is of no effect if the conditions are not met, and
 - (b) may be expressed to expire after a specified period, and (unless the Secretary of State directs otherwise) ceases to have effect at the end of that period.
- (4) An interim certificate ceases to have effect when a final certificate is issued.
- (5) If it appears to the Secretary of State that a relevant programme certified under this Part ought not to have been certified, the Secretary of State may revoke its certification.
- (6) Unless the Secretary of State directs otherwise, a certificate that is revoked is treated as never having had effect.

UK expenditure

1216CE UK expenditure

- (1) At least 25% of the core expenditure on the relevant programme incurred –
 - (a) in the case of a British programme that is not a qualifying co-production, by the company, and
 - (b) in the case of a qualifying co-production, by the co-producers,
 must be UK expenditure.
- (2) The Treasury may by regulations amend the percentage specified in subsection (1).

Additional deductions

1216CF Additional deduction for qualifying expenditure

- (1) If television tax relief is available to the company, it may (on making a claim) make an additional deduction in respect of qualifying expenditure on the relevant programme.
- (2) The deduction is made in calculating the profit or loss of the separate programme trade.
- (3) In this Chapter “qualifying expenditure” means core expenditure on the relevant programme that falls to be taken into account under Chapter 2 in calculating the profit or loss of the separate programme trade for tax purposes.
- (4) The Treasury may by regulations –
 - (a) amend subsection (3), and
 - (b) provide that expenditure of a specified description is or is not to be regarded as qualifying expenditure.

1216CG Amount of additional deduction

- (1) For the first period of account during which the separate programme trade is carried on, the amount of the additional deduction is given by –

$$0.8 \times E$$

where E is –

- (a) so much of the qualifying expenditure as is UK expenditure, or
(b) if less, 80% of the total amount of qualifying expenditure.

- (2) For any period of account after the first, the amount of the additional deduction is given by –

$$(0.8 \times E) - P$$

where –

E is –

- (a) so much of the qualifying expenditure incurred to date as is UK expenditure, or
(b) if less, 80% of the total amount of qualifying expenditure incurred to date, and

P is the total amount of the additional deductions given for previous periods.

- (3) The Treasury may by regulations amend the percentage specified in the definition of “E” in subsection (1) or (2).

Television tax credits

1216CH Television tax credit claimable if company has surrenderable loss

- (1) If television tax relief is available to the company, it may claim a television tax credit for an accounting period in which it has a surrenderable loss.

- (2) The company’s surrenderable loss in an accounting period is –
(a) the company’s available loss for the period in the separate programme trade (see subsection (3)), or
(b) if less, the available qualifying expenditure for the period (see subsections (5) and (6)).

- (3) 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 programme trade, and

RUL is the amount of any relevant unused loss of the company (see subsection (4)).

- (4) 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 1216CI(1), or
(b) carried forward under section 45 of CTA 2010 and set against profits of the separate programme trade.

- (5) For the first period of account during which the separate programme trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1216CG(1).
- (6) For any period of account after the first, the available qualifying expenditure is given by –
- $$E - S$$
- where –
- E is the amount that is E for that period for the purposes of section 1216CG(2), and
- S is the total amount previously surrendered under section 1216CI(1).
- (7) If a period of account of the separate programme trade does not coincide with an accounting period, any necessary apportionments are to be made by reference to the number of days in the periods concerned.

1216CI Surrendering of loss and amount of television tax credit

- (1) The company may surrender the whole or part of its surrenderable loss in an accounting period.
- (2) If the company surrenders the whole or part of that loss, the amount of the television tax credit to which it is entitled for the accounting period is 25% of the amount of the loss surrendered.
- (3) The company's available loss for the accounting period is reduced by the amount surrendered.

1216CJ Payment in respect of television tax credit

- (1) If the company –
- (a) is entitled to a television tax credit for a period, and
 - (b) makes a claim,
- the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") must pay to the company the amount of the credit.
- (2) An amount payable in respect of –
- (a) a television tax credit, or
 - (b) interest on a television tax credit under section 826 of ICTA,
- may be applied in discharging any liability of the company to pay corporation tax.
- To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.
- (3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a television tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).
- In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.
- (4) No payment need be made in respect of a television tax credit for an accounting period before the company has paid to the

Commissioners any amount that it is required to pay for payment periods ending in that accounting period –

- (a) under PAYE regulations,
 - (b) under section 966 of ITA 2007 (visiting performers), or
 - (c) in respect of Class 1 national insurance contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (5) A payment in respect of a television tax credit is not income of the company for any tax purpose.

Miscellaneous

1216CK No account to be taken of amount if unpaid

- (1) In determining for the purposes of this Chapter the amount of costs incurred on a relevant programme at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.
- (2) This is without prejudice to the operation of section 1216BD (when costs are taken to be incurred).

1216CL Artificially inflated claims for additional deduction or tax credit

- (1) So far as a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be ignored in determining for any period –
 - (a) any additional deduction which a company may make under this Chapter, and
 - (b) any television tax credit to be given to a company.
- (2) Arrangements are entered into wholly or mainly for a disqualifying purpose if their main object, or one of their main objects, is to enable a company to obtain –
 - (a) an additional deduction under this Chapter to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or
 - (b) a television tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.
- (3) “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

1216CM Confidentiality of information

- (1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to the Secretary of State for the purposes of the Secretary of State’s functions under any of the provisions listed in subsection (2).
- (2) The provisions referred to in subsection (1) are –
 - (a) sections 1216CB to 1216CD (certification of relevant programmes as British),

- (b) sections 1217CB to 1217CD (certification of video games as British), and
 - (c) Schedule 1 to the Films Act 1985 (certification of films as British).
- (3) Information so disclosed may be disclosed to the British Film Institute.
- (4) The Treasury may by order amend subsection (3) –
- (a) so as to substitute for the person or body specified in that subsection a different person or body, or
 - (b) in consequence of a change in the name of the person or body so specified.
- (5) A person to whom information is disclosed under subsection (1) or (3) may not otherwise disclose it except –
- (a) for the purposes of the Secretary of State’s functions under any of the provisions listed in subsection (2),
 - (b) if the disclosure is authorised by an enactment,
 - (c) in pursuance of an order of a court,
 - (d) for the purposes of a criminal investigation or legal proceedings (whether civil or criminal) connected with the operation of any of Parts 15 to 15B of this Act or Schedule 1 to the Films Act 1985,
 - (e) with the consent of the Commissioners for Her Majesty’s Revenue and Customs, or
 - (f) with the consent of each person to whom the information relates.

1216CN Wrongful disclosure

- (1) A person (“X”) commits an offence if –
- (a) X discloses revenue and customs information relating to a person (as defined in section 19(2) of the Commissioners for Revenue and Customs Act 2005),
 - (b) the identity of the person to whom the information relates is specified in the disclosure or can be deduced from it, and
 - (c) the disclosure contravenes section 1216CM(5).
- (2) If a person (“Y”) is charged with an offence under subsection (1), it is a defence for Y to prove that Y reasonably believed –
- (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public.
- (3) A person guilty of an offence under subsection (1) is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (4) A prosecution for an offence under subsection (1) may be brought in England and Wales only –
- (a) by the Director of Revenue and Customs Prosecutions, or

- (b) with the consent of the Director of Public Prosecutions.
- (5) A prosecution for an offence under subsection (1) may be brought in Northern Ireland only –
 - (a) by the Commissioners for Her Majesty’s Revenue and Customs, or
 - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (6) In the application of this section –
 - (a) in England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003, or
 - (b) in Northern Ireland,the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

CHAPTER 4

PROGRAMME LOSSES

1216D Application of sections 1216DA and 1216DB

- (1) Sections 1216DA and 1216DB apply to a company that is the television production company in relation to a relevant programme.
- (2) In those sections –
 - “the completion period” means the accounting period of the company –
 - (a) in which the relevant programme is completed, or
 - (b) if the company does not complete the relevant programme, in which it abandons television production activities in relation to the programme,
 - “loss relief” includes any means by which a loss might be used to reduce the amount in respect of which the company, or any other person, is chargeable to tax,
 - “pre-completion period” means an accounting period of the company before the completion period, and
 - “the separate programme trade” means the company’s separate trade in relation to the relevant programme (see section 1216B).

1216DA Restriction on use of losses while programme in production

- (1) This section applies if in a pre-completion period a loss is made in the separate programme trade.
- (2) The loss is not available for loss relief except to the extent that it may be carried forward under section 45 of CTA 2010 to be set against profits of the separate programme trade in a subsequent period.

1216DB Use of losses in later periods

- (1) This section applies to the following accounting periods of the company (“relevant later periods”) –
 - (a) the completion period, and

- (b) any subsequent accounting period during which the separate programme trade continues.
- (2) Subsection (3) applies if a loss made in the separate programme trade is carried forward under section 45 of CTA 2010 from a pre-completion period to a relevant later period.
- (3) So much (if any) of the loss as is not attributable to television tax relief (see subsection (6)) may be treated for the purposes of loss relief as if it were a loss made in the period to which it is carried forward.
- (4) Subsection (5) applies if in a relevant later period a loss is made in the separate programme trade.
- (5) The amount of the loss that may be –
 - (a) deducted from total profits of the same or an earlier period under section 37 of CTA 2010, or
 - (b) surrendered as group relief under Part 5 of that Act,
 is restricted to the amount (if any) that is not attributable to television tax relief (see subsection (6)).
- (6) The amount of a loss in any period that is attributable to television tax relief is calculated by deducting from the total amount of the loss the amount there would have been if there had been no additional deduction under Chapter 3 in that or any earlier period.
- (7) This section does not apply to a loss to the extent that it is carried forward or surrendered under section 1216DC.

1216DC Terminal losses

- (1) This section applies if –
 - (a) a company (“company A”) is the television production company in relation to a qualifying programme,
 - (b) company A ceases to carry on its separate trade in relation to that programme (“trade X”) (see section 1216B), and
 - (c) if company A had not ceased to carry on trade X, it could have carried forward an amount under section 45 of CTA 2010 to be set against profits of trade X in a later period (“the terminal loss”).
- (2) If on cessation of trade X company A –
 - (a) is the television production company in relation to another qualifying programme, and
 - (b) is carrying on its separate trade in relation to that programme (“trade Y”),
 it may (on making a claim) make an election under subsection (3).
- (3) The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 45 of CTA 2010 to be set against the profits of trade Y in the first accounting period beginning after the cessation and so on.
- (4) Subsection (5) applies if on cessation of trade X –
 - (a) there is another company (“company B”) that is the television production company in relation to a qualifying programme,

- (b) company B is carrying on its separate trade in relation to that programme (“trade Z”), and
 - (c) company B is in the same group as company A for the purposes of Part 5 of CTA 2010 (group relief).
- (5) Company A may surrender the terminal loss (or a part of it) to company B.
- (6) On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 45 of CTA 2010 to be set against the profits of trade Z of the first accounting period of that company beginning after the cessation and so on.
- (7) The Treasury may, in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6), make provision by regulations corresponding, subject to such adaptations or other modifications as appear to them to be appropriate, to that made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).
- (8) “Qualifying programme” means a relevant programme in relation to which the conditions for television tax relief are met (see 1216C(2)).

CHAPTER 5

PROVISIONAL ENTITLEMENT TO RELIEF

1216E Introduction

- (1) In this Chapter –
 - “the company” means the television production company in relation to a relevant programme,
 - “the completion period” means the accounting period of the company –
 - (a) in which the relevant programme is completed, or
 - (b) if the company does not complete the relevant programme, in which it abandons television production activities in relation to it,
 - “interim accounting period” means any earlier accounting period of the company during which television production activities are carried on in relation to the relevant programme,
 - “interim certificate” and “final certificate” have the meaning given by section 1216CC,
 - “the separate programme trade” means the company’s separate trade in relation to the relevant programme (see section 1216B), and
 - “special television relief” means –
 - (a) television tax relief, or
 - (b) relief under section 1216DC (transfer of terminal losses from one relevant programme to another).
- (2) The company’s company tax return for the completion period must state that the relevant programme has been completed or that the

company has abandoned television production activities in relation to it (as the case may be).

1216EA Certification as a British programme

- (1) The company is not entitled to special television relief for an interim accounting period unless its company tax return for the period is accompanied by an interim certificate.
- (2) If an interim certificate ceases to be in force (otherwise than on being superseded by a final certificate) or is revoked, the company –
 - (a) is not entitled to special television relief for any period for which its entitlement depended on the certificate, and
 - (b) must amend accordingly its company tax return for any such period.
- (3) If the relevant programme is completed by the company –
 - (a) its company tax return for the completion period must be accompanied by a final certificate,
 - (b) if that requirement is met, the final certificate has effect for the completion period and for any interim accounting period, and
 - (c) if that requirement is not met, the company –
 - (i) is not entitled to special television relief for any period, and
 - (ii) must amend accordingly its company tax return for any period for which such relief was claimed.
- (4) If the company abandons television production activities in relation to the relevant programme –
 - (a) its company tax return for the completion period may be accompanied by an interim certificate, and
 - (b) the abandonment of television production activities does not affect any entitlement to special television relief in that or any previous accounting period.
- (5) If a final certificate is revoked, the company –
 - (a) is not entitled to special television relief for any period, and
 - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

1216EB The UK expenditure condition

- (1) The company is not entitled to special television relief for an interim accounting period unless –
 - (a) its company tax return for the period states the amount of planned core expenditure on the relevant programme that is UK expenditure, and
 - (b) that amount is such as to indicate that the condition in section 1216CE (the UK expenditure condition) will be met on completion of the programme.

If those requirements are met, the company is provisionally treated in relation to that period as if that condition was met.

- (2) If such a statement is made but it subsequently appears that the condition will not be met on completion of the programme, the company –
 - (a) is not entitled to special television relief for any period for which its entitlement depended on such a statement, and
 - (b) must amend accordingly its company tax return for any such period.
- (3) When the relevant programme is completed or the company abandons television production activities in relation to it (as the case may be), the company's company tax return for the completion period must be accompanied by a final statement of the amount of core expenditure on the programme that is UK expenditure.
- (4) If that statement shows that the condition in section 1216CE is not met, the company –
 - (a) is not entitled to special television relief for any period, and
 - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

1216EC Time limit for amendments and assessments

Any amendment or assessment necessary to give effect to the provisions of this Chapter may be made despite any limitation on the time within which an amendment or assessment may normally be made.”

PART 2

COMMENCEMENT

- 2 (1) The amendments made by this Schedule come into force in accordance with provision contained in an order made by the Treasury.
- (2) An order under this paragraph –
 - (a) may make different provision for different cases;
 - (b) may make such adaptations of Part 15A of CTA 2009 as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.
- 3 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013.
- (2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2013 and ending on or after that date (“the straddling period”).
- (3) For the purposes of Part 15A of CTA 2009 –
 - (a) so much of the straddling period as falls before 1 April 2013, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
 - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

SCHEDULE 2

Section 1

TAX RELIEF FOR VIDEO GAMES DEVELOPMENT

PART 1

AMENDMENTS OF CTA 2009

1 After Part 15A of CTA 2009 (inserted by Schedule 1 above) insert –

“PART 15B

VIDEO GAMES DEVELOPMENT

CHAPTER 1

INTRODUCTION

Introductory

1217A Overview of Part

- (1) This Part is about video games development.
- (2) Sections 1217AA to 1217AF contain definitions and other provisions about interpretation that apply for the purposes of this Part.
 See, in particular –
 - (a) section 1217AA, which contains provision about the meaning of “video game”, and
 - (b) section 1217AB, which explains how a company comes to be treated as the video games development company in relation to a video game.
- (3) Chapter 2 is about the taxation of the activities of a video games development company and includes –
 - (a) provision for the company’s activities in relation to its video game to be treated as a separate trade, and
 - (b) provision about the calculation of the profits and losses of that trade.
- (4) Chapter 3 is about relief (called “video games tax relief”) which can be given to a video games development company –
 - (a) by way of additional deductions to be made in calculating the profits or losses of the company’s separate trade, or
 - (b) by way of a payment (a “video game tax credit”) to be made on the company’s surrender of losses from that trade.
- (5) Chapter 4 is about the relief which can be given for losses made by a video games development company in its separate trade, including provision for certain such losses to be transferred to other separate trades.
- (6) Chapter 5 provides –
 - (a) for relief under Chapters 3 and 4 to be given on a provisional basis, and

- (b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

Interpretation

1217AA “Video game” etc

- (1) This section applies for the purposes of this Part.
- (2) “Video game” does not include –
 - (a) anything produced for advertising or promotional purposes, or
 - (b) anything produced for the purposes of gambling (within the meaning of the Gambling Act 2005).
- (3) References to a video game include the game’s soundtrack.
- (4) A video game is completed when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and made available to the general public.

