

SCHEDULES

SCHEDULE 5

Section 42

FILM TAX RELIEF: FURTHER PROVISIONS

PART 1

ENTITLEMENT TO FILM TAX RELIEF

Introduction

- 1 (1) Film tax relief is available in accordance with this Schedule in respect of expenditure on a film—
 - (a) that qualifies for the relief (see section 38), and
 - (b) that commences principal photography on or after 1st April 2006.
- (2) References in this Part of this Schedule to the trade of a film production company are to the trade that it is treated as carrying on under Schedule 4.

Additional deduction in computing profits of trade

- 2 The film production company may (on making a claim) make an additional deduction in calculating the profit or loss of its trade in respect of qualifying expenditure on the film.

Qualifying expenditure

- 3 (1) Qualifying expenditure for this purpose means core expenditure on the film that falls to be taken into account under Schedule 4 in calculating the profit or loss of the trade for tax purposes.
- (2) The Treasury may by regulations—
 - (a) amend sub-paragraph (1);
 - (b) provide that expenditure of a specified description is or is not to be regarded for the purposes of this Part of this Schedule as qualifying expenditure.
- (3) No such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons.

Amount of additional deduction

- 4 (1) For the first period of account during which the trade is carried on the amount of the additional deduction is given by—

$$T \times R$$

where—

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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; and

R is the rate of enhancement (see paragraph 5).

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

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

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,

R is the rate of enhancement (see paragraph 5), and

P is the amount of the additional deduction given in the previous period or, as the case may be, the aggregate amount of the additional deductions given in previous periods.

- (3) The Treasury may by regulations amend the percentage stated in sub-paragraph (1) or (2).
- (4) No such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons.

Rate of enhancement

5 The rate of enhancement is—

- (a) for a limited-budget film, 100%;
- (b) for a film other than a limited-budget film, 80%.

Film tax credits

6 (1) A film production company may claim a film tax credit for an accounting period in which it has a surrenderable loss.

(2) The amount of the company's surrenderable loss in any period is equal to whichever is the less of—

- (a) the amount of its trading loss for that period, and
- (b) the available qualifying expenditure.

(3) For the first period of account during which the trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of paragraph 4(1).

(4) For any period of account after the first, the available qualifying expenditure is given by—

$$F - S$$

where—

E is the amount that is E for that period for the purposes of paragraph 4(2), and

S is the amount surrendered in the previous period, or (as the case may be) the aggregate amount of the amounts surrendered in previous periods, under paragraph 7.

Amount of credit

- 7 (1) The company may surrender the whole or part of its surrenderable loss in a period.
- (2) The amount of the film tax credit to which a company is entitled for a period is given by the formula—

$$L \times R$$

where—

L is the amount of the loss surrendered, and
R is the payable credit rate (see paragraph 8).

Payable credit rate

- 8 The payable credit rate is—
- (a) for a limited-budget film, 25%;
 - (b) for a film other than a limited-budget film, 20%.

Payment in respect of film tax credit

- 9 (1) Where—
- (a) a company is entitled to a film tax credit for a period, and
 - (b) makes a claim,
- the Commissioners shall pay to the company the amount of the credit.
- (2) An amount payable in respect of—
- (a) a film tax credit, or
 - (b) interest on a film 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 sub-paragraph (1) is discharged.
- (3) Where the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a film 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 think fit.
- (4) No payment need be made in respect of a film 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 555 of ICTA (foreign entertainers), or
 - (c) in respect of Class 1 national insurance contributions.

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Payment in respect of film tax credit not income

- 10 A payment in respect of film tax credit is not income of the company for any tax purpose.

Trading loss reduced by amount surrendered for film tax credit

- 11 The amount of a film production company's trading loss for an accounting period is reduced by any amount surrendered for a film tax credit.

No account to be taken of amounts if unpaid

- 12 (1) In determining for the purposes of this Part of this Schedule the amount of costs incurred on a film at the end of a period of account no account is to be taken of any amount that has not been paid four months after the end of that period.
- (2) This is without prejudice to the operation of paragraph 9 of Schedule 4 (general rules as to when costs are taken to be incurred).

Artificially inflated claims for deduction or film tax credit

- 13 (1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it shall be disregarded in determining for any period—
- (a) any additional deduction to which a company is entitled under this Part of this Schedule, and
 - (b) any film tax credit to which a company is entitled.
- (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 Part of this Schedule 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 film 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) In this paragraph “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

Interpretation

- 14 In this Part of this Schedule—
- “the Commissioners” means Her Majesty's Commissioners for Revenue and Customs;
 - “national insurance contributions” means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7); and
 - “PAYE regulations” means regulations under section 203 of ICTA.

