

Draft

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PART 1

FILM RELIEF

CHAPTER 1

RELIEF FROM CORPORATION TAX

Meaning of "production expenditure" 5

1 Meaning of “production expenditure”

- (1) For the purposes of this Chapter “production expenditure” incurred on the original master version of a film means expenditure which, in accordance with generally accepted accounting practice, is incurred on the production of that original master version. 10
- (2) “Production expenditure” incurred on the original master version of a film also includes expenditure of a description prescribed as “production expenditure” for the purposes of this Chapter.
- (3) But “production expenditure” incurred on the original master version of a film does not include – 15
 - (a) any amount incurred on goods, services or facilities to the extent that that amount exceeds the market value of the goods, services or facilities in question,
 - (b) any amount which is excluded by subsection (4) (reciprocal payments), or 20
 - (c) any amount of a description which is prescribed as not being “production expenditure” for the purposes of this Chapter.
- (4) [.....reciprocal payments.....]
- (5) In this section “prescribed” means prescribed by regulations made by the Treasury. 25
- (6) Regulations under this section may –
 - (a) make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient;
 - (b) make different provision for different cases or different purposes.
- (7) The first regulations under this section – 30
 - (a) may make provision which has effect in relation to expenditure incurred before the regulations are made (whether incurred before or after the passing of this Act), and
 - (b) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons. 35

Relief for production expenditure on films

2 Relief for production expenditure on films

- (1) The Schedule (relief for production expenditure on films) has effect.
- (2) In the Schedule—
- Part 1 provides for entitlement to relief, 5
 - Part 2 provides for the manner of giving effect to the relief, and
 - Part 3 contains supplementary provisions.

Supplementary

3 Meaning of “film” and related expressions

- (1) In this Chapter “film” is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985 (c. 21). 10
- (2) 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.
- (3) In this Chapter “original master version”, in relation to a film, means the original master negative, tape or disc. 15
- (4) In this Chapter references to the original master version of a film include—
- (a) the original master version of the film soundtrack (if any), and
 - (b) any rights in the original master version that are held or acquired with it. 20

4 When expenditure is incurred

- (1) This section applies to determine when expenditure is treated as incurred for the purposes of this Chapter.
- (2) The general rule is that an amount of expenditure is treated as incurred as soon as there is an unconditional obligation to pay it. 25
- (3) The general rule applies even if the whole or a part of the expenditure is not required to be paid until a later date.
- (4) There are the following exceptions to the general rule.
- (5) If under an agreement—
- (a) the expenditure is on the provision of an original master version of a film, 30
 - (b) an unconditional obligation to pay an amount of the expenditure comes into being as a result of the giving of a certificate or any other event,
 - (c) the giving of the certificate, or other event, occurs within the period of one month after the end of an accounting period, and 35
 - (d) at or before the end of that accounting period, the original master version of the film has become the property of, or is otherwise under the agreement attributed to, the person subject to the unconditional obligation to pay,

the expenditure is treated as incurred immediately before the end of that accounting period.

(6) If under an agreement an amount of expenditure is not required to be paid until a date more than 4 months after the unconditional obligation to pay has come into being, the amount is treated as incurred on that date. 5

(7) If under an agreement –
(a) there is an unconditional obligation to pay an amount of expenditure on a date earlier than accords with normal commercial usage, and
(b) the sole or main benefit which might (as a result) have been expected to be obtained is that the amount would be treated, under the general rule, as incurred at an earlier time, 10

the amount is treated as incurred on the date on or before which it is required to be paid.

5 Interpretation

In this Chapter – 15

“FA”, followed by a year, means the Finance Act of that year;

“F(No.2)A 1992” means the Finance (No. 2) Act 1992 (c. 48);

“ICTA” means the Income and Corporation Taxes Act 1988 (c. 1);

“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005 (c. 5). 20

SCHEDULE

Section 1

CORPORATION TAX: RELIEF FOR PRODUCTION EXPENDITURE ON FILMS

PART 1

ENTITLEMENT TO FILM TAX RELIEF

<i>Entitlement to film tax relief under this Schedule</i>	5
1 A company is entitled to film tax relief under this Schedule in respect of qualifying UK production expenditure on a film if –	
(a) the company is the producer of the film,	
(b) the film is an eligible film,	
(c) it is genuinely intended for theatrical release, and	10
(d) either –	
(i) the first day of principal photography is on or after 1st April 2006, or	
(ii) the first day of principal photography is before that date and the film is completed on or after 1st January 2007.	15
2 Paragraph 1 is subject to any other provisions of the Tax Acts.	
<i>Meaning of “producer”</i>	
3 For the purposes of this Schedule, a company is the producer of a film if –	
(a) at the time the film is completed, the company owns the original master version of the film and all rights in it, and	20
(b) the company incurs all the production expenditure on the film.	
<i>Meaning of “eligible film”</i>	
4 (1) For the purposes of this Schedule, a film is an eligible film if the prescribed requirements are satisfied in relation to the film.	
(2) In this paragraph “prescribed” means prescribed by regulations made by the Treasury.	25
(3) Regulations under this paragraph may in particular –	
(a) make provision applying any provision of Schedule 1 to the Films Act 1985 (c. 21) (certification in case of British films) with such modifications as may be prescribed;	30
(b) make provision providing for a person to exercise a discretion in determining whether any matter is satisfied in relation to a film;	
(c) make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient;	
(d) make different provision for different cases or different purposes.	35

- (4) In sub-paragraph (3) “modifications” includes additions, omissions and alterations.

