

# **CORPORATION TAX ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 15: Film production**

##### **Overview**

3001. This Part treats certain film production and exploitation activity by certain companies as separate film trades for corporation tax. It is based on Chapter 3 of Part 3 of, and Schedules 4 and 5 to, FA 2006 (films and sound recordings).
3002. In relation to some separate film trades, this Part also provides for:
- additional trading deductions; and
  - payments for the surrender of losses.
3003. This Part deals solely with film production companies. Provisions about the corporation tax treatment of sound recordings are dealt with in Chapter 9 of Part 3 (trade profits: other specific trades).

##### **Chapter 1: Introduction**

##### **Section 1180: Overview of Part**

3004. This section gives an overview of the Part. It is new.

##### **Section 1181: “Film” etc**

3005. This section provides for the meaning of “film” in this Part, when a series of films is treated as a single film and when a film is completed. It is based on section 31 of FA 2006.
3006. The definitions are the same as those in paragraph 1 of Schedule 1 to the Films Act 1985 (certification of British films for purposes of film tax relief) which was substituted by paragraph 17 of Schedule 5 to FA 2006.

##### **Section 1182: “Film production company”**

3007. This section defines “film production company” for this Part. It is based on section 32 of FA 2006.
3008. There can be at most one company that fits the description of “film production company” in relation to a particular film. There may be no such company. A company might be a film production company in relation to some of the films that it is involved with but not in relation to others.
3009. If a company is the film production company in relation to a particular film its production and exploitation activities in relation to the film are, for corporation tax purposes, treated as a separate trade (see Chapter 2: taxation of activities of film

production company). A film production company may, but need not, be entitled to additional reliefs in relation to the film concerned (see Chapter 3: film tax relief).

3010. *Subsection (7)* provides for a company to elect that it is not to be treated as a film production company in relation to films. Such an election is likely to be helpful to companies that are not entitled to additional reliefs in relation to films that they are involved with.

### ***Section 1183: “Film-making activities” etc***

3011. This section gives the meaning of “film-making activities” for this Part and gives the Treasury power to make regulations that alter the meaning. It is based on section 33 of FA 2006.
3012. The activities mentioned in *subsection (1)* are not further defined. Those activities are however well understood in the film industry.
3013. *Subsection (2)* ensures that principal photography has an appropriate meaning in cases where images for a film are generated by computer.

### ***Section 1184: “Production expenditure”, “core expenditure” and “limited-budget film”***

3014. This section defines the terms “production expenditure”, “core expenditure” and “limited-budget film”. It is based on section 34 of FA 2006.
3015. Limited-budget films are eligible for more generous reliefs than other films (see sections 1200(3) and 1202(3)). To reduce the risk of exploitation by arrangements involving connected parties, *subsection (3)* substitutes, in certain cases, (greater) arms length prices in determining whether a film is a limited-budget film.

### ***Section 1185: “UK expenditure” etc***

3016. This section gives the meaning of “UK expenditure” in this Part and gives the Treasury power to make regulations that alter the meaning. It is based on section 35 of FA 2006.
3017. *Subsection (2)* provides that any apportionment of expenditure be made on a “just and reasonable basis”. The source legislation refers to “fair and reasonable”. The formulation used in this section has generally been adopted in ITTOIA and ITA. See *Change 12* in Annex 1.

### ***Section 1186: “Qualifying co-production” and “co-producer”***

3018. This section defines “qualifying co-production” and “co-producer” for this Part. It is based on section 36 of FA 2006.

### ***Section 1187: “Company tax return”***

3019. This section defines “company tax return”. It is based on section 32(10) of FA 2006.
3020. Whilst the definition in section 32(10) of FA 2006 is not explicitly applied to instances where the term “company tax return” appears in Schedules 4 and 5 to FA 2006, it is considered that the same meaning applies in those instances. So the definition in this section applies to the whole Part.

## ***Chapter 2: Taxation of activities of film production company***

### ***Section 1188: Activities of film production company treated as a separate trade***

3021. This section treats a film production company’s activities in relation to the film as a separate trade for corporation tax purposes and provides for when that trade is treated as starting. It is based on section 37 of, and paragraphs 2 and 3 of Schedule 4 to, FA 2006.

3022. *Subsection (3)* introduces the label “the separate film trade” in this Chapter as a means of avoiding cumbersome references such as “the separate trade that a film production company is treated as carrying on in relation to the film in respect of which it is the film production company”.