1217AB Video games development company

- (1) For the purposes of this Part “video games development company” is to be read in accordance with this section.
- (2) There cannot be more than one video games development company in relation to a video game.
- (3) A company is the video games development company in relation to a video game if the company (otherwise than in partnership) –
 - (a) is responsible for designing, producing and testing the video game,
 - (b) is actively engaged in planning and decision-making during the design, production and testing of the video game, and
 - (c) directly negotiates, contracts and pays for rights, goods and services in relation to the video game.
- (4) If there is more than one company meeting the description in subsection (3), the company that is most directly engaged in the activities referred to in that subsection is the video games development company in relation to the video game.
- (5) If there is no company meeting the description in subsection (3), there is no video games development company in relation to the video game.
- (6) A company may elect to be regarded as a company which does not meet the description in subsection (3).
- (7) The election –
 - (a) must be made by the company by being included in its company tax return for an accounting period (and may be included in the return originally made or by amendment), and
 - (b) may be withdrawn by the company only by amending its company tax return for that accounting period.

- (8) The election has effect in relation to video games which begin to be produced in that or any subsequent accounting period.

1217AC “Video game development activities” etc

- (1) In this Part “video game development activities”, in relation to a video game, means the activities involved in designing, producing and testing the video game.
- (2) The Treasury may by regulations –
- (a) amend subsection (1),
 - (b) provide that specified activities are or are not to be regarded as video game development activities or as video game development activities of a particular description, and
 - (c) provide that, in relation to a specified description of video game, references to video game development activities of a particular description are to be read as references to such activities as may be specified.

“Specified” means specified in the regulations.

1217AD “Core expenditure”

- (1) In this Part “core expenditure”, in relation to a video game, means expenditure on designing, producing and testing the video game.
- (2) But the following descriptions of expenditure are not to be regarded as core expenditure for the purposes of this Part –
- (a) any expenditure incurred in designing the initial concept for a video game;
 - (b) any expenditure incurred in debugging a completed video game or carrying out any maintenance in connection with such a video game.

1217AE “UK expenditure” etc

- (1) In this Part “UK expenditure”, in relation to a video game, means expenditure on goods or services that are used or consumed in the United Kingdom.
- (2) Any apportionment of expenditure as between UK expenditure and non-UK expenditure for the purposes of this Part is to be made on a just and reasonable basis.
- (3) The Treasury may by regulations amend subsection (1).

1217AF “Company tax return”

In this Part “company tax return” has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1)).

CHAPTER 2

TAXATION OF ACTIVITIES OF VIDEO GAMES DEVELOPMENT COMPANY

Separate video game trade

1217B Activities of video games development company treated as a separate trade

- (1) This Chapter applies for corporation tax purposes to a company that is the video games development company in relation to a video game.
- (2) The company's activities in relation to the video game are treated as a trade separate from any other activities of the company (including any activities in relation to any other video game).
- (3) In this Chapter the separate trade is called "the separate video game trade".
- (4) The company is treated as beginning to carry on the separate video game trade –
 - (a) when the design of the video game begins, or
 - (b) if earlier, when any income from the video game is received by the company.

1217BA Calculation of profits or losses of separate video game trade

- (1) This section applies for the purpose of calculating the profits or losses of the separate video game trade.
- (2) For the first period of account the following are brought into account –
 - (a) as a debit, the costs of the video game incurred (and represented in work done) to date, and
 - (b) as a credit, the proportion of the estimated total income from the video game treated as earned at the end of that period.
- (3) For subsequent periods of account the following are brought into account –
 - (a) as a debit, the difference between the amount of the costs of the video game incurred (and represented in work done) to date and the corresponding amount for the previous period, and
 - (b) as a credit, the difference between the proportion of the estimated total income from the video game treated as earned at the end of that period and the corresponding amount for the previous period.
- (4) The proportion of the estimated total income treated as earned at the end of a period of account is given by –

$$\frac{C}{T} \times I$$

where –

C is the total to date of costs incurred (and represented in work done),

T is the estimated total cost of the video game, and
I is the estimated total income from the video game.

Supplementary

1217BB Income from the video game

- (1) References in this Chapter to income from the video game are to any receipts by the company in connection with the production or exploitation of the video game.
- (2) This includes –
 - (a) receipts from the sale of the video game or rights in it,
 - (b) royalties or other payments for use of the video game or aspects of it (for example, characters or music),
 - (c) payments for rights to produce games or other merchandise, and
 - (d) receipts by the company by way of a profit share agreement.
- (3) Receipts that (apart from this subsection) would be regarded as of a capital nature are treated as being of a revenue nature.

1217BC Costs of the video game

- (1) References in this Chapter to the costs of the video game are to expenditure incurred by the company on –
 - (a) video game development activities in connection with the video game, or
 - (b) activities with a view to exploiting the video game.
- (2) This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.
- (3) Expenditure that (apart from this subsection) would be regarded as of a capital nature by reason only of being incurred on the creation of an asset (the video game) is treated as being of a revenue nature.

1217BD When costs are taken to be incurred

- (1) For the purposes of this Chapter costs are incurred when they are represented in the state of completion of the work in progress.
- (2) Accordingly –
 - (a) payments in advance for work to be done are ignored until the work has been carried out, and
 - (b) deferred payments are recognised to the extent that the work is represented in the state of completion.
- (3) The costs incurred on the video game are taken to include an amount that has not been paid only if it is the subject of an unconditional obligation to pay.
- (4) If an obligation is linked to income being earned from the video game, no amount is to be brought into account in respect of the costs of the obligation unless an appropriate amount of income is or has been brought into account.

1217BE Estimates

Estimates for the purposes of this Chapter must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

CHAPTER 3

VIDEO GAMES TAX RELIEF

Introductory

1217C Availability and overview of video games tax relief

- (1) This Chapter applies for corporation tax purposes to a company that is the video games development company in relation to a video game.
- (2) Relief under this Chapter (“video games tax relief”) is available to the company if the conditions specified in the following sections are met in relation to the video game –
 - (a) section 1217CA (intended for supply),
 - (b) section 1217CB (British video game), and
 - (c) section 1217CE (UK expenditure).
- (3) Video games tax relief is given by way of –
 - (a) additional deductions (see sections 1217CF and 1217CG), and
 - (b) video game tax credits (see sections 1217CH to 1217CJ).
- (4) But video games tax relief is not available in respect of any expenditure if –
 - (a) the company is entitled to an R&D expenditure credit under Chapter 6A of Part 3 in respect of the expenditure, or
 - (b) the company has obtained relief under Part 13 (additional relief for expenditure on research and development) in respect of the expenditure.
- (5) Sections 1217CK to 1217CN contain provision about unpaid costs, artificially inflated claims and confidentiality of information.
- (6) In this Chapter “the separate video game trade” means the company’s separate trade in relation to the video game (see section 1217B).
- (7) See Schedule 18 to FA 1998 (in particular, Part 9D) for information about the procedure for making claims for video games tax relief.

“Intended for supply”

1217CA Intended for supply

- (1) The video game must be intended for supply to the general public.
- (2) Whether this condition is met is determined when video game production activities begin, so that –

- (a) where a video game is originally intended for supply, this condition continues to be met even if that ceases to be the intention, and
- (b) where a video game is not originally intended for supply, this condition is not met even if that becomes the intention.

British video games

1217CB British video game

- (1) The video game must be certified by the Secretary of State as a British video game.
- (2) The Secretary of State, with the approval of the Treasury, may by regulations specify conditions which must be met by a video game before it may be certified as a British video game. These conditions are known as the “cultural test”.
- (3) Regulations under subsection (2) may –
 - (a) specify different conditions in relation to different descriptions of video game,
 - (b) provide that specified descriptions of video game may not be certified as a British video game, and
 - (c) enable the Secretary of State to direct that any provision made by virtue of paragraph (b) does not apply to a video game that meets specified conditions.
 “Specified” means specified in the regulations.
- (4) Regulations under subsection (2) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) Sections 1217CC and 1217CD contain further provision about certification of video games as British video games, including provision about applications for, and withdrawal of, certification.

1217CC Applications for certification

- (1) An application for certification of a video game as a British video game is to be made to the Secretary of State by the video games development company.
- (2) The application may be for an interim or final certificate.
- (3) An interim certificate is a certificate that –
 - (a) is granted before the video game is completed, and
 - (b) states that the video game, if completed in accordance with the proposals set out in the application, will be a British video game.
- (4) A final certificate is a certificate that –
 - (a) is granted after the video game is completed, and
 - (b) states that the video game is a British video game.

- (5) The applicant must provide the Secretary of State with any documents or information which the Secretary of State requires in order to determine the application.
- (6) The Secretary of State may require information provided for the purposes of the application to be accompanied by a statutory declaration, made by the person providing it, as to the truth of the information.
- (7) The Secretary of State may by regulations make provision supplementing this section, including –
 - (a) provision about the form of applications,
 - (b) provision about the particulars and evidence necessary for satisfying the Secretary of State that a video game is a British video game for the purposes of this Part, and
 - (c) provision that any statutory declaration which is required by subsection (6) to be made by any person may be made on the person's behalf by such person as is specified in the regulations.
- (8) Regulations under subsection (7) are to be made by statutory instrument.
- (9) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of the House of Commons.

1217CD Certification and withdrawal of certification

- (1) If the Secretary of State is satisfied that the requirements are met for interim or final certification of a video game as a British video game, the Secretary of State must certify the video game accordingly.
- (2) If the Secretary of State is not satisfied that those requirements are met, the Secretary of State must refuse the application.
- (3) An interim certificate –
 - (a) may be given subject to conditions, and (unless the Secretary of State directs otherwise) is of no effect if the conditions are not met, and
 - (b) may be expressed to expire after a specified period, and (unless the Secretary of State directs otherwise) ceases to have effect at the end of that period.
- (4) An interim certificate ceases to have effect when a final certificate is issued.
- (5) If it appears to the Secretary of State that a video game certified under this Part ought not to have been certified, the Secretary of State may revoke its certification.
- (6) Unless the Secretary of State directs otherwise, a certificate that is revoked is treated as never having had effect.

UK expenditure

1217CE UK expenditure

- (1) At least 25% of the core expenditure on the video game incurred by the company must be UK expenditure.
- (2) The Treasury may by regulations amend the percentage specified in subsection (1).

Additional deductions

1217CF Additional deduction for qualifying expenditure

- (1) If video games tax relief is available to the company, it may (on making a claim) make an additional deduction in respect of qualifying expenditure on the video game.
- (2) The deduction is made in calculating the profit or loss of the separate video game trade.
- (3) In this Chapter “qualifying expenditure” means core expenditure on the video game that falls to be taken into account under Chapter 2 in calculating the profit or loss of the separate video game trade for tax purposes.
- (4) The Treasury may by regulations –
 - (a) amend subsection (3), and
 - (b) provide that expenditure of a specified description is or is not to be regarded as qualifying expenditure.

1217CG Amount of additional deduction

- (1) For the first period of account during which the separate video game trade is carried on, the amount of the additional deduction is given by –

$$0.8 \times E$$

where E is –

- (a) so much of the qualifying expenditure as is UK expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure.

- (2) For any period of account after the first, the amount of the additional deduction is given by –

$$(0.8 \times E) - P$$

where –

E is –

- (a) so much of the qualifying expenditure incurred to date as is UK expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure incurred to date, and

P is the total amount of the additional deductions given for previous periods.

- (3) The Treasury may by regulations amend the percentage specified in the definition of “E” in subsection (1) or (2).

Video game tax credits

1217CH Video game tax credit claimable if company has surrenderable loss

- (1) If video games tax relief is available to the company, it may claim a video game tax credit for an accounting period in which it has a surrenderable loss.
- (2) The company's surrenderable loss in an accounting period is –
 - (a) the company's available loss for the period in the separate video game trade (see subsection (3)), or
 - (b) if less, the available qualifying expenditure for the period (see subsections (5) and (6)).
- (3) 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 video game trade, and
 - RUL is the amount of any relevant unused loss of the company (see subsection (4)).
- (4) 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 1217CI(1), or
 - (b) carried forward under section 45 of CTA 2010 and set against profits of the separate video game trade.
- (5) For the first period of account during which the separate video game trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1217CG(1).
- (6) For any period of account after the first, the available qualifying expenditure is given by –
$$E - S$$
where –
 - E is the amount that is E for that period for the purposes of section 1217CG(2), and
 - S is the total amount previously surrendered under section 1217CI(1).
- (7) If a period of account of the separate video game trade does not coincide with an accounting period, any necessary apportionments are to be made by reference to the number of days in the periods concerned.

1217CI Surrendering of loss and amount of video game tax credit

- (1) The company may surrender the whole or part of its surrenderable loss in an accounting period.
- (2) If the company surrenders the whole or part of that loss, the amount of the video game tax credit to which it is entitled for the accounting period is 25% of the amount of the loss surrendered.

- (3) The company's available loss for the accounting period is reduced by the amount surrendered.

1217CJ Payment in respect of video game tax credit

- (1) If the company –
- (a) is entitled to a video game tax credit for a period, and
 - (b) makes a claim,
- the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") must pay to the company the amount of the credit.
- (2) An amount payable in respect of –
- (a) a video game tax credit, or
 - (b) interest on a video game tax credit under section 826 of ICTA,
- may be applied in discharging any liability of the company to pay corporation tax.
- To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.
- (3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a video game tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).
- In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.
- (4) No payment need be made in respect of a video game tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period –
- (a) under PAYE regulations,
 - (b) under section 966 of ITA 2007 (visiting performers), or
 - (c) in respect of Class 1 national insurance contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (5) A payment in respect of a video game tax credit is not income of the company for any tax purpose.

Miscellaneous

1217CK No account to be taken of amount if unpaid

- (1) In determining for the purposes of this Chapter the amount of costs incurred on a video game at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.
- (2) This is without prejudice to the operation of section 1217BD (when costs are taken to be incurred).

1217CL Artificially inflated claims for additional deduction or tax credit

- (1) So far as a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be ignored in determining for any period –
 - (a) any additional deduction which a company may make under this Chapter, and
 - (b) any video game tax credit to be given to a company.
- (2) Arrangements are entered into wholly or mainly for a disqualifying purpose if their main object, or one of their main objects, is to enable a company to obtain –
 - (a) an additional deduction under this Chapter to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or
 - (b) a video game tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.
- (3) “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

1217CM Confidentiality of information

- (1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to the Secretary of State for the purposes of the Secretary of State’s functions under any of the provisions listed in subsection (2).
- (2) The provisions referred to in subsection (1) are –
 - (a) sections 1216CB to 1216CD (certification of relevant programmes as British),
 - (b) sections 1217CB to 1217CD (certification of video games as British), and
 - (c) Schedule 1 to the Films Act 1985 (certification of films as British).
- (3) Information so disclosed may be disclosed to the British Film Institute.
- (4) The Treasury may by order amend subsection (3) –
 - (a) so as to substitute for the person or body specified in that subsection a different person or body, or
 - (b) in consequence of a change in the name of the person or body so specified.
- (5) A person to whom information is disclosed under subsection (1) or (3) may not otherwise disclose it except –
 - (a) for the purposes of the Secretary of State’s functions under any of the provisions listed in subsection (2),
 - (b) if the disclosure is authorised by an enactment,
 - (c) in pursuance of an order of a court,
 - (d) for the purposes of a criminal investigation or legal proceedings (whether civil or criminal) connected with the

- operation of any of Parts 15 to 15B of this Act or Schedule 1 to the Films Act 1985,
- (e) with the consent of the Commissioners for Her Majesty's Revenue and Customs, or
 - (f) with the consent of each person to whom the information relates.