PART 2

CERTIFICATION OF BRITISH FILMS FOR PURPOSES OF FILM TAX RELIEF

- 15 For section 6 of the Films Act 1985 (c. 21) (certification of master negatives, tapes and discs for purposes of section 72 of FA 1982) substitute—

“6 Certification of British films

Schedule 1 to this Act has effect with respect to the certification by the Secretary of State of a film as a British film for the purposes of film tax relief.”.

- 16 For the heading to Schedule 1 to that Act substitute “Certification of British films for purposes of film tax relief”.
- 17 For paragraph 1 of that Schedule substitute—

“Preliminary

- 1 (1) In this Schedule—

“film” includes any record, however made, of a sequence of visual images that is capable of being used as a means of showing that sequence as a moving picture;

“film production company” has the same meaning as in Chapter 3 of Part 3 of the Finance Act 2006 (see section 32 of that Act).

- (2) For the purposes of this Schedule each part of a series of films is treated as a separate film, unless—
- (a) the films form a series with not more than 26 parts,
 - (b) the combined playing time is not more than 26 hours, and
 - (c) the series constitutes a self-contained work or is a series of documentaries with a common theme,
- in which case the films are treated as a single film.
- (3) References in this Schedule to a film include the film soundtrack.
- (4) For the purposes of this Schedule a film 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 distributed for presentation to the general public.”.

- 18 For paragraph 2 of that Schedule substitute—

“Applications for certification

- 2 (1) The film production company may apply to the Secretary of State for the certification of a film as a British film.
- (2) The application may be for an interim or final certificate.
- (3) An interim certificate is a certificate granted before the film is completed that the film, if completed in accordance with the proposals set out in the application, will be a British film.

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- (4) A final certificate is a certificate granted after the film is completed that the film is a British film.
- (5) The applicant must—
 - (a) produce to the Secretary of State such books or other documents relating to the application, and
 - (b) provide the Secretary of State with such other information with respect to it,
 as the Secretary of State may require for the purposes of determining the application.
- (6) The Secretary of State may require information provided for the purposes of the application to be accompanied by a statutory declaration, by the person providing it, as to the truth of the information.”.

19 For paragraph 3 of that Schedule substitute—

“Certification and withdrawal of certification

- 3 (1) If the Secretary of State is satisfied that the requirements are met for interim or final certification of a film as a British film, he shall certify the film accordingly.
- (2) If the Secretary of State is not satisfied that those requirements are met, he shall 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;
 - (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; and
 - (c) ceases to have effect when a final certificate is issued.
- (4) If it appears to the Secretary of State that a film certified by him under this Schedule ought not to have been certified, he shall revoke its certification.

Unless the Secretary of State directs otherwise, a certificate that is revoked is treated as never having had effect.”.

20 In paragraph 4 of that Schedule (British films for purposes of the Schedule), for sub-paragraphs (1) to (3) substitute—

“(1) A film is a British film for the purposes of this Schedule if it passes the relevant cultural test (see paragraph 4A, 4B or 4C).”.

21 (1) Paragraph 5 of that Schedule (excluded films) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) A film must not be certified as a British film for the purposes of this Schedule if parts of the film whose playing time exceeds 10% of the total playing time of the film are derived from a previous film, unless—

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- (a) the two films have the same film production company or producer, and
- (b) the previous film has not been certified under this Schedule.”.

(3) After sub-paragraph (2) insert—

“(3) For the purposes of this paragraph—

- (a) the film soundtrack shall be left out of account;
- (b) “producer” means the person by whom the arrangements necessary for the making of the film are undertaken;
- (c) in relation to certification before the commencement of Chapter 3 of Part 3 of the Finance Act 2006, references to certification of a film shall be read as references to certification of the master negative, tape or disc of the film.”.

22 In paragraph 9 of that Schedule (determination of disputes) for the words from “any decision of the Secretary of State” to “may” substitute “any decision of the Secretary of State under paragraph 3 may”.

23 In paragraph 10 of that Schedule (regulations and orders)—

- (a) in sub-paragraph (1)(c), for “2(4)” substitute “2(6);
- (b) in sub-paragraph (2), for “4 to 8” substitute “4 to 5”.

Confidentiality of information

24 (1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to the Secretary of State for the purposes of his functions under Schedule 1 to the Films Act 1985 (c. 21) (certification of films as British films for the purposes of film tax relief).

(2) Information so disclosed may be disclosed to the UK Film Council.