***Section 1189: Calculation of profits or losses of separate film trade***

3023. This section provides rules for bringing into account income from the film (as defined) and costs of the film (as defined) in calculating the profit or loss of the separate film trade for a period of account. It is based on paragraph 7 of Schedule 4 to FA 2006.

***Section 1190: Income from the film***

3024. This section gives the meaning in this Chapter of the term “income from the film”. It is based on paragraph 6 of Schedule 4 to FA 2006.
3025. *Subsection (3)* provides that capital receipts are treated as having a revenue nature for this purpose. So, for instance, all receipts from the sale of the film will be treated as income for the purposes of this section.

***Section 1191: Costs of the film***

3026. This section gives the meaning in this Chapter of the term “costs of the film”. It is based on paragraph 5 of Schedule 4 to FA 2006.
3027. *Subsection (3)* prevents expenditure being treated as capital purely because it is on the creation of the film. It does not therefore apply to, say, capital expenditure on plant and machinery since that would be capital regardless of the creation of the film.

***Section 1192: When costs are taken to be incurred***

3028. This section makes provision about when costs are taken to be incurred. It is based on paragraph 9 of Schedule 4 to FA 2006.
3029. To prevent avoidance costs are, for instance, not to be treated as incurred before they are the subject of an unconditional obligation and are reflected in the state of completion of the work in progress.

***Section 1193: Pre-trading expenditure***

3030. This section allows expenditure incurred on development of the film, but before the separate film trade starts, to be treated as incurred immediately after the separate film trade starts. It is based on paragraph 4 of Schedule 4 to FA 2006.
3031. If pre-trading expenditure is treated in this fashion, the company must amend any company tax returns that have previously taken account of the same expenditure.

***Section 1194: Estimates***

3032. This section provides that estimates for the purposes of this Chapter are to be made at the balance sheet date and on a just and reasonable basis. It is based on paragraph 8 of Schedule 4 to FA 2006.
3033. The section provides that any estimate is to be made on a “just and reasonable basis”. The source legislation refers to “fair and reasonable”. The formulation used in this section has generally been adopted in ITTOIA and ITA. See *Change 12* in Annex 1.

### ***Chapter 3: Film tax relief***

#### ***Section 1195: Availability and overview of film tax relief***

3034. This section gives an overview of the Chapter and gives signposts to film tax relief and to the three conditions that must be satisfied in order for the relief to be available. It is new.

#### ***Section 1196: Intended theatrical release***

3035. This section sets out the condition about intended theatrical release. It is based on section 39 of FA 2006.

#### ***Section 1197: British film***

3036. This section sets out the condition about certification as a British film. It is based on section 40 of FA 2006.

#### ***Section 1198: UK expenditure***

3037. This section sets out conditions about the minimum percentage of core expenditure that must be UK expenditure and gives the Treasury power to alter that percentage. It is based on section 41 of FA 2006.

#### ***Section 1199: Additional deduction for qualifying expenditure***

3038. This section allows a company, entitled to film tax relief, to claim additional trading deductions in respect of core expenditure on the film and gives the Treasury powers in relation to such additional deductions. It is based on paragraphs 1 to 3 of Schedule 5 to FA 2006.

#### ***Section 1200: Amount of additional deduction***

3039. This section sets out the amount of additional deduction for which a claim may be made under section 1199 and gives the Treasury power to alter the percentages in subsections (1) and (2). It is based on paragraphs 4 and 5 of Schedule 5 to FA 2006.

3040. *Subsection (3)* provides for a higher rate of enhancement if the film is a limited-budget film.

#### ***Section 1201: Film tax credit claimable if company has surrenderable loss***

3041. This section allows a company, entitled to film tax relief, to surrender a tax loss for a payment if it has a surrenderable loss for the accounting period concerned. It is based on paragraph 6 of Schedule 5 to FA 2006.

#### ***Section 1202: Surrendering of loss and amount of film tax credit***

3042. This section allows a company to claim a film tax credit for only part of its surrenderable loss and quantifies the film tax credit. It is based on paragraphs 7, 8 and 11 of Schedule 5 to FA 2006.

3043. *Subsection (3)* provides for a higher payable credit rate if the film is a limited-budget film.

3044. *Subsection (4)* provides that the company's loss is reduced by the amount for which it claims a film tax credit.

