



# Finance Act 2006

## 2006 CHAPTER 25

### PART 3

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 3

#### FILMS AND SOUND RECORDINGS

#### *Introductory*

### **31 Meaning of “film” and related expressions**

- (1) In this Chapter “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.
- (2) For the purposes of this Chapter 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 Chapter to a film include the film soundtrack.
- (4) For the purposes of this Chapter 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.

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### **32 Meaning of “film production company”**

- (1) The following provisions have effect for the purposes of this Chapter as regards the meaning of “film production company”.
- (2) There cannot be more than one film production company in relation to a film.
- (3) A company that (otherwise than in partnership)—
  - (a) is responsible—
    - (i) for pre-production, principal photography and post production of the film, and
    - (ii) for delivery of the completed film,
  - (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 film,
 is the film production company in relation to the film.
- (4) In relation to a qualifying co-production, a company that (otherwise than in partnership)—
  - (a) is a co-producer, and
  - (b) makes an effective creative, technical and artistic contribution to the film,
 is the film production company in relation to the film.
- (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 film production company in relation to the film.
- (6) If there is no company meeting the description in subsection (3) or (4), there is no film production company in relation to the film.

### **33 Meaning of “film-making activities” etc**

- (1) In this Chapter “film-making activities”, in relation to a film, means the activities involved in development, pre-production, principal photography and post production of the film.
- (2) If all or any of the images in a film are generated by computer, references in this Chapter to principal photography shall 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 for the purposes of this Chapter as film-making activities or as film-making activities of a particular description;
  - (c) provide that, in relation to a specified description of film, references in this Chapter to film-making activities of a particular description are to be read as references to such activities as may be specified.  
 “Specified” here means specified in the regulations.
- (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.

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### **34 Meaning of “production expenditure” and related expressions**

- (1) In this Chapter, in relation to a film—
  - “production expenditure” means expenditure on film-making activities in connection with the film, and
  - “core expenditure” means production expenditure on pre-production, principal photography and post production.
- (2) For the purposes of this Chapter a “limited-budget film” means a film whose core expenditure is £20 million or less.
- (3) In determining whether a film is a limited-budget film, any core expenditure that—
  - (a) is incurred by a person under or as a result of a transaction entered into directly or indirectly between that person and a connected person, and
  - (b) might have been expected to have been of a greater amount (“the arm’s length amount”) if the transaction had been between independent persons dealing at arm’s length,is treated as having been of an amount equal to the arm’s length amount.
- (4) Section 839 of ICTA (connected persons) applies for the purposes of subsection (3).

### **35 Meaning of “UK expenditure”**

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

### **36 Meaning of “qualifying co-production” and “co-producer”**

In this Chapter—

- (a) “qualifying co-production” means a film that falls to be treated as a national film in the United Kingdom by virtue of an agreement between Her Majesty’s Government in the United Kingdom and any other government, international organisation or authority,
- (b) “co-producer” means a person who is a co-producer for the purposes of the agreement.

*Taxation of activities of film production company*

### **37 Taxation of activities of film production company**

Schedule 4 to this Act (taxation of activities of film production company) has effect for the purposes of corporation tax.

### *Film tax relief*

#### **38 Films qualifying for film tax relief**

A film qualifies for film tax relief if the conditions specified in the following sections are met—

- (a) section 39 (intended theatrical release),
- (b) section 40 (British film), and
- (c) section 41 (UK expenditure).

#### **39 Conditions of relief: intended theatrical release**

- (1) The film must be intended for theatrical release.
- (2) For this purpose—
  - (a) “theatrical release” means exhibition to the paying public at the commercial cinema;
  - (b) a film is not regarded as intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained by such exhibition.
- (3) Whether this condition is met is determined for each accounting period of the film production company during which film-making activities are carried on in relation to the film, in accordance with the following rules.
- (4) If at the end of an accounting period the film is intended for theatrical release, the condition is treated as having been met throughout that period (subject to subsection (5)(b)).
- (5) If at the end of an accounting period the film is not intended for theatrical release, the condition—
  - (a) is treated as having been not met throughout that period, and
  - (b) cannot be met in any subsequent accounting period.

This does not affect any entitlement of the company to relief in an earlier accounting period for which the condition was met.