1217CN Wrongful disclosure

- (1) A person ("X") commits an offence if –
 - (a) X discloses revenue and customs information relating to a person (as defined in section 19(2) of the Commissioners for Revenue and Customs Act 2005),
 - (b) the identity of the person to whom the information relates is specified in the disclosure or can be deduced from it, and
 - (c) the disclosure contravenes section 1217CM(5).
- (2) If a person ("Y") is charged with an offence under subsection (1), it is a defence for Y to prove that Y reasonably believed –
 - (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public.
- (3) A person guilty of an offence under subsection (1) is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (4) A prosecution for an offence under subsection (1) may be brought in England and Wales only –
 - (a) by the Director of Revenue and Customs Prosecutions, or
 - (b) with the consent of the Director of Public Prosecutions.
- (5) A prosecution for an offence under subsection (1) may be brought in Northern Ireland only –
 - (a) by the Commissioners for Her Majesty's Revenue and Customs, or
 - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (6) In the application of this section –
 - (a) in England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003, or
 - (b) in Northern Ireland,the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

CHAPTER 4

VIDEO GAME LOSSES

1217D Application of sections 1217DA and 1217DB

- (1) Sections 1217DA and 1217DB apply to a company that is the video games development company in relation to a video game.
- (2) In those sections –
 - “the completion period” means the accounting period of the company –
 - (a) in which the video game is completed, or
 - (b) if the company does not complete the video game, in which it abandons video game development activities in relation to the video game,
 - “loss relief” includes any means by which a loss might be used to reduce the amount in respect of which the company, or any other person, is chargeable to tax,
 - “pre-completion period” means an accounting period of the company before the completion period, and
 - “the separate video game trade” means the company’s separate trade in relation to the video game (see section 1217B).

1217DA Restriction on use of losses while video game in development

- (1) This section applies if in a pre-completion period a loss is made in the separate video game trade.
- (2) The loss is not available for loss relief except to the extent that it may be carried forward under section 45 of CTA 2010 to be set against profits of the separate video game trade in a subsequent period.

1217DB Use of losses in later periods

- (1) This section applies to the following accounting periods of the company (“relevant later periods”) –
 - (a) the completion period, and
 - (b) any subsequent accounting period during which the separate video game trade continues.
- (2) Subsection (3) applies if a loss made in the separate video game trade is carried forward under section 45 of CTA 2010 from a pre-completion period to a relevant later period.
- (3) So much (if any) of the loss as is not attributable to video games tax relief (see subsection (6)) may be treated for the purposes of loss relief as if it were a loss made in the period to which it is carried forward.
- (4) Subsection (5) applies if in a relevant later period a loss is made in the separate video game trade.
- (5) The amount of the loss that may be –
 - (a) deducted from total profits of the same or an earlier period under section 37 of CTA 2010, or
 - (b) surrendered as group relief under Part 5 of that Act,

is restricted to the amount (if any) that is not attributable to video games tax relief (see subsection (6)).

- (6) The amount of a loss in any period that is attributable to video games tax relief is calculated by deducting from the total amount of the loss the amount there would have been if there had been no additional deduction under Chapter 3 in that or any earlier period.
- (7) This section does not apply to a loss to the extent that it is carried forward or surrendered under section 1217DC.

1217DC Terminal losses

- (1) This section applies if –
 - (a) a company (“company A”) is the video games development company in relation to a qualifying video game,
 - (b) company A ceases to carry on its separate trade in relation to that video game (“trade X”) (see section 1217B), and
 - (c) if company A had not ceased to carry on trade X, it could have carried forward an amount under section 45 of CTA 2010 to be set against profits of trade X in a later period (“the terminal loss”).
- (2) If on cessation of trade X company A –
 - (a) is the video games development company in relation to another qualifying video game, and
 - (b) is carrying on its separate trade in relation to that video game (“trade Y”),
 it may (on making a claim) make an election under subsection (3).
- (3) The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 45 of CTA 2010 to be set against the profits of trade Y in the first accounting period beginning after the cessation and so on.
- (4) Subsection (5) applies if on cessation of trade X –
 - (a) there is another company (“company B”) that is the video games development company in relation to a qualifying video game,
 - (b) company B is carrying on its separate trade in relation to that video game (“trade Z”), and
 - (c) company B is in the same group as company A for the purposes of Part 5 of CTA 2010 (group relief).
- (5) Company A may surrender the terminal loss (or a part of it) to company B.
- (6) On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 45 of CTA 2010 to be set against the profits of trade Z of the first accounting period of that company beginning after the cessation and so on.
- (7) The Treasury may, in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6), make provision by regulations corresponding, subject to such adaptations or other modifications as appear to them to be appropriate, to that

made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).

- (8) “Qualifying video game” means a video game in relation to which the conditions for video games tax relief are met (see 1217C(2)).

CHAPTER 5

PROVISIONAL ENTITLEMENT TO RELIEF

1217E Introduction

- (1) In this Chapter –
- “the company” means the video games development company in relation to a video game,
 - “the completion period” means the accounting period of the company –
 - (a) in which the video game is completed, or
 - (b) if the company does not complete the video game, in which it abandons video game development activities in relation to it,
 - “interim accounting period” means any earlier accounting period of the company during which video game development activities are carried on in relation to the video game,
 - “interim certificate” and “final certificate” have the meaning given by section 1217CC,
 - “the separate video game trade” means the company’s separate trade in relation to the video game (see section 1217B), and
 - “special video games relief” means –
 - (a) video games tax relief, or
 - (b) relief under section 1217DC (transfer of terminal losses from one video game to another).
- (2) The company’s company tax return for the completion period must state that the video game has been completed or that the company has abandoned video game development activities in relation to it (as the case may be).

1217EA Certification as a British video game

- (1) The company is not entitled to special video games relief for an interim accounting period unless its company tax return for the period is accompanied by an interim certificate.
- (2) If an interim certificate ceases to be in force (otherwise than on being superseded by a final certificate) or is revoked, the company –
- (a) is not entitled to special video games relief for any period for which its entitlement depended on the certificate, and
 - (b) must amend accordingly its company tax return for any such period.
- (3) If the video game is completed by the company –
- (a) its company tax return for the completion period must be accompanied by a final certificate,

- (b) if that requirement is met, the final certificate has effect for the completion period and for any interim accounting period, and
 - (c) if that requirement is not met, the company –
 - (i) is not entitled to special video games relief for any period, and
 - (ii) must amend accordingly its company tax return for any period for which such relief was claimed.
- (4) If the company abandons video game development activities in relation to the video game –
- (a) its company tax return for the completion period may be accompanied by an interim certificate, and
 - (b) the abandonment of video game development activities does not affect any entitlement to special video games relief in that or any previous accounting period.
- (5) If a final certificate is revoked, the company –
- (a) is not entitled to special video games relief for any period, and
 - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

1217EB The UK expenditure condition

- (1) The company is not entitled to special video games relief for an interim accounting period unless –
- (a) its company tax return for the period states the amount of planned core expenditure on the video game that is UK expenditure, and
 - (b) that amount is such as to indicate that the condition in section 1217CE (the UK expenditure condition) will be met on completion of the video game.

If those requirements are met, the company is provisionally treated in relation to that period as if that condition was met.

- (2) If such a statement is made but it subsequently appears that the condition will not be met on completion of the video game, the company –
- (a) is not entitled to special video games relief for any period for which its entitlement depended on such a statement, and
 - (b) must amend accordingly its company tax return for any such period.
- (3) When the video game is completed or the company abandons video game development activities in relation to it (as the case may be), the company's company tax return for the completion period must be accompanied by a final statement of the amount of core expenditure on the video game that is UK expenditure.
- (4) If that statement shows that the condition in section 1217CE is not met, the company –
- (a) is not entitled to special video games relief for any period, and

- (b) must amend accordingly its company tax return for any period for which such relief was claimed.

1217EC Time limit for amendments and assessments

Any amendment or assessment necessary to give effect to the provisions of this Chapter may be made despite any limitation on the time within which an amendment or assessment may normally be made.”

PART 2

COMMENCEMENT

- 2 (1) The amendments made by this Schedule come into force in accordance with provision contained in an order made by the Treasury.
- (2) An order under this paragraph –
 - (a) may make different provision for different cases;
 - (b) may make such adaptations of Part 15B of CTA 2009 as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.
- 3 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013.
- (2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2013 and ending on or after that date (“the straddling period”).
- (3) For the purposes of Part 15B of CTA 2009 –
 - (a) so much of the straddling period as falls before 1 April 2013, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
 - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

SCHEDULE 3

Section 1

TELEVISION AND VIDEO GAMES TAX RELIEF: CONSEQUENTIAL AMENDMENTS

ICTA

- 1 (1) Section 826 of ICTA (interest on tax overpaid) is amended as follows.
- (2) In subsection (1), after paragraph (f) insert –
 - “(fa) a payment of television tax credit falls to be made to a company; or
 - (fb) a payment of video game tax credit falls to be made to a company; or”.
- (3) In subsection (3C), after “film tax credit” insert “, television tax credit or video game tax credit”.

- (4) In subsection (8A)(b)(ii), after “film tax credit” insert “or television tax credit or video game tax credit”.
- (5) In subsection (8BA), after “film tax credit” insert “or television tax credit or video game tax credit”.

FA 1998

- 2 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.
- 3 (1) Paragraph 10 (other claims and elections to be included in return) is amended as follows.
 - (2) In sub-paragraph (4), for “film tax relief” substitute “tax relief under Part 15, 15A or 15B of the Corporation Tax Act 2009”.
 - (3) After sub-paragraph (5) insert –
 - “(6) An election under section 1216AE(7) of the Corporation Tax Act 2009 (election not to be a television production company) can only be made by being included in a company tax return (see section 1216AE(8)(a) of that Act).
 - (7) An election under section 1217AB(6) of the Corporation Tax Act 2009 (election not to be a video games development company) can only be made by being included in a company tax return (see section 1217AB(7)(a) of that Act).”
- 4 (1) Paragraph 52 (recovery of excessive overpayments etc) is amended as follows.
 - (2) In sub-paragraph (2), after paragraph (bd) insert –
 - “(be) television tax credit under Part 15A of that Act,
 - (bf) video game tax credit under Part 15B of that Act.”
 - (3) In sub-paragraph (5) –
 - (a) after paragraph (af) insert –
 - “(ag) an amount of television tax credit paid to a company for an accounting period,
 - (ah) an amount of video game tax credit paid to a company for an accounting period.”;
 - (b) after “(ae)” insert “, (ag), (ah)”.
- 5 (1) Part 9D (claims for film tax relief) is amended as follows.
 - (2) In paragraph 83S (introduction), for “film tax relief” substitute “the following reliefs –
 - (a) film tax relief,
 - (b) television tax relief,
 - (c) video games tax relief.”
 - (3) The heading of that Part becomes “CLAIMS FOR TAX RELIEF UNDER PART 15, 15A OR 15B OF THE CORPORATION TAX ACT 2009”.

CAA 2001

- 6 In Schedule A1 to CAA 2001 (first-year tax credits), in paragraph 11(4), omit

the “and” at the end of paragraph (b) and after paragraph (c) insert –

- “(d) Chapter 3 of Part 15A of that Act (television tax credits),
and
- (e) Chapter 3 of Part 15B of that Act (video game tax credits).”

FA 2007

7 In Schedule 24 to FA 2007 (penalties for errors), in paragraph 28(fa) (meaning of “corporation tax credit”), omit the “or” at the end of sub-paragraph (iv) and after that sub-paragraph insert –

- “(iva) a television tax credit under Chapter 3 of Part 15A of that Act,
- (ivb) a video game tax credit under Chapter 3 of Part 15B of that Act, or”.

CTA 2009

8 In Chapter 6A of Part 3 of CTA 2009 (trade profits: R&D expenditure credits), after section 104B insert –

“104BA Restriction on claiming other tax reliefs

- (1) For provision prohibiting an R&D expenditure credit being given under this Chapter and relief being given under Chapter 3 of Part 15 (film tax relief), see section 1195(3A).
- (2) For provision prohibiting an R&D expenditure credit being given under this Chapter and relief being given under Chapter 3 of Part 15A (television tax relief), see section 1216C(4).
- (3) For provision prohibiting an R&D expenditure credit being given under this Chapter and relief being given under Chapter 3 of Part 15B (video games tax relief), see section 1217C(4).”

9 In Part 8 of CTA 2009 (intangible fixed assets), in Chapter 10 (excluded assets), after section 808 insert –

“808A Assets representing production expenditure on certain TV programmes

- (1) This Part does not apply to an intangible fixed asset held by a television production company so far as it represents production expenditure on a television programme to which Chapter 2 of Part 15A (taxation of activities of television production company) applies.
- (2) In this section –
 - (a) “television programme” has the same meaning as in Part 15A (see section 1216AA),
 - (b) “television production company” has the same meaning as in that Part (see section 1216AE), and
 - (c) “production expenditure” has the same meaning as in that Part (see section 1216AG(2)).

808B Assets representing core expenditure on video games

- (1) This Part does not apply to an intangible fixed asset held by a video games development company so far as it represents core expenditure

on a video game to which Chapter 2 of Part 15B (taxation of activities of video games development company) applies.

- (2) In this section –
- (a) “video game” has the same meaning as in Part 15B (see section 1217AA),
 - (b) “video games development company” has the same meaning as in that Part (see section 1217AB), and
 - (c) “core expenditure” has the same meaning as in that Part (see section 1217AD).”

- 10 In Part 13 of CTA 2009 (additional relief for expenditure on research and development), after section 1040 insert –

“1040ZA Restriction on claiming other tax reliefs

- (1) For provision prohibiting relief being given under this Part and under Chapter 3 of Part 15 (film tax relief), see section 1195(3A).
- (2) For provision prohibiting relief being given under this Part and under Chapter 3 of Part 15A (television tax relief), see section 1216C(4).
- (3) For provision prohibiting relief being given under this Part and under Chapter 3 of Part 15B (video games tax relief), see section 1217C(4).”

- 11 Part 15 of CTA 2009 (film tax relief) is amended as follows.

- 12 In section 1195 (availability and overview of film tax relief), after subsection (3) insert –

- “(3A) But film tax relief is not available in respect of any expenditure if –
- (a) the company is entitled to an R&D expenditure credit under Chapter 6A of Part 3 in respect of the expenditure, or
 - (b) the company has obtained relief under Part 13 (additional relief for expenditure on research and development) in respect of the expenditure.”

- 13 (1) Section 1206 (confidentiality of information) is amended as follows.

- (2) In subsection (1), for the words from “Schedule 1” to the end substitute “any of the provisions listed in subsection (1A)”.

- (3) After subsection (1) insert –

- “(1A) The provisions referred to in subsection (1) are –
- (a) sections 1216CB to 1216CD (certification of relevant programmes as British programmes for the purposes of television tax relief),
 - (b) sections 1217CB to 1217CD (certification of video games as British video games for the purposes of video games tax relief), and
 - (c) Schedule 1 to the Films Act 1985 (certification of films as British films for the purposes of film tax relief).”

- (4) In subsection (2), for “UK Film Council” substitute “British Film Institute”.