***Section 1203: Payment in respect of film tax credit***

3045. This section requires the Commissioners for HMRC to pay to the company any film tax credit to which it is entitled and for which a claim has been made. It is based on paragraphs 9, 10 and 14 of Schedule 5 to FA 2006.
3046. Various circumstances in which a payment need not be made are set out. These include cases where the company has not yet made certain payments that it is required to make.
3047. *Subsection (5)* provides that a payment in respect of film tax credit does not count as income of the company.

***Section 1204: No account to be taken of amount if unpaid***

3048. This section requires costs that remain unpaid four months after the end of a period of account to be treated, for the purposes of this Chapter, as if they had not been incurred by the end of that period. It is based on paragraph 12 of Schedule 5 to FA 2006.
3049. The restriction in this section is additional to that in section 1192. Section 1192 is concerned with whether, and when, a trading deduction may be made in respect of expenditure in calculating the profit or loss of the single film trade. The further restriction in this section applies in deciding whether (and, if so, how much of) an additional trading deduction may be claimed or a trading loss may be surrendered for payment.

***Section 1205: Artificially inflated claims for additional deduction or film tax credit***

3050. This section requires transactions to be ignored for film tax relief purposes if they are attributable to arrangements whose sole or main purpose is obtaining, or increasing, entitlement to that relief. It is based on paragraph 13 of Schedule 5 to FA 2006.

***Section 1206: Confidentiality of information***

3051. This section permits disclosure of information by HMRC for the purpose of the Secretary of State's functions relating to certification of films, but prevents the recipient of such information making further disclosure except in specified cases. It is based on paragraph 24 of Schedule 5 to FA 2006.

***Section 1207: Wrongful disclosure***

3052. This section makes it an offence to disclose information in contravention of section 1206(3) if the disclosure reveals, or one can deduce, the identity of the person to whom the information relates. It is based on paragraph 25 of Schedule 5 to FA 2006.
3053. *Subsection (6)(b)* does not reproduce the reference to "Scotland" in paragraph 25(7) of Schedule 5 to FA 2006. That is because section 45(1) of the [Criminal Proceedings etc \(Reform\) \(Scotland\) Act 2007 \(ASP 6\)](#) (brought into force on 10 December 2007) has the effect that the 12 month limit in paragraph 25(4)(b) of Schedule 5 to FA 2006 applies in Scotland.

***Chapter 4: Film losses***

***Section 1208: Application of sections 1209 and 1210***

3054. This section introduces, and provides defined terms for, the next two sections dealing with losses of separate film trades. It is based on section 43(3) and 44(5) of FA 2006.

***Section 1209: Restriction on use of losses while film in production***

3055. This section restricts the offset of single film trade losses arising in accounting periods ending before the film is completed or abandoned (“pre-completion periods”). It is based on section 43(1) and (2) of FA 2006.
3056. The profits against which pre-completion period single film trade losses can be offset are restricted to those provided for by section 393(1) of ICTA (carry forward against trading profits of the same trade). But this restriction may effectively cease to apply in respect of some, or all, of those single film trade losses from the accounting period in which the film is completed or abandoned (see section 1210).

***Section 1210: Use of losses in later periods***

3057. This section modifies, for accounting periods from that in which the film is completed or abandoned (“the completion period”), the rules on trade losses and their offset against other profits. It is based on section 44(1) to (4) and (6) of FA 2006.
3058. *Subsection (1)(b)* refers to the separate film trade continuing in accounting periods after the completion period. This deals with the possibility that a film production company might decide to exploit the completed film, rather than sell it. In such a case the separate film trade may continue after the completion period.
3059. *Subsections (2) and (3)* allow part (or all) of single film trade losses brought forward to the completion period to be treated as if they were single film trade losses of the completion period. Single film trade losses of the completion period are not subject to the restrictions in section 1209. Any brought forward losses that are attributable to film tax relief (see *subsection (6)*) will not be “freed-up” in this manner. Nor will losses be “freed-up” if they are brought forward because of section 1211 (terminal losses) (see *subsection (7)*).
3060. *Subsections (4) and (5)* prevent single film trade losses being offset against other profits to the extent that such losses are attributable to film tax relief (see *subsection (6)*).