Meaning of “genuinely intended for theatrical release”

- 5 (1) This paragraph determines for the purposes of this Schedule whether a film is genuinely intended for theatrical release. 5
- (2) The relevant intention is the intention at the time the film is completed of the person then entitled to determine how the film is to be exploited.
- (3) “Theatrical release” means exhibition to the paying public at the commercial cinema.
- (4) A film is not regarded as genuinely intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained by exhibition to the paying public at the commercial cinema. 10

Meaning of “production expenditure”

- 6 (1) For the purposes of this Schedule, “production expenditure” on a film means production expenditure incurred on the original master version of the film (see section 1). 15
- (2) But for the purposes of this Schedule, production expenditure on a film does not include any amount which at the time the film is completed –
- (a) has not been paid, and
- (b) is not the subject of an unconditional obligation to pay within 4 months after the date of completion. 20

Meaning of “qualifying UK production expenditure”

- 7 (1) For the purposes of this Schedule, a company’s “qualifying UK production expenditure” on a film means –
- (a) where the relevant UK production expenditure on the film exceeds 80% of the total production expenditure on the film, so much of that UK production expenditure as equals 80% of the total production expenditure on the film, and 25
- (b) in any other case, the relevant UK production expenditure on the film. 30
- (2) The “relevant UK production expenditure on the film” means production expenditure on the film which –
- (a) [is incurred on services which],
- (b) is incurred by the company in the completion accounting period or an earlier accounting period, and 35
- (c) is unrelieved.
- (3) For this purpose expenditure is “unrelieved” if it is expenditure in respect of which –
- (a) no deduction has been made by virtue of section 40B of F(No.2)A 1992 (allocation of expenditure to periods) or section 135 of ITTOIA 2005 (corresponding income tax provision), 40
- (b) no deduction has been made under section 41 of F(No.2)A 1992 (relief for preliminary expenditure), and

- (c) no other deduction has been made in computing for corporation tax purposes the profits accruing to the company from a trade carried on by it.
- (4) The “total production expenditure on the film” means all the production expenditure on the film incurred by the company in the completion accounting period or an earlier accounting period. 5

Meaning of “the completion accounting period”

- 8 For the purposes of this Schedule “the completion accounting period”, in relation to a company which incurs production expenditure on a film, means the accounting period of the company in which the film is completed. 10

PART 2

MANNER OF GIVING EFFECT TO FILM TAX RELIEF

Introduction

- 9 This Part applies where a company is entitled to film tax relief by virtue of paragraph 1 in respect of qualifying UK production expenditure on a film. 15
- 10 For the purposes of this Part –
- “relevant film” means the film in respect of which the company is entitled to the film tax relief;
 - “relevant trade” means a trade or business of the company which consists of or includes the exploitation of the relevant film; 20
 - “relevant trading income” means income of the company which –
 - (a) is from the carrying on by it of the relevant trade and which derives directly from the exploitation by the company of the relevant film, or
 - (b) is an amount of subsidy or grant obtained by the company in respect of its production expenditure on the relevant film. 25

Deduction in computing profits of trade for the completion accounting period

- 11 (1) This paragraph applies where the company –
- (a) is carrying on the relevant trade in the completion accounting period, and
 - (b) makes a claim under this paragraph. 30
- (2) The company may, for the purposes of computing for corporation tax purposes the profits accruing to the company in that period from the relevant trade, deduct an amount equal to the aggregate of –
- (a) the amount of the company’s qualifying UK production expenditure on the relevant film, and
 - (b) in a case where the company has relevant trading income for the completion accounting period –
 - (i) the amount which is equal to X% of the amount of the company’s qualifying UK production expenditure on the relevant film, or 40
 - (ii) if less, the amount of that trading income.

