

SCHEDULES

SCHEDULE 5

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.