- (5) After that subsection insert –
- “(2A) The Treasury may by order amend subsection (2) –
- (a) so as to substitute for the person or body specified in that subsection a different person or body, or
 - (b) in consequence of a change in the name of the person or body so specified.”
- (6) In subsection (3) –
- (a) in paragraph (a), for the words from “Schedule 1” to the end substitute “any of the provisions listed in subsection (1A)”;
 - (b) in paragraph (d), for “that Schedule or this Part” substitute “any of Parts 15 to 15B of this Act or Schedule 1 to the Films Act 1985”.
- 14 (1) In section 1310 of CTA 2009 (orders and regulations), subsection (4) is amended as follows.
- (2) Omit the “or” at the end of paragraph (e) and after that paragraph insert –
- “(ea) section 1216AF(3) (meaning of “television production activities” etc),
 - (eb) section 1216AH(3) (meaning of “UK expenditure” etc),
 - (ec) section 1216CE(2) (UK expenditure),
 - (ed) section 1216CF(4) (additional deduction for qualifying expenditure),
 - (ee) section 1216CG(3) (amount of additional deduction),
 - (ef) section 1217AC(2) (meaning of “video games development activities” etc),
 - (eg) section 1217AE(3) (meaning of “UK expenditure” etc),
 - (eh) section 1217CE(2) (UK expenditure),
 - (ei) section 1217CF(4) (additional deduction for qualifying expenditure),
 - (ej) section 1217CG(3) (amount of additional deduction),”.
- 15 (1) Schedule 4 to CTA 2009 (index of defined expressions) is amended as follows.
- (2) At the appropriate place insert –

“the company (in Chapter 5 of Part 15A)	section 1216E(1)”;
“company tax return (in Part 15A)	section 1216AJ”;
“the completion period (in Chapter 5 of Part 15A)	section 1216E(1)”;
“co-producer (in Part 15A)	section 1216AI”;
“core expenditure (in Part 15A)	section 1216AG(3)”;

“costs of the relevant programme (in Chapter 2 of Part 15A)	section 1216BC”;
“final certificate (in Chapter 5 of Part 15A)	section 1216CC”;
“income from the relevant programme (in Chapter 2 of Part 15A)	section 1216BB”;
“interim accounting period (in Chapter 5 of Part 15A)	section 1216E(1)”;
“interim certificate (in Chapter 5 of Part 15A)	section 1216CC”;
“principal photography (in Part 15A)	section 1216AF(2)”;
“production expenditure (in Part 15A)	section 1216AG(2)”;
“qualifying co-production (in Part 15A)	section 1216AI”;
“qualifying expenditure (in Chapter 3 of Part 15A)	section 1216CF(3)”;
“relevant programme (in Part 15A)	section 1216AB”;
“the separate programme trade (in Chapters 2, 3 and 5 of Part 15A)	section 1216B(3)”;
“special television relief (in Chapter 5 of Part 15A)	section 1216E(1)”;
“television production activities (in Part 15A)	section 1216AF”;
“television production company (in Part 15A)	section 1216AE”;
“television programme (in Part 15A)	section 1216AA”;
“television tax relief (in Part 15A)	section 1216C(2)”;
“UK expenditure (in Part 15A)	section 1216AH”.

(3) At the appropriate place insert –

“the company (in Chapter 5 of Part 15B)	section 1217E(1)”;
“company tax return (in Part 15B)	section 1217AF”;
“the completion period (in Chapter 5 of Part 15B)	section 1217E(1)”;
“core expenditure (in Part 15B)	section 1217AD”;
“costs of the video game (in Chapter 2 of Part 15B)	section 1217BC”;
“final certificate (in Chapter 5 of Part 15B)	section 1217CC”;
“income from the video game (in Chapter 2 of Part 15B)	section 1217BB”;
“interim accounting period (in Chapter 5 of Part 15B)	section 1217E(1)”;
“interim certificate (in Chapter 5 of Part 15B)	section 1217CC”;
“qualifying expenditure (in Chapter 3 of Part 15B)	section 1217CF(3)”;
“the separate video game trade (in Chapters 2, 3 and 5 of Part 15B)	section 1217B(3)”;
“special video games relief (in Chapter 5 of Part 15B)	section 1217E(1)”;
“UK expenditure (in Part 15B)	section 1217AE”;
“video game (in Part 15B)	section 1217AA”;
“video games development activities (in Part 15B)	section 1217AC”;
“video games development company (in Part 15B)	section 1217AB”;
“video games tax relief (in Part 15B)	section 1217C(2)”.

FA 2009

- 16 In Schedule 54A to FA 2009 (further provision as to late payment interest and repayment interest), in paragraph 2(2), omit the “or” at the end of paragraph (d) and after paragraph (e) insert –
- “(f) a payment of television tax credit under Chapter 3 of Part 15 of CTA 2009 for an accounting period, or
 - (g) a payment of video game tax credit under Chapter 3 of Part 15B of CTA 2009 for an accounting period.”

CTA 2010

- 17 Part 8A of CTA 2010 (profits arising from the exploitation of patents etc) is amended as follows.
- 18 (1) Section 357CG (adjustments in calculating profits of trade) is amended as follows.
- (2) In subsection (3), omit the “and” at the end of paragraph (a) and after paragraph (b) insert –
- “(c) the amount of any additional deduction for the accounting period obtained by the company under Part 15A of CTA 2009 in respect of qualifying expenditure on a television programme, and
 - (d) the amount of any additional deduction for the accounting period obtained by the company under Part 15B of CTA 2009 in respect of qualifying expenditure on a video game.”
- (3) After subsection (5) insert –
- “(5A) In a case where –
- (a) the company is –
 - (i) a television production company in relation to a television programme, or
 - (ii) a video games development company in relation to a video game, and
 - (b) there is a shortfall in qualifying expenditure in relation to the separate programme trade or (as the case may be) the separate video game trade for a relevant accounting period (see section 357CHA),
- the amount of qualifying expenditure brought into account in calculating the profits of the trade for that accounting period is to be increased by the amount mentioned in section 357CHA(2).”
- (4) In subsection (6) –
- (a) for “subsection (5)” substitute “subsections (5) and (5A)”;
 - (b) before the definition of “R&D expenditure” insert –
 - ““qualifying expenditure” –
 - (a) in relation to a company that is a television production company, has the same meaning as in Chapter 3 of Part 15A of CTA 2009, and
 - (b) in relation to a company that is a video games development company, has the same meaning as in Chapter 3 of Part 15B of that Act;”;

- (c) omit the “and” before the definition of “research and development”;
- (d) after that definition insert –
 - ““the separate programme trade”, in relation to a television production company, has the same meaning as in Chapter 2 of Part 15A of CTA 2009 (see section 1216B),
 - “the separate video game trade”, in relation to a video games development company, has the same meaning as in Chapter 2 of Part 15B of CTA 2009 (see section 1217B),
 - “television production company” has the same meaning as in Part 15A of CTA 2009 (see section 1216AE),
 - “video games development company” has the same meaning as in Part 15B of CTA 2009 (see section 1217AB).”

19 After section 357CH insert –

“357CHA Shortfall in qualifying expenditure

- (1) There is a shortfall in qualifying expenditure in relation to the separate programme trade of a television production company or (as the case may be) the separate video game trade of a video games development company for a relevant accounting period if the actual qualifying expenditure of the trade for the accounting period (as adjusted under subsections (8) to (11)) is less than 75% of the average amount of qualifying expenditure.
- (2) The amount that is to be added to the actual qualifying expenditure for the purposes of section 357CG(5A) is an amount equal to the difference between –
 - (a) 75% of the average amount of qualifying expenditure, and
 - (b) the actual qualifying expenditure, as adjusted under subsections (8) to (11).
- (3) In this section –
 - (a) the “actual qualifying expenditure” of a trade of a company for an accounting period is the amount of qualifying expenditure that (ignoring section 357CG(5A)) is brought into account in calculating the profits of the trade for the accounting period, and
 - (b) the following terms have the meaning given by section 357CG(6) –
 - “qualifying expenditure”,
 - “relevant accounting period”,
 - “the separate programme trade”,
 - “the separate video game trade”,
 - “television production company”,
 - “video games development company”.
- (4) The average amount of qualifying expenditure is –

$$\frac{E}{N} \times 365$$

where –

E is the amount of qualifying expenditure that –

- (a) has been incurred by the company during the relevant period, and
- (b) has been brought into account in calculating the profits of the trade for any accounting period ending before the first relevant accounting period, and

N is the number of days in the relevant period.

- (5) The relevant period is the shorter of –
 - (a) the period of 4 years ending immediately before the first relevant accounting period, and
 - (b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.
- (6) For a relevant accounting period of less than 12 months, the average amount of qualifying expenditure is proportionately reduced.
- (7) Subsections (8) to (11) apply for the purposes of determining –
 - (a) whether there is a shortfall in qualifying expenditure for a relevant accounting period, and
 - (b) if there is such a shortfall, the amount to be added by virtue of subsection (2).
- (8) If the amount of the actual qualifying expenditure in a relevant accounting period is greater than the average amount of qualifying expenditure, the difference between the two amounts is to be added to the actual qualifying expenditure for the next relevant accounting period.
- (9) If –
 - (a) there is not a shortfall in qualifying expenditure for a relevant accounting period, but
 - (b) in the absence of any additional amount, there would be a shortfall in qualifying expenditure for that accounting period,
 the remaining portion of the additional amount is to be added to the actual qualifying expenditure for the next relevant accounting period.
- (10) For the purposes of this section –
 - “additional amount”, in relation to a relevant accounting period, means any amount added to the actual qualifying expenditure for that accounting period by virtue of subsection (8), (9) or (11), and
 - “the remaining portion” of an additional amount is so much of that amount as exceeds the difference between –
 - (a) the actual qualifying expenditure for the relevant accounting period in the absence of the additional amount, and
 - (b) 75% of the average amount of qualifying expenditure.
- (11) If –
 - (a) there is not a shortfall in qualifying expenditure for a relevant accounting period, and

- (b) there would not be a shortfall in qualifying expenditure for that accounting period in the absence of any additional amount,
the additional amount is to be added to the actual qualifying expenditure for the next relevant accounting period (in addition to any additional amount so added by virtue of subsection (8)).”
- 20 (1) Section 357CK (deductions that are not routine deductions) is amended as follows.
- (2) In subsection (1), at the end insert –
“(e) subsection (7A) (television production expenditure),
(f) subsection (7B) (video games development expenditure).”
- (3) After subsection (7) insert –
“(7A) Head 5 is –
(a) the amount of any qualifying expenditure on a television programme for which an additional deduction for the accounting period is obtained by the company under Part 15A of CTA 2009, and
(b) the amount of that additional deduction.
(7B) Head 6 is –
(a) the amount of any qualifying expenditure on a video game for which an additional deduction for the accounting period is obtained by the company under Part 15B of CTA 2009, and
(b) the amount of that additional deduction.”

Consequential renumbering

- 21 (1) Sections 1217 and 1218 of CTA 2009 are renumbered as follows –
(a) section 1217 becomes section 1218A, and
(b) section 1218 becomes section 1218B.
- (2) In the following provisions of CTA 2009, for “section 1218” substitute “section 1218B” –
section 985(3),
section 999(4),
section 1000(3),
section 1013(3), and
section 1021(3).
- (3) In Schedule 4 to CTA 2009 –
(a) in the entry for “company with investment business (in Part 16)”, for “section 1218(1) and (2)” substitute “section 1218B(1) and (2)”, and
(b) in the entry for “investment business in a company (in Part 16)”, for “section 1218(3)” substitute “section 1218B(3)”.
- (4) In section 18 of CAA 2001, for “section 1218” substitute “section 1218B”.

Commencement

- 22 (1) The amendments made by this Schedule come into force in accordance with provision contained in an order made by the Treasury.

- (2) An order under this paragraph—
 - (a) may make different provision for different cases;
 - (b) may make such adaptations of provisions of this Schedule brought into force as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.

- 23 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013.

- (2) For provision about the case where a company has an accounting period beginning before 1 April 2013 and ending on or after that date, see paragraph 3(3) of Schedule 1 or (as the case may be) Schedule 2.

EXPLANATORY NOTE

TAX RELIEF FOR TELEVISION PRODUCTION AND VIDEO GAMES DEVELOPMENT

SUMMARY

1. The clauses and Schedules introduce three new reliefs from corporation tax for animation and high-end television production and for video games development.

DETAILS OF THE CLAUSE

2. The clauses bring in three Schedules which in turn;
 - introduce two new reliefs for animation and high-end television production;
 - introduce a new relief for video game development; and
 - provide for the consequential amendments to other parts of the Taxes Acts as a result of the new reliefs.

DETAILS OF SCHEDULE 1

3. This Schedule introduces two new tax reliefs for high-end television and animation television production.
4. There are two parts to the Schedule. Part 1 introduces amendments to the Corporation Taxes Act (CTA) 2009, whereas part 2 contains the commencement provisions.

Part 1: Amendments of CTA 2009

5. Paragraph 1 introduces a new part 15A to CTA 2009 concerning the new reliefs for animation and high-end television production. It also explains that there are 5 chapters in part 1 covering the introduction to the two reliefs, how activities are taxed, British programmes, certification, qualifying expenditure, losses and entitlement to the relief.

Chapter 1: Introduction

6. New sections 1216A (1) to 1216A (6) set out the scope and basic concepts of the legislation contained within each Chapter.
7. New section 1216AA (2) defines the meaning of ‘television programme’ for the purposes of the Chapter.
8. New section 1216AA (3) clarifies that the definition at 1216AA (1) includes the internet.
9. New section 1216AA (4) provides that where qualifying programmes are commissioned as an individual series or serial that series or serial is treated as a single television programme.
10. New section 1216AA(5) provides that a programme is treated as being complete when it is first in a form in which it can be reasonably regarded as ready for broadcast to the general public.
11. New section 1216AB (2) provides that a ‘relevant programme’ for the purposes of the legislation is one which meets certain conditions of A and B, and C and D.
12. New section 1216AB (3) sets out condition A which is that the programme is: a drama, a documentary, or animation. These terms are further defined at new section 1216AC.
13. New section 1216AB (4) sets out condition B which is that the programme is not an excluded programme as defined in section 1216AD.
14. New section 1216AB (5) sets out condition C, which is that a programme slot length must be greater than 30 minutes.
15. New sections 1216AB (6) sets out condition D which is that the average core expenditure, as defined by new section 1216AG, per hour of slot length, as defined by 1216AB (8), is not less than £1 million (one million pounds sterling).
16. New section 1216AB (7) defines ‘slot length’ for the purposes of new section 1216AB (6).
17. New section 1216AC(2) provides that for the purposes of new section 1216AB(3) a programme is a ‘drama’ if it consists:
 - wholly or mainly of a depiction of events;
 - the events are depicted (wholly or mainly) by one or more persons performing; and

- the whole or 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 the purposes of new section 1216AC (2) ‘drama’ also includes comedy.

18. New section 1216AC (3) provides that a relevant programme is to be treated as animation if at least 51% of total core expenditure is on animation.
19. New section 1216AD (1) provides that a television programme is an excluded programme (i.e. it is not within the scope of the reliefs) if it falls within any of the Heads set out in new sub sections 1216AD (2) to 1216AD (7).
20. New section 1216AD (2) provides that any advertisement or other promotional programme is an excluded programme.
21. New section 1216AD (3) provides that any news, current affairs or discussion programme is an excluded programme.
22. New section 1216AD(4) provides that quiz shows, game shows, panel shows, variety shows, chat shows or similar entertainment are excluded programmes.
23. New section 1216AD (5) provides that any programme consisting of or including a competition or contest, or the results of a competition or contest is an excluded programme.
24. New section 1216AD (6) provides that any broadcast of a live event or of a theatrical or artistic performance given otherwise than for the purpose of being filmed is an excluded programme.
25. New section 1216AD (7) provides that any programmes produced for training purposes is an excluded programme.
26. New section 1216AE (2) provides that there can only be one television production company in relation to a relevant programme.
27. New section 1216AE (3) sets out the general rule that governs whether a company is a television production company in relation to a relevant programme. The company must be responsible for pre-production, principal photography and post production of the relevant programme, as well as for delivery of the completed programme. The company must be actively engaged in planning and decision taking during those stages of a programme’s production; and it must directly negotiate, contract and pay for rights, goods and services.