#### **40 Conditions of relief: British film**

The film must be certified by the Secretary of State as a British film under Schedule 1 to the Films Act 1985 (c. 21).

#### **41 Conditions of relief: UK expenditure**

- (1) Not less than 25% of the core expenditure on the film incurred—
  - (a) in the case of a British film other than a qualifying co-production, by the film production company,
  - (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).

- (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.

#### **42 Film tax relief: further provisions**

- (1) Schedule 5 to this Act contains further provisions about film tax relief.
- (2) In that Schedule—
- Part 1 deals with entitlement to the relief;
  - Part 2 provides for the certification of British films for the purposes of the relief;
  - Part 3 makes provision for claims for the relief;
  - Part 4 is about provisional entitlement to relief.

#### *Film losses*

#### **43 Films: restriction on use of losses while film in production**

- (1) This section applies to restrict the use that may be made of a film production company's trading loss for an accounting period before—
- (a) that in which the film is completed, or
  - (b) where the company does not complete the film, that in which it abandons film-making activities in relation to the film.
- (2) A trading loss for such a period is not available for loss relief except to the extent that it may be carried forward under section 393(1) of ICTA to be set against profits of the same trade in a later period.
- (3) In this section “loss relief” includes any means by which a loss might be used to reduce the amount in respect of which the film production company, or any other person, is chargeable to tax.

#### **44 Films: use of losses in later periods**

- (1) This section applies—
- (a) to the accounting period—
    - (i) in which the film is completed, or
    - (ii) if the film production company does not complete the film, in which it abandons film-making activities in relation to the film, and
  - (b) to any subsequent accounting period during which the trade continues.
- (2) Where a trading loss is carried forward to any such period under section 393(1) of ICTA from an earlier period in relation to which section 43 applied (restriction on use of losses while film is in production), so much (if any) of the loss as is not attributable to film tax relief may be treated for the purposes of loss relief as if it were a loss incurred in the period to which it is carried forward.
- (3) The amount of the trading loss for an accounting period to which this section applies that may be—
- (a) set against other profits of the same or an earlier period under section 393A of ICTA, or
  - (b) surrendered as group relief under section 403 of that Act,

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is restricted to the amount (if any) that is not attributable to film tax relief.

- (4) For the purposes of this section the amount of a trading loss in any period that is attributable to film 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 Schedule 5 in that or any earlier period.
- (5) In this section “loss relief” includes any means by which a loss might be used to reduce the amount in respect of which the film production company, or any other person, is chargeable to tax.
- (6) This section does not apply to a loss to the extent that it is carried forward or surrendered under section 45 (terminal losses).

#### **45 Films: terminal losses**

- (1) This section applies where—
  - (a) a film production company (“company A”) ceases to carry on a trade in relation to a qualifying film, and
  - (b) if the company had not ceased to carry on the trade, it could have carried forward an amount under section 393(1) of ICTA 1988 to be set against profits of the same trade in a later period (the “terminal loss”).
- (2) If on cessation of the trade company A is carrying on a trade in relation to another qualifying film, it may on making a claim elect that the terminal loss or a part of it shall be treated as if it were a loss brought forward under section 393(1) to be set against profits of that other trade in the accounting period following that at the end of which the cessation takes place.
- (3) If on cessation of the trade carried on by company A there is another film production company (“company B”) which—
  - (a) is carrying on a trade in relation to a qualifying film (its “qualifying trade”), and
  - (b) is in the same group as company A for the purposes of Chapter 4 of Part 10 of ICTA (group relief),
 the whole or part of the terminal loss may be surrendered by company A to company B.
- (4) On the making of a claim by company B the amount surrendered shall be treated as if it were a loss brought forward by that company under section 393(1) to be set against the profits of its qualifying trade for the accounting period of that company following that in which or at the end of which the cessation takes place of the qualifying trade carried on by company A.
- (5) The Treasury may, in relation to the surrender of a loss under subsection (3) and the resulting claim under subsection (4), 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).
- (6) In this section—
  - (a) references to the trade carried on by a film production company in relation to a film are to the trade that it is treated as carrying on under Schedule 4, and
  - (b) references to a qualifying film are to a film that meets the conditions for film tax relief (see section 38).