***Section 1211: Terminal losses***

3061. This section allows certain single film trade losses, attributable to a trade that ceases, to be treated as if they were brought forward losses of certain other single film trades and it allows the Treasury to make regulations appropriate to the operation of the section. It is based on section 45 of FA 2006.
3062. The normal rule is that trade losses do not survive the cessation of the trade in which the losses were made. This section operates if the trade that ceases (trade A) is a single film trade that qualifies for film tax relief and, at the time of cessation, there is another single film trade (trade B) carried on which also qualifies for film tax relief. Subject to conditions being met, the losses of trade A that would otherwise have been available for carry forward under section 393(1) of ICTA may be treated as if they were losses of trade B that are carried forward under section 393(1) of ICTA.
3063. Trade B may be carried on either by the film production company that had carried on trade A or by another member of the same group (for group relief) as that film production company.
3064. The [Corporation Tax \(Surrender of Terminal Losses on Films and Claims for Relief\) Regulations 2007 \(SI 2007/678\)](#) have been made under section 45(5) of FA 2006.



## ***Chapter 5: Provisional entitlement to relief***

### **Overview**

3065. It may not be established that a film qualifies for film tax relief, or transfer of terminal losses, until the accounting period in which the film is completed or abandoned (“the final accounting period”). This Chapter provides for film tax relief to be obtained, or terminal losses transferred, for earlier accounting periods (“interim accounting periods”) on the basis of provisional assumptions and for later adjustments where those assumptions are wrong.

### ***Section 1212: Introduction***

3066. This section defines terms used in the Chapter and requires the appropriate company tax return of the film production company to state that the film has been completed or abandoned. It is based on paragraph 30 of Schedule 5 to FA 2006.

3067. The term “special film relief” covers both film tax relief (which requires that the film in question satisfy the requirements listed in section 1195(2)) and the transfer of terminal losses (which requires that both of the films in question satisfy those requirements).

### ***Section 1213: Certification as a British film***

3068. This section relates to the requirement that a film must be certified as a British film in order for there to be entitlement to special film relief. It is based on paragraph 31 of Schedule 5 to FA 2006.

3069. Special film relief cannot be claimed for an interim accounting period unless the company tax return is accompanied by an interim certificate. For the final accounting period the company tax return must be accompanied by a final certificate or, if the film was abandoned rather than completed, an interim certificate. Special film relief previously obtained is withdrawn if the conditions in this section are not met.

### ***Section 1214: The UK expenditure condition***

3070. This section relates to the requirement that a film must meet the UK expenditure condition in order for there to be entitlement to special film relief. It is based on paragraph 32 of Schedule 5 to FA 2006.

3071. Special film relief cannot be claimed for an interim accounting period unless the company tax return indicates that the UK expenditure condition will be met. For the final accounting period the company tax return must show that the UK expenditure condition is met. Special film relief previously obtained is withdrawn if the conditions in this section are not met.

3072. *Subsection (3)* does not rewrite the requirement, in paragraph 32(3)(a)(i) of Schedule 5 to FA 2006, that the company’s tax return for the final accounting period state that the film has been completed or abandoned. That is because it duplicates the requirement in paragraph 30(2) of Schedule 5 to FA 2006 (rewritten in section 1212(2)).

### ***Section 1215: Film tax relief on basis that film is limited-budget film***

3073. This section relates to the requirement that a film must be a limited-budget film in order for there to be entitlement to film tax relief at the enhanced rates in sections 1200(3)(a) and 1202(3)(a). It is based on paragraph 33 of Schedule 5 to FA 2006.

3074. Film tax relief at an enhanced rate cannot be claimed for an interim accounting period unless the company tax return indicates that the film will be a limited-budget film. For the final accounting period the company tax return must show that the film is, or if it had been completed would have been, a limited-budget film. Film tax relief previously

*These notes refer to the Corporation Tax Act 2009  
(c.4) which received Royal Assent on 26 March 2009*

obtained at an enhanced rate tax relief is reduced if the conditions in this section are not met.

3075. *Subsection (3)* does not rewrite the requirement, in paragraph 33(3)(a)(i) of Schedule 5 to FA 2006, that the company's tax return for the final accounting period state that the film has been completed or abandoned. That is because it duplicates the requirement in paragraph 30(2) of Schedule 5 to FA 2006 (rewritten in section 1212(2)).

***Section 1216: Time limit for amendments and assessments***

3076. This section allows an amendment or assessment, required by this Chapter, to be made even if it would otherwise be out of time to do so. It is based on paragraph 34 of Schedule 5 to FA 2006.