28. New section 1216AE (4) sets out a special rule for qualifying co-productions as defined in new section 1216AI. A company, which is a co-producer, in relation to a relevant programme must make an effective creative, technical and artistic contribution to the programme (so long as it does not do this in partnership). Co-producers who only provide finance are excluded.
29. New section 1216AE(5) recognises that there may be more than one company meeting the conditions of 1216AE(3) and (4) and provides that where this is the case, the company most directly engaged in the activities referred to is the television production company in relation to the relevant programme.
30. New sections 1216AE (6) makes it clear that it is possible that there may be no television production company in relation to the relevant programme.
31. New sections 1216AE (7) to (9) allows for a company to be regarded as a company not meeting the description in 1216AE (3) and (4) provided it makes an election in its company tax return for an accounting period. That election has effect in relation to relevant programmes which commence principal photography in that or any subsequent accounting period.
32. New sections 1216AF (1) provides that ‘television production activities’ includes work on development, pre-production, principal photography and post production of the programme.
33. New section 1216AF (2) provides that where any of the programme is computer generated, references to principal photography include computer generation of the images.
34. New section 1216AF (3) provides that HM Treasury may, by regulations amend subsections 1216AF (1) and (2) and in particular provide that certain activities are not television production activities.
35. New sections 1216AG (2) to (3) define what is meant by ‘production expenditure’ and ‘core expenditure’ in relation to the relevant programme.
36. New sections 1216AH(1) to (2) provide that for the purposes of the legislation “UK expenditure” means expenditure on goods or services that 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. 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 qualifying

expenditure. Any apportionment between non-UK expenditure and UK expenditure is made on a just and reasonable basis.

37. New section 1216AH (3) provides that HM Treasury may, by regulations amend subsection (1).
38. New section 1216AI defines ‘qualifying co-producer’ and ‘co-producer’ for the purposes of new section 1216AE (4).

Chapter 2: Taxation of Activities of Television Production Company.

39. New section 1216B(2) to (3) provides that the activities of a television production company in relation to each programme will be treated as a separate trade, (“the separate programme trade”) so that where a television production company makes more than one programme it will have more than one trade unless new section 1216AA(3) applies.
40. New section 1216B (4) sets out that a trade is treated as starting when pre-production begins or when any income is received from the relevant programme, whichever is earlier.
41. New section 1216BA (1) provides the basic rules for the computation of amounts to be brought into account for the purposes of determining a profit or a loss.
42. New section 1216BA (2) explains how this works for the first period of account. It brings in as a debit the cost incurred and as a credit the proportion of the income determined by the formula set out in sub paragraph (4).
43. New section 1216BA (3) explains how this works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the corresponding amount for the previous period and, as a credit, the difference between the proportion of total estimated income treated as earned at the end of the period and the corresponding amount for the previous period.
44. New section 1216BA (4) sets out the formula for calculating the proportion of total estimated income treated as earned at the end of the period of account.
45. New section 1216BB (1) to (3) set out that income from a relevant programme constitutes any receipts in connection with its making or from its exploitation. This includes:
 - receipts from the sale of the programme or rights in it;

- royalties or other payments for use of the programme or aspects of it (for example characters or music);
 - payments for rights to produce games or other merchandise;
 - receipts received by the company by way of a profit share agreement; and
 - income from relevant programmes held as capital assets (the income will be treated as revenue in nature).
46. New sections 1216BC (1) to (2) provide the basic rules for when costs on the relevant programme are taken to be incurred. However, expenditure that is prohibited or limited by the Corporation Taxes Acts is excluded.
47. New section 1216BC Section (3) addresses the situation where a company is making a relevant programme that is treated as a capital asset in its hands and such expenditure would be capital and naturally fall to be prohibited. (3) ensures that such expenditure will instead be treated as being of a revenue nature.
48. New section 1216BD (1) sets out the primary rule that costs are incurred when they are represented in the state of completion of the work in progress.
49. New section 1216BD(2) elaborates on this to make clear that payments in advance are ignored until the work is done and deferred payments are recognised to the extent that work is represented in the stage of completion.
50. New section 1216BD (3) makes clear that only amounts for which there is an unconditional obligation to pay can be treated as incurred.
51. New section 1216BD (4) ensures that where this obligation is linked to income being earned, then the cost can only be included when an appropriate amount of income has been brought into account.
52. New section 1216BE (1) addresses the case where a company incurs expenditure on development of the relevant programme and this expenditure pre-dates the commencement.
53. New section 1216BE (2) treats such development expenditure as if it were expenditure incurred immediately after the company begins to carry on the trade.
54. New sections 1216BE(3) to (4) require the company to amend its tax return if it has previously taken such expenditure into account and

allows any such amendment of a return to be made regardless of the normal time limits.

55. New section 1216BF provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must also take into consideration all relevant circumstances.

Chapter 3: Television Tax Relief

56. New sections 1216C(1) to (7) provide that for a relief to be available a relevant programme must satisfy a number of criteria and also set out how relief will be given and the procedure for making claims. The criteria include:

- being intended for broadcast;
- being a British programme as required by new section 1216CB; and
- having the required level of core expenditure as required by new section 1216CE.

57. New section 1216C (4) provides that where relief has already been given for R&D on the same expenditure then relief is not available for animation or high-end television. This is to prevent double claims on the same expenditure.

58. New section 1216CA (1) provides that a relevant programme must be intended for broadcast to the general public.

59. New section 1216CA (2) provides that the question of whether this condition is met is to be determined when the television production activities begin. And also provides for circumstances where a programme starts out being intended for broadcast even if subsequently the intention changes. However, where the original intention is not to broadcast the programme to the general public the condition will not be met.

60. New sections 1216CB(1) provides that a television production company must apply to the Secretary of State for a relevant programme to be certified as British and that certain conditions must be met in a 'cultural test'.

61. New section 1216CB (2) to (5) provide further details on the operation of the regulations.

62. New section 1216CB (6) provides that further details on certification of programmes is contained at new sections 1216CC and 1216CD.
63. New sections 1216CC(1) to (2) provide that applications for certification of the relevant television programme as British are to be made to the Secretary of State and that the application may be for an interim or final certificate.
64. New sections 1216CC (3) and (4) define what is meant by an ‘interim’ certificate and a ‘final’ certificate’.
65. New sections 1216CC(5) to (6) provide that companies must provide the Secretary of State with all documents and information to determine an application and that the Secretary of State may require additional information provided for the purposes of the application and a declaration as to its truth.
66. New section 1216CC (7) to (9) provide that the Secretary of State may, by regulations, amend the application process, particulars required etc.
67. New section 1216CD (1) to (2) provide that the Secretary of State shall certify a relevant programme if he is satisfied that it meets the requirements for an interim or final certificate. However, if the Secretary of State is not so satisfied, he shall not certify the relevant programme.
68. New sections 1216CD(3) and (4) allows an interim certificate to be given subject to certain conditions, and provides that the certificate may, if the Secretary of State wishes, be given an expiry date. In any case an interim certificate expires when a corresponding final certificate is issued.
69. New sections 1216CD (5) and (6) provide that the Secretary of State shall revoke a certificate if it becomes clear that it should not have been issued. A revoked certificate is treated as never having been issued (unless the Secretary of State provides otherwise).
70. New sections 1216CE (1) to (2) impose another condition for relief; that not less than 25 per cent of the core production expenditure on the relevant programme must be UK expenditure. HM Treasury may vary this minimum percentage of UK expenditure by regulations.
71. New sections 1216CF(1) and (2) provide that the company may claim an additional deduction, based on its qualifying expenditure on the relevant programme to be taken into account in calculating its profit or loss from its separate programme trade. The additional deduction and the payable tax credit together make up the new tax relief.

72. New section 1216CF (3) defines ‘qualifying expenditure’ for this purpose.
73. New section 1216CF (4) allows HM Treasury, by regulation, to amend subsection (3) and to provide that particular sorts of expenditure are or are not qualifying expenditure.
74. New section 1216CG (1) applies for the first period of account in which the trade of producing the relevant programme is carried out. For this period, the additional deduction is given by $0.8 \times E$ where E is the lesser of the amount of qualifying expenditure which is UK expenditure or 80 per cent of that amount.
75. New section 1216CG (2) applies in the subsequent periods of account. In such periods the additional deduction is $(0.8 \times E) - P$ where E is now either the lesser of the amount of qualifying expenditure to date (i.e. the sum for the current period and all subsequent periods) which is UK expenditure and 80 per cent of that amount. P is the total amount of additional deduction for all previous periods.
76. New section 1216CG (3) allows HM Treasury to amend the percentage specified in E by regulations.
77. New section 1216CH(1) provides that a television production company (as defined in new section 1216AE) may claim a television tax credit in an accounting period for which it has a surrenderable loss.
78. New section 1216CH (2) defines the surrenderable loss. This is the lesser of the trading loss and the available qualifying expenditure.
79. New section 1216CH(3) calculates the available loss for an accounting period as L plus RUL where L is the amount of the company’s loss for the period and RUL is the amount of any relevant unused loss. RUL is defined further in new section 1216CH (4).
80. New section 1216CH(4) defines “relevant unused loss” of a company as that part of a loss neither surrendered for tax credit nor carried forward under section 45 of the Corporation Tax Act 2010.
81. New section 1216CH (5) defines the available qualifying expenditure for the first period of account during which the trade is carried on as the amount E defined in 1216CG (1).
82. New section 1216CH(6) defines the available qualifying expenditure for subsequent periods as E minus S, where E is the amount defined in new section 1216CG(2) and S is the aggregate of the amounts

surrendered for television tax credit in previous periods as defined by new section 1216CI(1).

83. New section 1216CH (7) provides for any necessary apportionments where a period of account of the separate programme trade does not coincide with an accounting period.
84. New section 1216CI (1) provides that a company may surrender all or part of its surrenderable loss for a period.
85. New section 1216CI (2) sets the payable tax credit rate as 25%.
86. New section 1216CI (3) provides that where part of the loss is surrendered a company's available loss will be reduced by the surrendered amount.
87. New section 1216CJ(1) provides that where a company is entitled to a television tax credit for a period, and it claims that credit, the Commissioners for Her Majesty's Revenue and Customs will pay the credit to the company.
88. New section 1216CJ(2) provides that an amount of credit that is payable, or an amount of interest payable under section 826 Income and Corporation Taxes Act 1988, may be set against any corporation tax that the company owes, and that if it is so set, the Commissioners' obligation under new section 1216CJ(1) is met.
89. New section 1216CJ (3) overrules new section 1216CJ (1) when the company's tax return is enquired into by HM Revenue and Customs, so that no payment need then be made to the company. HM Revenue and Customs may however make such provisional payments as it deems fit.
90. New section 1216CJ(4) overrules new section 1216CJ(1) so that when the company owes HM Revenue and Customs any amount of PAYE, Class 1 National Insurance contributions or any amount due, no payment need to be made to the company.
91. New section 1216CJ (5) provides that a payment of a television tax credit is not income for the company for any tax purpose.
92. New section 1216CK (1) provides that no amount is to be included in costs for a period if it is still unpaid four months after the period ends.
93. New section 1216CK (2) provides that new section 1216CK (1) does not override the normal operation of new section 1216BD (when costs are taken to be incurred).

94. New section 1216CL is a general anti avoidance provision, which denies television production tax relief to the extent that it arises from artificially inflated claims.
95. New section 1216CL(1) sets out that where a transaction is attributable to arrangements entered into (wholly or partly) for a disqualifying purpose, that transaction is disregarded in determining the amount of additional deduction or television tax credit due.
96. New section 1216CL (2) sets out when arrangements are entered into for a disqualifying purpose. This is when their main object, or one of their main objects, is to enable a company to obtain an additional deduction or a television tax credit that it would not otherwise be entitled to, or a larger deduction or greater amount of television tax credit than it would otherwise be entitled to.
97. New section 1216CL (3) defines “arrangements”.
98. New sections 1216CM (1) to (4) allow HM Revenue and Customs to disclose information to the Secretary of State for the purposes of his functions and also allows for the same information to be disclosed to the British Film Institute.
99. New section 1216CM (5) imposes a duty of confidentiality on any person to whom the information is disclosed under new sections 1216CM (1) and (3).
100. New section 1216CN (1) provides that a person commits an offence if he discloses information about an identifiable person in contravention of new section 1216CM.
101. New section 1216CN (2) provides a defence for a person charged with such an offence that he believed the disclosure to be lawful, or the information had already lawfully been made public.
102. New sections 1216CN (3) and (6) sets out the penalties for a person convicted of wrongful disclosure.
103. New section 1216CN (4) provides that a prosecution may only be brought in England and Wales by the Director of Revenue and Customs Prosecution or with the consent of the Director of Public Prosecutions.
104. New section 1216CN(5) provides that a prosecution may only be brought in Northern Ireland by the Commissioners for HM Revenue and Customs or with the consent of the Director of Public Prosecutions for Northern Ireland.

Chapter 4: Programme losses

105. New section 1216D (2) sets out definitions used later in the section.
106. New sections 1216DA(1) to (2) provide for a restriction to losses arising while a programme is in production to the extent that they may only be carried forward to be set against profits of the separate programme trade in a subsequent period.
107. New section 1216DB (1) provides that the clause applies to the accounting period during which a qualifying programme is completed or abandoned and to any subsequent accounting periods if the trade continues.
108. New section 1216DB(2) provides that any trading loss carried forward under section 45 Corporation Tax Act 2010 from a pre-completion accounting period to a later accounting period is to be treated as a loss for the purposes of loss relief of the accounting period into which it is carried forward. This is subject to the restriction in new section 1216DB (3).
109. New section 1216DB(3) restricts the amount of any loss available to set sideways against other profits of the same or an earlier period, and to be surrendered as group relief, to the amount that is not attributable to television tax relief (see subsection (6)).
110. New section 1216DB(4) to (5) explain how the amount of loss that may either be deducted from total profits or surrendered as group relief will be restricted to the amount not attributable to television tax relief.
111. New section 1216DB (6) explains how the loss for television tax relief is calculated. This loss is the amount of the total loss less the amount of loss that there would have been without the additional deduction under Chapter 3.
112. New section 1216DB (7) provides that 1216DB does not apply to losses carried forward or surrendered under new section 1216DC (terminal losses).
113. New section 1216DC(1) provides that this section applies when a television production company ceases to carry on a separate trade in relation to a relevant programme and has an amount of loss that remains to be carried forward (a terminal loss).
114. New sections 1216DC(2) and (3) provide that where a television production company with a terminal loss carries on another trade in relation to another qualifying programme it can, by election, treat such a loss as being a loss brought forward in the next accounting period following the cessation.

115. New sections 1216DC(4) to (6) provide for the situation where a company with a terminal loss is in a group relationship with another company at the time of the cessation and that other company is a television production company in relation to another qualifying programme. The company with the terminal loss may surrender this loss to another television production company within the same group provided that that company makes a claim for the loss.
116. New section 1216DC (7) provides that HM Treasury may, by regulations, make adaptations or such modifications as appear to be appropriate to this section.
117. New section 1216DC (8) defines a ‘qualifying programme’.

Chapter 5: Provisional Entitlement to Relief

118. New section 1216E (1) defines certain expressions for the purposes of Chapter 5.
119. New section 1216E (2) sets out a requirement for reporting in a company’s return whether a relevant programme has been completed or abandoned.
120. New section 1216EA (1) provides that a company is not entitled to relief in an interim accounting period unless an interim certificate accompanies its company tax return.
121. New section 1216EA (2) provides that if an interim certificate is revoked the company loses eligibility for any period in respect of which the interim certificate has been provided and must amend its return(s) accordingly.
122. New section 1216EA(3) provides that where a relevant programme is completed the company tax return must be accompanied by a final certificate, which then covers both the final period and any interim periods. If no such final certificate is provided the company loses eligibility for all periods and must amend its return(s) accordingly.
123. New section 1216EA (4) deals with the abandonment of a relevant programme. If the company abandons television production activities its tax return for the final accounting period may be accompanied by an interim certificate. The company does not lose entitlement to any earlier relief.
124. New section 1216EA (5) provides that if a final certificate is revoked, the company loses eligibility for all periods and must amend its return(s) accordingly.