*Films: withdrawal of existing reliefs*

**46 Films: withdrawal of existing reliefs (corporation tax)**

- (1) Sections 40A to 40D of F(No.2)A 1992 (treatment of expenditure on production or acquisition of film) do not apply—
  - (a) to production expenditure on a film that commences principal photography on or after 1st April 2006;
  - (b) to acquisition expenditure—
    - (i) on a film that commences principal photography on or after 1st April 2006, or
    - (ii) that is incurred on or after 1st October 2007 on a film (whenever made).
- (2) Section 41 of that Act (preliminary expenditure) does not apply to expenditure incurred after the date on which this Act is passed.
- (3) Section 42 of that Act and section 48 of F(No.2)A 1997 (special reliefs for British films) do not apply—
  - (a) to production expenditure on a film that commences principal photography on or after 1st April 2006;
  - (b) to acquisition expenditure—
    - (i) on a film that commences principal photography on or after 1st April 2006, or
    - (ii) that is incurred on or after 1st October 2007.
- (4) References in this section to expenditure on the acquisition of a film, or to sums received from the disposal of a film, are to expenditure on the acquisition of, or sums received from the disposal of, the original master version of the film.
- (5) For this purpose—
  - (a) “original master version” means the original negative, tape or disc;
  - (b) references to the original master version of a film include the original master version of the film soundtrack (if any);
  - (c) references to the original master version include any rights in the original master version that are held or acquired with it.

**47 Films: withdrawal of existing reliefs (income tax)**

- (1) Sections 134 and 135 of ITTOIA 2005 (treatment of expenditure on production or acquisition of film) do not apply—
  - (a) to production expenditure on a film that commences principal photography on or after 1st April 2006;
  - (b) to acquisition expenditure—
    - (i) on a film that commences principal photography on or after 1st April 2006, or
    - (ii) that is incurred on or after 1st October 2007 on a film (whenever made).
- (2) Section 137 of that Act (preliminary expenditure) does not apply to expenditure incurred after the date on which this Act is passed.

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- (3) Sections 138 to 144 of that Act (special reliefs for British films) do not apply—
- (a) to production expenditure on a film that commences principal photography on or after 1st April 2006;
  - (b) to acquisition expenditure—
    - (i) on a film that commences principal photography on or after 1st April 2006, or
    - (ii) that is incurred on or after 1st October 2007.
- (4) References in this section to expenditure on the acquisition of a film, or to sums received from the disposal of a film, are to expenditure on the acquisition of, or sums received from the disposal of, the original master version of the film.
- (5) For this purpose—
- (a) “original master version” means the original negative, tape or disc;
  - (b) references to the original master version of a film include the original master version of the film soundtrack (if any);
  - (c) references to the original master version include any rights in the original master version that are held or acquired with it.

#### *Corporation tax treatment of sound recordings*

### **48 Sound recordings: revenue nature of expenditure**

- (1) If a company carrying on a trade incurs expenditure on the production or acquisition of the original master version of a sound recording, the expenditure is treated for corporation tax purposes as expenditure of a revenue nature.
- (2) If expenditure is treated under this section as revenue in nature, sums received by the company from the disposal of the original master version of the sound recording—
- (a) are treated for corporation tax purposes as receipts of a revenue nature, and
  - (b) are brought into account in calculating the profits of the relevant period in which they are received.
- (3) For this purpose sums received from the disposal of the original master version include—
- (a) sums received from the disposal of any interest or right in or over the original master version (including an interest or right created by the disposal), and
  - (b) insurance, compensation or similar money derived from the original master version.

### **49 Sound recordings: allocation of expenditure**

- (1) This section applies in calculating for the purposes of corporation tax the profits or losses of a company from a trade where—
- (a) the trade consists of or includes the exploitation of original master versions of sound recordings, and
  - (b) the original master versions do not constitute trading stock of the trade as defined by section 100(2) of ICTA.
- (2) Expenditure that is—



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- (a) incurred on the production or acquisition of the original master version of a sound recording, and
  - (b) expenditure of a revenue nature (whether as a result of section 48 or otherwise),
- must be allocated to relevant periods in accordance with this section.
- (3) The company must allocate to a relevant period so much of the expenditure as is just and reasonable having regard to—
- (a) the amount of the expenditure that remains unallocated at the beginning of the period,
  - (b) the proportion that the estimated value of the original master version of the sound recording that is realised in that period (whether by way of income or otherwise) bears to the aggregate of the value so realised and the estimated remaining value of the original master version at the end of the period, and
  - (c) the need to bring the whole of the expenditure into account over the time during which the value of the original master version is expected to be realised.
- (4) The company may also allocate to a relevant period a further amount, so long as the total amount allocated does not exceed the value of the original master version of the sound recording realised in that period (whether by way of income or otherwise).