(3) A person to whom information is disclosed under sub-paragraph (1) or (2) may not otherwise disclose it except—

- (a) for the purposes of the Secretary of State’s functions under Schedule 1 to the Films Act 1985 (c. 21),
- (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 that Schedule or this Chapter,
- (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.

(4) The references in this paragraph to the functions of the Secretary of State under Schedule 1 to the Films Act 1985 do not include those functions in so far as they are exercised in relation to a film that commenced principal photography before 1st April 2006.

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Wrongful disclosure

- 25 (1) A person commits an offence if—
- (a) he discloses information about a person in contravention of paragraph 24(3), and
 - (b) the person’s identity is specified in the disclosure, or can be deduced from it.
- (2) In sub-paragraph (1) “information about a person” means revenue and customs information relating to a person within the meaning of section 19(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (wrongful disclosure).
- (3) It is a defence for a person charged with an offence under this paragraph to prove that he reasonably believed—
- (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public.
- (4) A person guilty of an offence under this paragraph 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 twelve months or a fine not exceeding the statutory maximum or both.
- (5) A prosecution for an offence under this paragraph 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.
- (6) A prosecution for an offence under this paragraph 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.
- (7) In the application of this paragraph—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44), or
 - (b) in Scotland or Northern Ireland,
- the reference in sub-paragraph (4)(b) to twelve months shall be read as a reference to six months.

PART 3

CONSEQUENTIAL AMENDMENTS

Interest

- 26 (1) Section 826 of ICTA (interest on tax overpaid etc) is amended as follows.
- (2) In subsection (1) (payments that carry interest) after paragraph (e) insert—
- “; or
- (f) a payment of film tax credit falls to be made to a company.”.

(3) After subsection (3B) insert—

“(3C) In relation to a payment of film tax credit the material date is whichever is the later of—

- (a) the filing date for the company’s company tax return for the accounting period for which the tax credit is payable, and
- (b) the date on which the company tax return or amended company tax return containing the claim for payment is delivered to an officer of Revenue and Customs.

For this purpose “the filing date”, in relation to a company tax return, has the same meaning as in Schedule 18 to the Finance Act 1998.”

(4) In subsection (8A) (recovery of overpaid amounts)—

- (a) in paragraph (a), for “or (e)” substitute “, (e) or (f)”;
- (b) in paragraph (b)(ii) after “life assurance company tax credit” insert “or film tax credit”.

(5) In subsection (8B) after “life assurance company tax credit” (twice) insert “or film tax credit”.

Claim to be made in tax return

27 In Schedule 18 to FA 1998 (company tax returns), in paragraph 10 (other claims etc to be included in return), after sub-paragraph (3) insert—

“(4) A claim to which Part 9D of this Schedule applies (claims for film tax relief) can only be made by being included in a company tax return (see paragraph 83T).”

Recovery of excessive film tax credit

28 In paragraph 52 of that Schedule (recovery of excessive repayments etc)—

- (a) in sub-paragraph (2) (excessive repayments etc to which paragraphs 41 to 48 apply), after paragraph (bc) insert—
“(bd) film tax credit.”;
- (b) in sub-paragraph (5) (connection of assessment for excessive payment to an accounting period), after paragraph (ad) insert—
“(ae) an amount of film tax credit paid to a company for an accounting period.”;
- (c) in the closing words of that sub-paragraph, after “(ad)” insert “, (ae)”.

Claims for film tax credits

29 After Part 9C of that Schedule insert—

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“PART 9D

CLAIMS FOR FILM TAX RELIEF

Introduction

83S This Part of this Schedule applies to claims for film tax relief.

Claim to be included in company tax return

- 83T (1) A claim to which this Part of this Schedule applies must be made by being included in the claimant company’s tax return for the accounting period for which the claim is made.
- (2) It may be included in the return originally made or by amendment.

Content of claim

83U A claim to which this Part of this Schedule applies must specify the amount of the relief claimed, which must be an amount quantified at the time the claim is made.

Amendment or withdrawal of claim

83V A claim to which this Part of this Schedule applies may be amended or withdrawn by the claimant company only by amending its company tax return.

Time limits for claim

- 83W (1) A claim to which this part of this Schedule applies may be made, amended or withdrawn at any time up to the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made.
- (2) The claim may be made, amended or withdrawn at a later date if an officer of Revenue and Customs allows it.