125. New section 1216EB(1) provides that the company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for that period, a statement of the planned amount of UK expenditure on the relevant programme, and that amount indicates that the condition in new section 1216CE will be met on completion.
126. New section 1216EB(2) provides that where the condition in subparagraph (1) is met but it subsequently becomes apparent that the amount of UK expenditure on completion will be too low, the company loses eligibility for all periods and must amend its company tax return(s) accordingly.
127. New sections 1216EB (3) and (4) deal with the completion of the relevant programme. If the relevant programme is completed or abandoned, its company tax return for the final accounting period must be accompanied by a statement that it has been completed or abandoned, as the case may be, and by a final statement of UK core expenditure on the relevant programme. If the company tax return shows that the amount of UK core expenditure is too low and no such final statement is provided, the company loses eligibility for all periods(s) and must amend its company tax return(s) accordingly.
128. New section 1216EC overrides the normal time limits for amendments of assessments as necessary in order to allow the provisions of Chapter 5 to have effect.

Part 2: Commencement

129. Paragraph 2 allows HM Treasury, by order to appoint a day when amendments in the Schedule shall come into force.
130. Paragraph 3 (1) provides that the amendments in the Schedule will have effect from 1 April 2013 (subject to State aid approval).
131. Paragraphs 3 (2) and (3) provides that where a company has an accounting period which straddles 1 April 2013 then periods before or after that date are, for the purposes of Part 15A, treated as separate accounting periods.

DETAILS OF SCHEDULE 2

132. This Schedule introduces a new relief for video games development.
133. There are 2 parts to the Schedule. Part 1 introduces amendments to the Corporation Taxes Act (CTA) 2009, whereas part 2 contains the commencement provisions.

Part 1: Amendments of CTA 2009

134. Paragraph 1 introduces a new part 15B to CTA 2009 concerning the new relief for video games development. It also explains that there are 5 chapters in part 1 covering the introduction to the relief, how activities are taxed, British video games, certification, qualifying expenditure, losses and entitlement to the relief.

Chapter 1: Introduction

135. New sections 1217A (1) to (6) set out the scope and basic concepts of the legislation contained within each Chapter.
136. New section 1217AA (2) provides that ‘video game’ does not include anything produced for advertising or promotional purposes or gambling.
137. New section 1217AA (3) provides that references to a video games includes the game’s soundtrack.
138. New section 1217AA (4) provides that a video game is regarded as being completed when copies of it can be made and these are made available to the general public.
139. New section 1217AB(2) provides that there can only be one video games development company in relation to a video game
140. New section 1217AB(3) sets out the general rule that governs whether a company is a video games development company in relation to a video game. The company must be responsible for developing the game and it must be actively engaged in planning and decision making during the design, production and testing of the game; and it must directly negotiate, contract and pay for rights, goods and services.
141. New section 1217AB(4) recognises that there may be more than one company meeting the conditions of 1217AB(3) and provides that where this is the case, the company most directly engaged in the activities referred to is the video games development company in relation to the relevant game.
142. New section 1217AB(5) makes it clear that it is possible that there may be no video games development company in relation to the relevant game.
143. New sections 1217AB (6) to (8) allow for a company not be regarded as a company not meeting the description in 1217AB (3) provided it makes an election in its company tax return for an accounting period. That election has effect in relation to relevant

games which begin to be produced in that or any subsequent accounting period.

144. New section 1217AC(1) provides that ‘video game development activities’ include work involved in designing, producing and testing the video game.
145. New section 1217AC (2) provides that HM Treasury may, by regulations, amend subsection (1) and provide that certain activities are or are not video game development activities.
146. New section 1217AD (1) defines what is meant by ‘core expenditure’ in relation to the video game.
147. New section 1217AD(2) provides that any expenditure incurred in designing the initial concept for the video game (e.g. setting out the business case for making a game) and on further debugging a completed video game or carrying out maintenance in connection with a video game is not regarded as core expenditure.
148. New sections 1217AE(1) to (2) provide that for the purposes of the legislation “UK expenditure” means expenditure on goods or services that 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. 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 qualifying expenditure. Any apportionment between non-UK expenditure and UK expenditure is made on a just and reasonable basis.
149. New section 1217AE (3) provides that HM Treasury may, by regulations amend subsection (1).

Chapter 2: Taxation of Activities of Video Games development Company

150. New sections 1217B(2) to (3) provides that the activities of a video games development company in relation to each game will be treated as a separate trade, (“the separate video game trade”) so that where a video games development company makes more than one game it will have more than one trade.
151. New section 1217B(4) sets out when a company is treated as beginning a video game trade which is the earlier of when income is received or the design starts.
152. New section 1217BA (1) provides the basic rules for the computation of amounts to be brought into account for the purposes of determining a profit or a loss.

153. New section 1217BA (2) explains how this works for the first period of account. It brings in as a debit the cost incurred and as a credit the proportion of the income determined by the formula set out in sub paragraph (4).
154. New section 1217BA (3) explains how this works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the corresponding amount for the previous period and as a credit the difference between the proportion of total estimated income treated as earned at the end of the period and the corresponding amount for the previous period.
155. New section 1217BA (4) sets out the formula for calculating the proportion of total estimated income treated as earned at the end of the period of account.
156. New sections 1217BB(1) to (3) set out that income from a video game constitutes any receipts in connection with its making or from its exploitation. This includes:
- receipts from the sale of the video game or rights in it;
 - royalties or other payments for use of the video game or aspects of it (for example characters or music);
 - payments for rights to produce games or other merchandise;
 - receipts received by the company by way of a profit share agreement;
 - income from games held as capital assets (the income will be treated as revenue in nature).
157. New section 1217BC (1) to (2) provide the basic rules for when costs on the video game are taken to be incurred. However, expenditure that is prohibited or limited by the Corporation Taxes Acts is excluded.
158. New section 1217BC (3) addresses the situation where a company is making a video game that is treated as a capital asset in its hands and such expenditure would be capital and naturally fall to be prohibited. Section (3) ensures that such expenditure will instead be treated as being of a revenue nature.
159. New section 1217BD (1) sets out the primary rule that costs are incurred when they are represented in the state of completion of the work in progress.

160. New section 1217BD(2) elaborates on this to make clear that payments in advance are ignored until the work is done and deferred payments are recognised to the extent that work is represented in the stage of completion.
161. New section 1217BD (3) makes clear that only amounts for which there is an unconditional obligation to pay can be treated as incurred.
162. New section 1217BD (4) ensures that where this obligation is linked to income being earned, then the cost can only be included when an appropriate amount of income has been brought into account.
163. New section 1217BE provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must also take into consideration all relevant circumstances.

Chapter 3: Video Games Tax Relief

164. New section 1217C(1) to (6) provide that for a relief to be available a video game must satisfy a number of criteria and also sets out how relief will be given and the procedure for making claims. The criteria include:
- being intended for supply;
 - being a British video game as required by new section 1217CB; and,
 - having the required level of core expenditure as required by new section 1217CE.
165. New section 1217C (4) provides that where relief has already been given for R&D tax credits on the same expenditure then relief is not available for animation or high-end television. This is to prevent double claims on the same expenditure.
166. New section 1217CA (1) provides that a video game must be intended for release supply to the general public.
167. New section 1217CA (2) provides that the question of whether this condition is met is to be determined when the video game development activities begin. And also provides for circumstances where a game starts out being intended for supply even if subsequently the intention changes. However, where the original intention is not to supply the game to the general public the condition will not be met.
168. New sections 1217CB(1) to (6) provide that a video game development company must apply to the Secretary of State for a

video game to be certified as British and that certain conditions must be met in a 'cultural test'.

169. New sections 1217CC(1) to (2) provide that for applications for certification of the video game as British are to be made to the Secretary of State and that the application may be for an interim or final certificate.
170. New sections 1217CC (3) and (4) define what is meant by an 'interim' certificate and a 'final' certificate'.
171. New sections 1217CC(5) to (6) provide that companies must provide the Secretary of State with all documents and information to determine an application and that the Secretary of State may require additional information to be provided for the purposes of the application and a declaration as to its truth.
172. New sections 1217CC (7) to (9) provide that the Secretary of State may, by regulations, amend the application process, particulars required etc.
173. New section 1217CD(1) to (2) provide that the Secretary of State shall certify a video game if he is satisfied that it meets the requirements for an interim or final certificate. However, if the Secretary of State is not so satisfied, he shall not certify the video game.
174. New sections 1217CD(3) and (4) allows an interim certificate to be given subject to certain conditions, and provides that the certificate may, if the Secretary of State wishes, be given an expiry date. In any case an interim certificate expires when a corresponding final certificate is issued.
175. New sections 1217CD (5) and (6) provide that the Secretary of State shall revoke a certificate if it becomes clear that it should not have been issued. A revoked certificate is treated as never having been issued (unless the Secretary of State provides otherwise).
176. New sections 1217CE(1) and (2) impose another condition for relief; that not less than 25 per cent of the core expenditure on the video game must be UK expenditure. HM Treasury may vary this minimum percentage of UK expenditure by regulations.
177. New sections 1217CF(1) and (2) provide that the company may claim an additional deduction, based on its qualifying expenditure on the video game to be taken into account in calculating its profit or loss from its separate video game trade. The additional deduction and the payable tax credit together make up the new tax relief.

178. New section 1217CF (3) defines ‘qualifying expenditure’ for this purpose.
179. New section 1217CF (4) allows HM Treasury, by regulation, to amend subsection (3) and to provide that particular sorts of expenditure are or are not qualifying expenditure.
180. New section 1217CG (1) applies in the first period of account in which the separate video game trade is carried on. For this period, the additional deduction is given by $0.8 \times E$ where E is the lesser of the amount of qualifying expenditure which is UK expenditure or 80 per cent of that amount.
181. New section 1217CG (2) applies in the subsequent periods of account. In such periods the, the additional deduction is $(0.8 \times E) - P$ where E is now either the lesser of the qualifying expenditure to date (i.e. the sum for the current period and all subsequent periods) which is UK expenditure or 80 per cent of that amount, which ever is less. P is the total amount of additional deduction for all previous periods.
182. New section 1217CG (3) allows HM Treasury to amend the percentage specified in subsections (1) and (2).
183. New section 1217CH(1) provides that a video games development company (as defined in new section 1217AB) may claim a video games tax credit in an accounting period for which it has a surrenderable loss.
184. New section 1217CH (2) defines the surrenderable loss. This is the lesser of the trading loss and the available qualifying expenditure.
185. New section 1217CH(3) calculates the available loss for an accounting period as L plus RUL where L is the amount of the company’s loss for the period and, RUL is the amount of any relevant unused loss. RUL is defined further in new section 1217CH (4).
186. New section 1217CH (4) defines “relevant unused loss” of a company as that part of a loss neither surrendered for tax credit under new section 1217CI (1) nor carried forward under section 45 of the Corporation Tax Act 2010.
187. New section 1217CH (5) defines the available qualifying expenditure for the first period of account during which the trade is carried on as the amount E defined in 1217CG (1).
188. New section 1217CH(6) defines the available qualifying expenditure for subsequent periods as E minus S, where E is the amount defined in new section 1217CG(2) and S is the aggregate of the amounts

surrendered for video games tax credit in previous periods as defined by new section 1217CI(1).

189. New section 1217CH (7) provides for any necessary apportionments where a period of account of the separate video game trade does not coincide with an accounting period.
190. New section 1217CI (1) provides that a company may surrender all or part of its surrenderable loss for a period.
191. New section 1217CI (2) sets the payable tax credit rate as 25%.
192. New section 1217CI (3) provides that where part of the loss is surrendered a company's available loss will be reduced by the surrendered amount.
193. New section 1217CJ(1) provides that where a company is entitled to a video games tax credit for a period, and it claims that credit, the Commissioners for Her Majesty's Revenue and Customs will pay the credit to the company.
194. New section 1217CJ(2) provides that an amount of credit that is payable, or an amount of interest payable under section 826 Income and Corporation Taxes Act 1988, may be set against any corporation tax that the company owes, and that if it is so set. The Commissioners' obligation under new section 1217CJ (1) is met.
195. New section 1217CJ (3) overrules new section 1217CJ (1) when the company's tax return is enquired into by HM Revenue and Customs, so that no payment need then be made to the company. HM Revenue and Customs may however make such provisional payments as it deems fit.
196. New section 1217CJ(4) overrules new section 1217CJ(1) so that when the company owes HM Revenue and Customs any amount of PAYE, Class 1 National Insurance contributions or any amount due no payment need to be made to the company.
197. New section 1217CJ (5) provides that a payment of a video games tax credit is not income for the company for any tax purpose.
198. New section 1217CK (1) provides that no amount is to be included in costs for a period if it is still unpaid four months after the period ends.
199. New section 1217CK (2) provides that new section 1217CK (1) does not override the normal operation of new section 1217BD (when costs are taken to be incurred).

200. New section 1217CL is a general anti avoidance provision, which denies video games development tax relief to the extent that it arises from artificially inflated claims.
201. New section 1217CL(1) sets out that where a transaction is attributable to arrangements entered into (wholly or partly) for a disqualifying purpose, that transaction is disregarded in determining the amount of additional deduction or video games tax credit due.
202. New section 1217CL (2) sets out when arrangements are entered into for a disqualifying purpose. This is when their main object, or one of their main objects, is to enable a company to obtain an additional deduction or a video games tax credit that it would otherwise not be entitled to, or a larger deduction or greater amount of video games tax credit than it would otherwise be entitled to.
203. New section 1217CL (3) defines “arrangements”.
204. New section 1217CM (1) to (4) allow HM Revenue and Customs to disclose information to the Secretary of State for the purposes of his functions and also allows for the same information to be disclosed to the British Film Institute.
205. New section 1217CM5) imposes a duty of confidentiality on any person to whom the information is disclosed under new sections 1217CM (1) and (3).
206. New section 1217CN (1) provides that a person commits an offence if he discloses information about an identifiable person in contravention of new section 1217CM.
207. New section 1217CN2) provides a defence for a person charged with such an offence that he believed the disclosure to be lawful, or the information had already lawfully been made public.
208. New section 1217CN (3) and (6) sets out the penalties for a person convicted of wrongful disclosure.
209. New section 1217CN (4) provides that a prosecution may only be brought in England and Wales by the Director of Revenue and Customs Prosecution or with the consent of the Director of Public Prosecutions.
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Chapter 4: Video Game Losses

211. New section 1217D (2) sets out definitions used later in the section.
212. New section 1217DA(1) to (2) provide for a restriction to losses arising in while a video game is in development to the extent that they may only be carried forward to be set against profits of the separate video games trade in a subsequent period.
213. New section 1217DB (1) applies the clause to the accounting period when a qualifying video game is completed or abandoned and to any subsequent accounting periods, if the trade continues.
214. New section 1217DB(2) provides that any trading loss carried forward under section 45 Corporation Tax Act 2010 from a pre-completion accounting period may be treated as a loss, for the purposes of loss relief, of the accounting period into which it is carried forward. This is subject to the restriction in new section 1217DB (3).
215. New section 1217DB(3) restricts the amount of any loss available to be set sideways against other profits of the same, or an earlier period, and to be surrendered as group relief to the amount that is not attributable to video games tax relief (see subsection (6)).
216. New section 1217DB(4) to (5) explain how the amount of loss that may either be deducted from total profits or surrendered as group relief will be restricted to the amount not attributable to video games tax relief.
217. New section 1217DB (6) explains how the loss for video games tax relief is calculated. This loss is the amount of the total loss less the amount of loss there would have been without the additional deduction under Chapter 3.
218. New section 1217DB (7) provides that 1217DB does not apply to losses carried forward or surrendered under new section 1217DC (terminal losses).
219. New section 1217DC(1) provides that this section applies when a video games development company ceases to carry on a separate trade in relation to the video game and has an amount of loss that remains to be carried forward (a terminal loss).
220. New section 1217DC(2) and (3) provide that where a video games development company with a terminal loss carries on a another trade in relation to another qualifying video game it can, by election, treat such a loss as being a loss brought forward in the next accounting period following the cessation.