## **50 Sound recordings: interpretation**

For the purposes of sections 48 and 49 (corporation tax treatment of sound recordings)

- (a) “sound recording” does not include a film soundtrack;
- (b) “original master version” means the master tape or master audio disc of the recording;
- (c) references to the original master version of a sound recording include any rights in the original master version that are held or acquired with it; and
- (d) “relevant period” means—
  - (i) a period for which accounts of the trade are made up, or
  - (ii) if no accounts of the trade are made up for a period, an accounting period of the company.

### *Supplementary provisions*

## **51 Corporation tax: films and sound recordings as intangible fixed assets**

- (1) In Schedule 29 to FA 2002 (corporation tax: gains and losses from intangible fixed assets), for paragraph 80 (exclusion of films and sound recordings) substitute—

*“Assets excluded: certain films*

- 80A (1) This Schedule does not apply to an intangible fixed asset held by a film production company to the extent that it represents production expenditure on a film to which Schedule 4 of the Finance Act 2006 applies.

Expressions used in this sub-paragraph have the same meaning as in Chapter 3 of Part 3 of the Finance Act 2006.

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- (2) Except as regards royalties, this Schedule does not apply to an intangible fixed asset held by a company to the extent that it represents expenditure by the company—
- (a) on the production of the original master version of a film that commenced principal photography before 1st April 2006;
  - (b) on the acquisition before 1st October 2007 of the original master version of a film that commenced principal photography before 1st April 2006.
- (3) In sub-paragraph (2)—
- (a) “film” has the same meaning as in Chapter 3 Part 3 of the Finance Act 2006;
  - (b) “original master version” means the original negative, tape or disc;
  - (c) references to the original master version of a film include the original master version of the film soundtrack (if any);
  - (d) references to the original master version include any rights in the original master version that are held or acquired with it.

*Assets excluded except as regards royalties: sound recordings*

- 80B (1) Except as regards royalties, this Schedule does not apply to an intangible fixed asset held by a company to the extent that it represents expenditure by the company on the production or acquisition of the master version of a sound recording.
- (2) For this purpose—
- (a) “sound recording” does not include a film soundtrack;
  - (b) “master version” means master tape or master audio disc of the recording;
  - (c) references to the master version include any rights in the master version that are held or acquired with it.”.
- (2) In determining for the purposes of that Schedule whether an asset representing production expenditure on a film was created before or after 1st April 2002, the asset shall be treated as created when the film was completed.

**52 Films: application of provisions to certain films already in production**

- (1) The Treasury may make provision by regulations for the application of the provisions of this Chapter, and of any enactment amended by this Chapter, in relation to films that commenced principal photography before 1st April 2006 but are not completed before 1st January 2007.
- (2) The regulations may provide for such adaptations and modifications of the provisions of this Chapter, of any enactment amended by this Chapter and of any other provision of the Corporation Tax Acts, as appear to the Treasury appropriate for that purpose.
- (3) The regulations may—
  - (a) provide that the provisions of this Chapter (or any specified provisions of this Chapter) shall have effect as if they had been in force at all material times;

- (b) require or authorise the making or amendment of returns, or the making of assessments, in relation to past accounting periods or tax years (whether before or after the commencement of this Chapter);
  - (c) authorise the making of any such return, amendment or assessment notwithstanding any limitation on the time within which a return, amendment or assessment may normally be made.
- (4) No regulations shall be made under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

**53 Films and sound recordings: commencement and power to alter dates**

- (1) The provisions of this Chapter come into force on such day as the Treasury may appoint by order.
- (2) The Treasury may by order amend any provision of this Chapter that refers to 1st April 2006, the date on which this Act is passed or 1st October 2007 so as to substitute a reference to a later date.