Penalty

- 83X (3) The company is liable to a penalty where it—
- (a) fraudulently or negligently makes a claim for a film tax credit that is incorrect, or
 - (b) discovers that a claim for a film tax credit made by it (neither fraudulently nor negligently) is incorrect and does not remedy the error without unreasonable delay.
- (4) The penalty is an amount not exceeding the excess film tax credit claimed, that is, the difference between—
- (a) the amount (if any) of the film tax credit to which the company is entitled for the accounting period to which the claim relates, and

- (b) the amount of the film tax credit claimed by the company for that period.”.

PART 4

PROVISIONAL ENTITLEMENT TO RELIEF

Introduction

- 30 (1) In this Part of this Schedule—
- “the company” means the film production company;
 - “the final accounting period” means the accounting period of the company in which—
 - (a) the film is completed, or
 - (b) where the company does not complete the film, it abandons film-making activities in relation to it;
 - “interim accounting period” means any earlier accounting period of the company during which film-making activities are carried on in relation to the film;
 - “interim certificate” and “final certificate” refer to certificates under Schedule 1 to the Films Act 1985 (c. 21) (certification of films as British films for purposes of film tax relief);
 - “relief” means—
 - (a) film tax relief, or
 - (b) relief under section 45 (transfer of terminal losses from one qualifying film to another).
- (2) The company tax return of the company for the final accounting period must state that the film has been completed or, as the case may be, that the company has abandoned film-making activities in relation to it.

Certification as a British film

- 31 (1) The company is not entitled to 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 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 film is completed by the company—
- (a) its company tax return for the final accounting period must be accompanied by a final certificate;
 - (b) if that requirement is met, the final certificate has effect for the final accounting period and for any interim accounting period;
 - (c) if that requirement is not met, the company—
 - (i) is not entitled to relief for any period, and

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- (ii) must amend accordingly its company tax return for any period for which relief was claimed.
- (4) If the company abandons film-making activities in relation to the film—
 - (a) its company tax return for the final accounting period may be accompanied by an interim certificate; and
 - (b) the abandonment of film-making activities does not affect any entitlement to relief in that or any previous accounting period.
- (5) If a final certificate is revoked, the company—
 - (a) is not entitled to relief for any period, and
 - (b) must amend accordingly its company tax return for any period for which relief was claimed.

The UK expenditure condition

- 32 (1) The company is not entitled to relief for an interim accounting period unless—
- (a) its company tax return for the period states the amount of planned core expenditure on the film that is UK expenditure, and
 - (b) that amount is such as to indicate that the condition in section 41 (the UK expenditure condition) will be met on completion of the film.
- 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 condition will not be met on completion of the film, the company—
- (a) is not entitled to 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 film is completed or, as the case may be, the company abandons film-making activities in relation to it—
- (a) the company tax return for the final accounting period must—
 - (i) state that the film has been completed or, as the case may be, the company has abandoned film-making activities in relation to it, and
 - (ii) be accompanied by a final statement of the amount of core expenditure on the film that is UK expenditure; and
 - (b) if the return shows that the condition in section 41 is not met, the company—
 - (i) is not entitled to relief for any period, and
 - (ii) must amend accordingly its company tax return for any period for which relief was claimed.

Whether film a limited-budget film

- 33 (1) The company is not entitled to film tax relief for an interim accounting period on the basis that the film is a limited-budget film unless—
- (a) its company tax return for the period states the amount of planned core expenditure on the film, and
 - (b) that amount is such as to indicate that the condition in section 34(2) (definition of “limited-budget film”) will be met on completion of the film.

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In that case, the film is provisionally treated in relation to that period as if that condition was met.

- (2) If it subsequently appears that the condition will not be met on completion of the film, the company—
 - (a) is not entitled to film tax relief for any period on the basis that the film is a limited-budget film, and
 - (b) must amend accordingly its company tax return for any such period for which relief has been claimed on that basis.
- (3) When the film is completed or, as the case may be, the company abandons film-making activities in relation to it—
 - (a) its company tax return for the final accounting period must—
 - (i) state that the film has been completed or, as the case may be, the company has abandoned film-making activities in relation to it, and
 - (ii) be accompanied by a final statement of the core expenditure on the film; and
 - (b) if the return shows that the film is not a limited-budget film, or (as the case may be) that having regard to the proportion of work on the film that was completed, it would not have been a limited-budget film if it had been completed, the company—
 - (i) is not entitled to film tax relief for any period on the basis that the film is a limited-budget film, and
 - (ii) must amend accordingly its company tax return for any period for which such relief was claimed on that basis.

Time limit for amendments and assessments

- 34 Any amendment or assessment necessary to give effect to the provisions of this Part of this Schedule may be made notwithstanding any limitation on the time within which an amendment or assessment may normally be made.