221. New section 1217DC(4) to (6) provide for the situation where a company with a terminal loss is in a group relationship with another company at the time of the cessation and that other company is a video games development company in relation to another qualifying video game. The company with the terminal loss may surrender this loss to another video games development company within the same group provided that company makes a claim for the loss.
222. New section 1217DC (7) provides that HM Treasury may, by regulations make adaptations or such modifications as appear to be appropriate to this section.
223. New section 1217DC (8) defines a ‘qualifying video game’.

Chapter 5: Provisional Entitlement to Relief

224. New section 1217E (1) defines certain expressions for the purposes of Chapter 5.
225. New section 1217E (2) sets out a requirement for reporting in a company’s return whether a video game has been completed or abandoned.
226. New section 1217EA (1) provides that a company is not entitled to relief in an interim accounting period unless an interim certificate accompanies its company tax return.
227. New section 1217EA (2) provides that if an interim certificate is revoked the company loses eligibility for any period in respect of which a certificate has been provided must amend its return(s) accordingly.
228. New section 1217EA(3) provides that where a video game is completed the company tax return must be accompanied by a final certificate, which then covers both the final period and any interim periods. If no such final certificate is provided the company loses eligibility for all periods and must amend it return(s) accordingly.
229. New section 1217EA (4) deals with the abandonment of a video game. If the company abandons video game development activities its tax return for the final accounting period may be accompanied by an interim certificate. The company does not lose entitlement to any earlier relief.
230. New section 1217EA (5) provides that if a final certificate is revoked, the company loses eligibility for all periods and must amend its return(s) accordingly.

231. New section 1217EB(1) provides that the company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for that period, a statement of the planned amount of UK expenditure on the video game, and that amount indicates the condition in new section 1217CE will be met on completion.
232. New section 1217EB(2) provides that where the condition in subparagraph (1) is met but it subsequently becomes apparent that the amount of UK expenditure on completion will be too low, the company loses eligibility for all periods and must amend its company tax return(s) accordingly.
233. New section 1217EB (3) and (4) deal with the completion of the video game. If the video game is completed, or abandoned, its company tax return for the final accounting period must be accompanied by a statement that it has been completed or abandoned, as the case may be, and by a final statement of UK core expenditure on the relevant video game. If the company tax return shows that the amount of UK core expenditure is too low and no such final statement is provided, the company loses eligibility for all periods(s) and must amend its company tax return(s) accordingly.
234. New section 1217EC overrides the normal time limits for amendments of assessments as necessary in order to allow the provisions of Chapter 5 to have effect.

Part 2: Commencement

235. Paragraph 2 allows HM Treasury, by order to appoint a day when amendments in the Schedule shall come into force.
236. Paragraph 3 (1) provides that the amendments in the Schedule will have effect from 1 April 2013 (subject to State aid approval).
237. Paragraph 3 (2) and (3) provides that where a company has an accounting period which straddles 1 April 2013 then periods before or after that date are for the purposes of Part 15B treated as separate accounting periods.

DETAILS OF SCHEDULE 3

238. Paragraph 1 covers the necessary consequential amendments to ICTA 1988.
239. Paragraphs 2 to 5 cover the necessary consequential amendments to FA 1998.
240. Paragraph 6 covers the consequential amendments to CAA 2001.

- 241. Paragraph 7 cover the necessary consequential amendments to FA 2007.
- 242. Paragraphs 8 to 15 cover the necessary consequential amendments to CTA 2009.
- 243. Paragraph 16 covers the necessary consequential amendments to FA 2009.
- 244. Paragraphs 17 to 20 covers the consequential amendments to Part 8A CTA 2010.
- 245. Paragraph 21 provides for the consequential renumbering to CTA 2009.
- 246. Paragraphs 22 to 23 provide for commencement of the new reliefs.

BACKGROUND

- 247. The new tax reliefs for animation and high-end television production will allow qualifying companies engaged in the production of animation and high-end television intended for release to the general public to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit. Similarly the new video games development relief will allow eligible companies engaged in the production of qualifying video games to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.
- 248. Both the additional deduction and the payable credit are calculated on the basis of UK core expenditure up to a maximum of 80% of the total core expenditure by the qualifying company. The additional deduction is 100% of qualifying core expenditure and the payable tax credit is 25% of losses surrendered.
- 249. For all three new reliefs the credit is based on the company's qualifying expenditure on the production of a qualifying animation, high-end television programme or video game of which at least 25% of the qualifying expenditure must be on goods or services used or consumed in the UK.
- 250. The animation or high-end television programme or game must be certified as a culturally British product to qualify for the tax credit.

251. The three new tax reliefs are part of the Government's growth agenda (as detailed in the Plan for Growth document published in March 2011). The aim is to help support technological innovation and ensure that animation, high-end television and video game production companies continue to contribute to UK economic growth and to British culture.
252. In June 2012 a stage 2 consultation document: 'Consultation on creative sector tax reliefs' was published giving more detail on the design proposals.
253. If you have any questions about this change, or comments on the legislation, please contact Kerry Pope on 020 7147 2617 (email kerry.pope@hmrc.gsi.gov.uk) or Des Ryan on 020 7147 0818 (email des.ryan@hmrc.gsi.gov.uk).

2013 No.

CORPORATION TAX

**The Cultural Test (Programmes and Video Games) Regulations
2013**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1216CB, 1216CC(7), 1217CB and 1217CC(7) of the Corporation Tax Act 2009(a).

The regulations made under sections 1216CB and 1217CB of the Act are made with the approval of the Treasury.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Cultural Test (Programmes and Video Games) Regulations 2013.

(2) These Regulations come into force on [date].

Interpretation

2.—(1) In these Regulations—

“the Act” means the Corporation Tax Act 2009;

“EEA state” has the meaning prescribed by Schedule 1 to the Interpretation Act 1978(b);

“cast” means all the actors and performers but not the extras who appear in a drama or animation;

“co-production programme” means a programme which passes the cultural test(c) by satisfying the condition in regulation 3(2)(b) or 4(2)(b);

(a) 2009 c. 4. Parts 15A and 15B of the Act, which contain sections 1216CB and 1216CC(7) and sections 1217CB and 1217CC(7) respectively, were inserted by sections [j2390] and [j2060] of and Schedules [j2390sTV] and [j2060sVG] to the Finance Act 2013 (c. []).

(b) 1978 c. 30.

(c) The meaning of “cultural test” in relation to a programme is set out in section 1216CB(2) of the Act.

“development team” means all the persons directly involved in the development of a video game;

“group of companies” means a company and all other companies which are its subsidiaries within the meaning of section 1159 of the Companies Act 2006(a);

“heads of department” has the meaning given by paragraph (2);

“member State” has the meaning prescribed by section 1 of and Schedule 1 to the European Communities Act 1972(b);

“other expenditure” means all the expenditure on the work carried out in the making of the programme or the video game which is not core expenditure(c);

“participant” means a presenter, narrator, subject or other person who participates and appears in a documentary;

“production crew” means all the persons directly involved in the production of a programme who do not appear in the programme;

“programme” means a drama(d), a documentary or animation;

“qualifying person” means a citizen of, or a person ordinarily resident in, an EEA state;

“recognised regional or minority language” means Welsh, Scottish-Gaelic, Irish, Scots, Ulster Scots or Cornish;

“special effects” means artificial techniques or processes, which are not visual effects, used to create an illusion in a programme;

“visual effects” means digital alterations to a programme’s images;

(2) “Heads of department” means—

- (a) in relation to a drama, lead cinematographer, lead production designer, lead costume designer, lead editor, lead sound designer, lead visual effects supervisor, and lead hair and makeup supervisor;
- (b) in relation to a documentary, lead camera operator, lead sound recordist, lead editor, and lead researcher;
- (c) in relation to animation, lead layout supervisor, lead production designer, lead character designer, lead editor, lead sound designer, lead visual effects supervisor and lead modelling supervisor;
- (d) in relation to a video game, lead layout supervisor, lead production designer, lead character designer, lead editor and lead sound designer;

PART 2

Programmes - Dramas and Documentaries

Cultural test: dramas and documentaries

3.—(1) A drama or documentary may be certified as a British programme under section 1216CB(1) of the Act only if it passes the following cultural test.

(2) A drama or documentary passes the cultural test if it meets either of the following conditions—

- (a) it is awarded at least 16 points in total under paragraphs (3) to (6);

(a) 2006 c. 46.

(b) 1972 c. 68.

(c) “Core expenditure” is defined in relation to a programme in section 1216AG(3) of the Act and in relation to a video game is section 1217AG(3) of the Act.

(d) “Drama” is defined in section 1216AC(2) of the Act.

(b) it is made in accordance with the respective agreements made between the Government of the United Kingdom and the international organisations, authorities or the Governments of the countries set out in Schedule 1.

(3) Up to 16 points shall be awarded in respect of the content of the drama or documentary as follows—

(a) up to 4 points depending on the percentage of the drama or documentary that is set in the United Kingdom or another EEA state as follows—

- (i) 4 points for at least 75%;
- (ii) 3 points for at least 66%;
- (iii) 2 points for at least 50%;
- (iv) 1 point for at least 25%;

(b) up to 4 points depending on the number of the characters depicted in the drama or documentary that are from the United Kingdom or another EEA state as follows—

- (i) if there are more than three characters depicted in the drama or documentary, 4 points if two or three of the three lead characters are from the United Kingdom or another EEA state or, if only one of the three lead characters is from the United Kingdom or another EEA state, 2 points if that character is the first or second lead, 1 point if that character is the third lead;
- (ii) if there are only three characters depicted in the drama or documentary, 4 points if two or three of them are from the United Kingdom or another EEA state or, if only one of them is from the United Kingdom or another EEA state, 2 points if that character is the first or second lead, 1 point if that character is the third lead;
- (iii) if there are only two characters depicted in the drama or documentary, 4 points if both of them are from the United Kingdom or another EEA state, 2 points if one of them is;
- (iv) if there is only one character depicted in the drama or documentary, 4 points if that character is from the United Kingdom or another EEA state;

(c) 4 points if the drama or documentary depicts a British story or a story which relates to an EEA state;

(d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—

- (i) 4 points for at least 75%;
- (ii) 3 points for at least 66%;
- (iii) 2 points for at least 50%;
- (iv) 1 point for at least 25%.

(4) Up to 4 points may be awarded in respect of the contribution of the drama or documentary to the promotion, development and enhancement of British culture.

(5) Up to 3 points shall be awarded in respect of work carried out in the making of the drama or documentary as follows—

(a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—

(i) in relation to a drama—

- (aa) principle photography;
- (bb) visual effects;
- (cc) special effects;

(ii) in relation to a documentary—

- (aa) shooting;
- (bb) visual effects;

- (cc) research and development;
- (dd) special effects;
- (b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) performing and recording the music score created for the drama or documentary;
 - (ii) audio post production;
 - (iii) picture post production.
- (6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the drama or documentary as follows—
 - (a) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;
 - (b) 1 point if at least one of the scriptwriters (or, if there are more than three, one of the three lead scriptwriters) is a qualifying person;
 - (c) 1 point if at least one of the producers (or, if there are more than three, one of the three lead producers) is a qualifying person;
 - (d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
 - (e) 1 point if at least one of the actors or participants (as the case may be) (or, if there are more than three, one of the three lead actors or participants) is a qualifying person;
 - (f) 1 point if at least 50% of the cast or participants (as the case may be) are qualifying persons;
 - (g) 1 point if at least one of the heads of department is a qualifying person;
 - (h) 1 point if at least 50% of the production crew are qualifying persons.

PART 3

Programmes - Animation

Cultural test: animation

4.—(1) Animation may be certified as a British programme under section 1216CB(1) of the Act only if it passes the following cultural test.

(2) Animation passes the cultural test if it meets either of the following conditions—

- (a) it is awarded at least 16 points in total under paragraphs (3) to (6);
 - (b) it is made in accordance with the respective agreements made between the Government of the United Kingdom and the international organisations, authorities or the Governments of the countries set out in Schedule 1.
- (3) Up to 16 points shall be awarded in respect of the content of the animation as follows—
- (a) up to 4 points depending on the percentage of the animation that is set in the following locations—
 - (i) 4 points if at least 75% is set in the United Kingdom or another EEA state;
 - (ii) 3 points if at least 66% is set in the United Kingdom or another EEA state or set in an undetermined location;
 - (iii) 2 points if at least 50% is set in the United Kingdom or another EEA state or set in an undetermined location;
 - (iv) 1 point if at least 25% is set in the United Kingdom or another EEA state or set in an undetermined location;

- (b) up to 4 points depending on the number of the characters depicted in the animation with the following characteristics—
 - (i) if there are more than three characters depicted in the animation, 4 points if two or three of the three lead characters are from the United Kingdom or another EEA state or from an undetermined location or, if only one of the three lead characters is from the United Kingdom or another EEA state or from an undetermined location, 2 points if that character is the first or second lead, 1 point if that character is the third lead;
 - (ii) if there are only three characters depicted in the animation, 4 points if two or three of them are from the United Kingdom or another EEA state or from an undetermined location or, if only one of them is from the United Kingdom or another EEA state or from an undetermined location, 2 points if that character is the first or second lead, 1 point if that character is the third lead;
 - (iii) if there are only two characters depicted in the animation, 4 points if both of them are from the United Kingdom or another EEA state or from an undetermined location, 2 points if one of them is;
 - (iv) if there is only one character depicted in the animation, 4 points if that character is from the United Kingdom or another EEA state or from an undetermined location;
 - (c) 4 points if the animation depicts a British story or a story which relates to an EEA state;
 - (d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—
 - (i) 4 points for at least 75%;
 - (ii) 3 points for at least 66%;
 - (iii) 2 points for at least 50%;
 - (iv) 1 point for at least 25%.
- (4) Up to 4 points may be awarded in respect of the contribution of the animation to the promotion, development and enhancement of British culture.
- (5) Up to 3 points shall be awarded in respect of work carried out in the making of the animation as follows—
- (a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) shooting;
 - (ii) visual design;
 - (iii) layout and storyboarding;
 - (iv) visual effects;
 - (v) special effects;
 - (b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) performing and recording the music score created for the animation;
 - (ii) voice recording;
 - (iii) audio post production;
 - (iv) picture post production.
- (6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the animation as follows—
- (a) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;
 - (b) 1 point if at least one of the scriptwriters (or, if there are more than three, one of the three lead scriptwriters) is a qualifying person;

- (c) 1 point if at least one of the producers (or, if there are more than three, one of the three lead producers) is a qualifying person;
- (d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
- (e) 1 point if at least one of the actors (or, if there are more than three, one of the three lead actors) is a qualifying person;
- (f) 1 point if at least 50% of the cast are qualifying persons;
- (g) 1 point if at least one of the heads of department is a qualifying person;
- (h) 1 point if at least 50% of the production crew are qualifying persons.

PART 4

Video Games

Cultural test: video games

5.—(1) A video game may be certified as a British video game under section 1217CB(1) of the Act only if it passes the following cultural test.

(2) A video game passes the cultural test if it is awarded at least 16 points in total under paragraphs (3) to (6).

(3) Up to 16 points shall be awarded in respect of the content of the video game as follows—

- (a) up to 4 points depending on the percentage of the video game that is set in the following locations—
 - (i) 4 points if at least 75% is set in the United Kingdom or another EEA state;
 - (ii) 3 points if at least 66% is set in the United Kingdom or another EEA state or set in an undetermined location;
 - (iii) 2 points if at least 50% is set in the United Kingdom or another EEA state or set in an undetermined location;
 - (iv) 1 point if at least 25% is set in the United Kingdom or another EEA state or set in an undetermined location;
- (b) up to 4 points depending on the number of the characters depicted in the video game with the following characteristics—
 - (i) if there are more than three characters depicted in the video game, 4 points if two or three of the three lead characters are from the United Kingdom or another EEA state or from an undetermined location or, if only one of the three lead characters is from the United Kingdom or another EEA state or from an undetermined location, 2 points if that character is the first or second lead, 1 point if that character is the third lead;
 - (ii) if there are only three characters depicted in the video game, 4 points if two or three of them are from the United Kingdom or another EEA state or from an undetermined location or, if only one of them is from the United Kingdom or another EEA state or from an undetermined location, 2 points if that character is the first or second lead, 1 point if that character is the third lead;
 - (iii) if there are only two characters depicted in the video game, 4 points if both of them are from the United Kingdom or another EEA state or from an undetermined location, 2 points if one of them is;
 - (iv) if there is only one character depicted in the video game, 4 points if that character is from the United Kingdom or another EEA state or from an undetermined location;
- (c) 4 points if the video game depicts a British story or a story which relates to an EEA state;

- (d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—
 - (i) 4 points for at least 75%;
 - (ii) 3 points for at least 66%;
 - (iii) 2 points for at least 50%;
 - (iv) 1 point for at least 25%.
- (4) Up to 4 points may be awarded in respect of the contribution of the video game to the promotion, development and enhancement of British culture.
- (5) Up to 3 points shall be awarded in respect of work carried out in the making of the video game as follows—
 - (a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) conceptual development;
 - (ii) layout and storyboarding;
 - (iii) programming;
 - (iv) visual design;
 - (b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) performing and recording the music score created for the video game;
 - (ii) voice recording;
 - (iii) audio production;
 - (iv) picture production.
- (6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the video game as follows—
 - (a) 1 point if the project leader (or, if there is more than one, the main project leader) is a qualifying person;
 - (b) 1 point if at least one of the scriptwriters (or, if there are more than three, one of the three lead scriptwriters) is a qualifying person;
 - (c) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
 - (d) 1 point if the artist (or, if there is more than one, the lead artist) is a qualifying person;
 - (e) 1 point if the programmer (or, if there is more than one, the lead programmer) is a qualifying person;
 - (f) 1 point if the designer (or, if there is more than one, the lead designer) is a qualifying person;
 - (g) 1 point if at least one of the heads of department is a qualifying person;
 - (h) 1 point if at least 50% of the development team are qualifying persons.

PART 5

Excluded Programmes

6.—(1) A programme must not be certified as a British programme under these Regulations if parts of the programme whose playing time exceeds 10% of the total playing time are derived from a previous programme, unless—

- (a) the two programmes have the same television production company^(a) or producer, and
 - (b) the previous programme has not been certified under these Regulations.
- (2) The Secretary of State may direct that paragraph (1) shall not apply in relation to a programme if in the opinion of the Secretary of State—
- (a) it is a documentary within the meaning of section 1216AC of the Act; and
 - (b) its subject matter makes it appropriate for paragraph (1) not to be applied.
- (3) For the purposes of this regulation—
- (a) the programme soundtrack shall be left out of account;
 - (b) “producer” means the person by whom the arrangements necessary for the making of a programme are undertaken.

PART 6

Applications for Certification

Applications

7.—(1) An application under section 1216CC(1) or 1217CC(1) of the Act (as the case may be) for the certification of a relevant programme^(b) (other than a co-production programme) as a British programme or the certification of a video game as a British video game must be made in writing to the Secretary of State.

(2) For the purposes of this regulation, “in writing” includes text which is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

Particulars

8. An application must set out the particulars (where applicable) of the programme or video game described in Schedule 2.

Evidence

9.—(1) An application must be accompanied by a statutory declaration made by the applicant as to the truth of the particulars given in the application.

(2) A statutory declaration will be deemed to be properly made by the applicant if it has been made on behalf of the company by the secretary or one of the directors of the company or by any person duly authorised by the company to make the declaration on its behalf.

10.—(1) Where an application for final certification seeks to rely on any point that may be awarded under regulation 3(5), 4(5), 5(5), 3(6), 4(6) or 5(6) the application must be accompanied by a report prepared by a person referred to in paragraph (2) verifying the particulars in paragraphs 17 to 19 of Schedule 2.

(2) The person referred to in this paragraph is a person who is eligible for appointment as a statutory auditor under section 1212 of the Companies Act 2006 and is not and was not at any time while the programme or video game was being made—

- (a) in partnership with the applicant or any officer or servant of the applicant;
- (b) in the employment of the applicant or any officer or servant of the applicant; or

(a) The meaning of “television production company” is set out in section 1216AE of the Act.

(b) “Relevant programme” is defined in section 1216AB of the Act.

- (c) an officer or servant of the applicant or, if the applicant is a member of a group of companies, of any other company in that group.

PART 7

General

11. For the purposes of these Regulations—

- (a) a programme or video game is set in the United Kingdom or another EEA state if it is set in a country which is now part of the United Kingdom or another EEA state;
- (b) a programme or video game depicts a British story or a story which relates to an EEA state if the subject matter of the programme or video game or the underlying material on which the programme or video game is based is British or relates to an EEA state;
- (c) a person or a character in a programme or video game is from the United Kingdom or another EEA state if the person or character is a citizen or resident of the United Kingdom or another EEA state;
- (d) a state shall be treated as if it were a member State if—
- (i) it is a party to an agreement under Article 217 of the Treaty on the Functioning of the European Union, and
- (ii) the agreement requires a maker of a programme or video game who is ordinarily resident or registered in that state to be treated for the purposes of these Regulations in the same way as a maker of a programme or video game who is ordinarily resident or registered in a member State.

12. The amount of work that is carried out in the United Kingdom or elsewhere shall be determined—

- (a) for the purposes of regulation 3(5)(a)(i)(aa) (principal photography), by reference to the number of days spent on the work;
- (b) for the purposes of the rest of regulation 3(5) and regulations 4(5) and 5(5) (other matters), by reference to the amount of expenditure on the work.

13. No points shall be awarded under any provision of regulation 3(5), 4(5) or 5(5) (where work carried out) in respect of work the expenditure on which is, in the opinion of the Secretary of State, insignificant in relation to the expenditure on all the work carried out in the making of the programme or video game.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULE 1

Regulation 3(2)(b), 4(2)(b)f

INTERNATIONAL AGREEMENTS

<i>Country/International Organisation/Authority</i>	<i>Date of Agreement</i>	<i>Command Paper</i>
Australia	12th June 1990	Cm 1758
Canada	12th September 1975	Cmnd 6380
	9th July 1985	Cmnd 9887

	5th July 1991	Cm 1807
France	8th November 1994	Cm 2992
Israel	3rd November 2010	Cm 7994
New Zealand	14th April 1993	Cm 2638
Palestine Liberation Organisation for the benefit of the Palestinian Authority	3rd November 2010	Cm 7995

SCHEDULE 2

Regulation 8

PARTICULARS

1. Title of the programme or video game or, in the case of a series of television programmes(a) that are to be treated as a single television programme under section 1216AA of the Act, the title of the series.
2. Whether the application relates to a drama, a documentary, animation or a video game.
3. Total playing time in minutes and seconds of the programme, including credits and titles.
4. Whether the application is for interim or final certification.
5. Whether the programme or video game is intended for broadcast or supply to the general public (as the case may be).
6. Name of the applicant.
7. Address of the applicant's principal place of business.
8. Address of the applicant's registered office.
9. Registered number of the applicant.
10. Date of registration of the applicant.
11. In relation to a drama, the date of the first day of principal photography.
12. Date on which the programme was completed for the purposes of section 1216AB(9) of the Act or the video game was completed for the purposes of section 1217AA(4) of the Act.
13. In relation to a programme, a copy of the commissioning agreement.
14. If the application relates to a drama, documentary, or animation the reasons why it should be considered to be a drama, documentary or animation (as the case may be).
15. The reasons why any point should be awarded under regulation 3(3) (drama or documentary), 4(3) (animation) or 5(3) (video game) (as the case may be).
16. The reasons why any point should be awarded under regulation 3(4) (drama or documentary), 4(4) (animation) or 5(4) (video game) (as the case may be).
17. If the applicant seeks to rely on regulation 3(5)(a)(i)(aa), the total number of days of principal photography and the number of days of principal photography carried out in the United Kingdom.
18. If the applicant seeks to rely on the rest of regulation 3(5) or on regulation 4(5) or 5(5), the total expenditure of the work in relation to which the applicant is applying for points to be awarded and the expenditure of such work carried out in the United Kingdom.

(a) "Television programme" is defined in section 1216AA of the Act.

19. The nationality or ordinary residence of all the persons mentioned in regulation 3(6), 4(6) or 5(6) in relation to whom the applicant is applying for a point to be awarded.

20. Total core expenditure(a).

21. Total UK expenditure(b).

22. Total non-UK expenditure by each country the expenditure is carried out in.

23. Other expenditure.

24. Shooting script (programme) or script (video game) in the English language.

25. A complete synopsis or treatment of the screenplay (programme) or of the video game in the English language.

26. Shooting schedule (programme) or production schedule (video game).

27. Production budget.

28. Copy of the chain of title.

29. The following particulars—

- (a) if any part of the programme that is the subject of the application is derived from any previous programme, the playing time in minutes and seconds of that part (the “derived part”) and the combined playing time in minutes and seconds of all derived parts;
- (b) the particulars in paragraph (a) are only required in relation to any derived parts which—
 - (i) do not have the same television production company or producer as the programme that is the subject of the application; or
 - (ii) are derived from a previous programme that has been certified under these Regulations;
- (c) if the applicant seeks to rely on regulation 6(2) the reasons why the subject matter of the programme makes it appropriate for regulation 6(1) not to be applied;
- (d) for the purposes of paragraph (b)(i), “producer” has the same meaning as in regulation 6(3)(b).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce points-based “cultural tests” for programmes (dramas, documentaries, and animation) and video games. The purpose of the tests is to determine whether a programme or video game may be certified as a “British” programme or video game by the Secretary of State under the Corporation Tax Act 2009. Points under the tests are awarded on the basis of the content of the programme or video game, where certain work on the programme or video game is carried out, and the residence or citizenship of the personnel involved in the making of the programme or video game. Certification as a British programme or video game is a condition of eligibility for television tax relief or video games tax relief under that Act.

These Regulations also prescribe the particulars and evidence that must be provided to the Secretary of State in support of an application for certification. They also make provision for the making of a statutory declaration on behalf of a company.

An impact assessment has not been prepared for this instrument.

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- (a) “Core expenditure” is defined in relation to a programme in section 1216AG(3) of the Act and in relation to a video game in section 1217AD(3) of the Act.
 - (b) “UK expenditure” is defined in relation to a programme in section 1216AH of the Act and in relation to a video game in section 1217AE of the Act.

EXPLANATORY MEMORANDUM TO
THE CULTURAL TEST (PROGRAMMES AND VIDEO GAMES)
REGULATIONS 2013

1. This explanatory memorandum has been prepared by the Department for Culture, Media & Sport and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the Instrument**

2.1 These Regulations introduce points-based tests for television programmes (which may be a drama, documentary or animation) and video games in connection with qualification for tax relief for television production or video games development. The purpose of the tests is to allow the Secretary of State to assess whether the attributes of a television programme or video game (such as its content, where it was made and the persons involved in its production or development) are sufficiently culturally British or European in order to qualify for the reliefs. These Regulations also set out the information and evidence that applicants must provide in relation to these cultural tests.

3. **Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The Finance Act 2013 introduced into the Corporation Tax Act 2009 new tax reliefs for television programmes and video games (see Parts 15A and 15B of the 2009 Act). One of the requirements that must be satisfied in order to qualify for the reliefs is that the television programme or the video game must be certified by the Secretary of State as a 'British' programme or a video game in accordance with conditions specified by the Secretary of State in regulations. These Regulations set out the conditions that must be satisfied in order that the Secretary of State may certify a programme or a video game as 'British'.

4.2 In addition, the provisions introduced into the Corporation Tax Act 2009 by the Finance Act 2013 allow the Secretary of State to make regulations setting out the information and the evidence required in connection with an application for certification as a 'British' programme or video game. These Regulations also include regulations made under these provisions.

4.3 As the tax reliefs for television programmes and video games are new reliefs, this is the first time that these regulation-making powers have been used.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 As with the existing corporation tax relief for film production, the new creative sector reliefs for television programmes and video games require State aid approval from the European Commission. Article 107 of the Treaty on the Functioning of the European Union prohibits Member States from providing aid, such as tax relief, to selected industries or businesses if such aid has the potential to distort competition and affect trade between Member States. There is an exemption, however, for aid to promote culture. The European Commission may approve such aid if such aid does not affect trading conditions and competition in the European Union to an extent that is contrary to the common interest.

7.2 The Department is currently seeking approval from the European Commission that the cultural tests set out in these Regulations provide verifiable national criteria to identify culturally British productions. A television programme or a video game will have to pass the relevant cultural test in order to be certified as a British programme or video game for the purpose of the tax relief.

7.3 The cultural tests award points in four sections: in relation to the British or European content of the programme or video game; the cultural contribution of the programme or video game; the extent to which the programme or video game was developed in the United Kingdom; and the extent the programme or video game was made by nationals or residents of the European Economic Area.

7.3. The cultural tests do not stipulate content, location of production, or selection of practitioners, but the tests do ask for a reasonable amount of production activity to take place in the UK in order for a drama, documentary, or animation programme, or a video game to qualify as 'British'.

8. Consultation Outcome

8.1 The Department worked with stakeholders – through sector based working groups - to design separate cultural tests for television programmes and video games in line with the European Commission's rules on State aid. The Department subsequently issued consultation papers on the proposed cultural tests on 1 October 2012 and invited responses by 29 October 2012. The Department considers that the consultation period was sufficient because the Department has good existing links and working relationships with those, such as television producers and video games developers, who are likely to be most affected by the policy. A total of 41 responses were received. All respondents were broadly supportive of the cultural tests, but adjustments were made post-consultation to the terminology used in the cultural tests

and the distribution of points in Section A of the tests (in relation to British or European content). The final versions of the cultural tests are available from [link].

9. Guidance

9.1 The [British Film Institute (BFI) - *to be confirmed*] Certification Unit will be responsible for assessing applications for the certification of British programmes and video games. The department and the BFI have developed guidance on the cultural tests (which is similar to the current guidance for British film certification). The Department has deposited a copy of the guidance in the Libraries of both Houses.

10. Impact

10.1 The impact on business, charities or voluntary bodies is as set out in the Tax impact assessment published by HM Treasury in June 2012 as part of the consultation on the design of these creative sector tax reliefs – Annex B at http://www.hm-treasury.gov.uk/consult_creative_sector_tax_reliefs.htm. Businesses will have to complete a cultural test application for each production in order to qualify for the relief, as well as making the claim for the relief through their tax returns. These regulations are necessary for the administration of the reliefs.

10.2 The impact on the public sector, chiefly the [BFI] and the Department, is beneath the financial threshold that would indicate that a Regulatory Impact Assessment should be prepared. The exiting Certification Unit for the Film Tax Relief has an administration budget of £120k per annum and the BFI estimate that an additional c. £300-350k per annum will be required to provide this function for the three new reliefs. This additional cost will be met from existing budgets.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business. The views of small businesses were taken into account before the consultation and during the consultation period. The cultural test is a mandatory requirement for any programme or video game wishing to qualify for the tax relief.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to seek to minimise the particulars required to apply for tax relief. The Department is satisfied that the impact on small businesses is not disproportionate to that on other businesses.

11.3 The basis for the decision on what action to take to assist small business is that the cultural test will benefit the UK's creative content sector by encouraging the use of British content and practitioners.

12. Monitoring & review

12.1 The UK is required to submit an annual report to the European Commission on the implementation of the cultural test measure to ensure it is consistent with the original State aid notification.

12.2 This cultural measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

13. Contact

Tim Scott at the Department for Culture, Media and Sport Tel: 020 7211 6148 or e-mail Tim.Scott@culture.gsi.gov.uk can answer any queries regarding the instrument.