Deduction in computing profits of trade for later accounting periods

- 12 (1) This paragraph applies where the company claims and is entitled to relief under paragraph 11 in respect of qualifying UK production expenditure on the relevant film and –
- (a) the company has no relevant trading income for the completion accounting period, or 5
 - (b) the amount of its relevant trading income for that period is less than X% of the amount of the company’s qualifying UK production expenditure on the relevant film.
- (2) The company may, for the purposes of computing for corporation tax purposes the profits accruing to the company in subsequent accounting periods from the relevant trade, deduct the unused relief from the amount of its relevant trading income in accordance with sub-paragraphs (4) and (5). 10
- (3) In this paragraph “the unused relief” in relation to the company means –
- (a) in a case within sub-paragraph (1)(a), an amount equal to X% of the amount of the company’s qualifying UK production expenditure on the relevant film, and 15
 - (b) in a case within sub-paragraph (1)(b), the difference between that amount and the amount of its relevant trading income for the completion accounting period. 20
- (4) The unused relief is to be deducted from the company’s relevant trading income for the first accounting period after the completion accounting period for which the company has such income.
- (5) Where the amount of the unused relief exceeds the amount of that income, the balance is to be deducted from the company’s relevant trading income for the next accounting period for which it has such income, and so on. 25

Alternative treatment of pre-trading expenditure

- 13 (1) This paragraph applies where the company is not carrying on the relevant trade in the completion accounting period.
- (2) The company may elect to be treated as if it had incurred a trading loss in that trade in that period equal to the amount of the company’s qualifying UK production expenditure on the relevant film. 30
- (3) Where an election is made under this paragraph, section 401 of ICTA (relief for pre-trading expenditure) does not apply in relation to the qualifying UK production expenditure. 35
- (4) An election under this paragraph must –
- (a) be made by notice in writing given to an officer of Revenue and Customs,
 - (b) identify the completion accounting period in respect of which it is made, and 40
 - (c) be given before the end of the period of 2 years beginning with the end of that accounting period.
- (5) An election under this paragraph is irrevocable.

Pre-trading expenditure where no election made under paragraph 13

- 14 (1) This paragraph applies where the company –
- (a) is not carrying on the relevant trade in the completion accounting period, but
 - (b) does not make an election under paragraph 13. 5
- (2) Section 4 (when expenditure is incurred) applies to determine whether, for the purposes of the application of section 401 of ICTA, the company’s qualifying UK production expenditure on the film is incurred before the time when the company begins to carry on that trade.

Enhanced relief in respect of pre-trading expenditure 10

- 15 (1) This paragraph applies where the company is not carrying on the relevant trade in the completion accounting period and –
- (a) it makes an election under paragraph 13, or
 - (b) it makes a claim under this paragraph.
- (2) The company may, for the purposes of computing for corporation tax purposes the profits accruing to the company from the relevant trade in the accounting period in which the company begins carrying on the relevant trade and subsequent accounting periods, deduct the enhanced relief from the amount of its relevant trading income in accordance with subparagraphs (4) and (5). 15
- (3) In this paragraph “the enhanced relief” in relation to the company means an amount equal to X% of the amount of the company’s qualifying UK production expenditure on the relevant film. 20
- (4) The enhanced relief is to be deducted from the company’s relevant trading income for the first accounting period for which the company has such income. 25
- (5) Where the amount of the enhanced relief exceeds the amount of that income, the balance is to be deducted from the company’s relevant trading income for the next accounting period for which it has such income, and so on.

Entitlement to film tax credit 30

- 16 (1) Where the company has a surrenderable loss in the relevant trade in the completion accounting period, it may claim a film tax credit for that period.
- (2) For this purpose the company has a “surrenderable loss” in the completion accounting period if –
- (a) it claims and is entitled to relief under paragraph 11 (relief where company carrying on trade in completion accounting period) and it incurs a trading loss in the relevant trade in that period, or 35
 - (b) it is not carrying on that trade in the completion accounting period, but is treated under paragraph 13 as incurring a trading loss in that trade in that period. 40
- (3) The amount of the surrenderable loss in that period is equal to –
- (a) so much of that trading loss as is unrelieved, or
 - (b) if less, the amount of the company’s qualifying UK production expenditure on the relevant film.

- (4) For this purpose the amount of a trading loss that is “unrelieved” means the amount of that loss reduced by the amount of –
- (a) any relief that was or could have been obtained by the company making a claim under section 393A(1)(a) of ICTA to set the loss against profits of whatever description of the same accounting period, 5
 - (b) any other relief obtained by the company in respect of the loss, including relief under section 393A(1)(b) of ICTA (losses set against profits of an earlier accounting period), and
 - (c) any loss surrendered under section 403(1) of ICTA (surrender of relief to group or consortium members). 10
- (5) No account shall be taken for the purpose of sub-paragraph (3) of any losses –
- (a) brought forward from an earlier accounting period under section 393(1) of ICTA, or 15
 - (b) carried back from a later accounting period under section 393A(1)(b) of ICTA.
- (6) Sub-paragraphs (7) and (8) apply where –
- (a) by reason of it incurring qualifying UK production expenditure on more than one film, the company claims more than one film tax credit under this paragraph for the same period, and 20
 - (b) disregarding sub-paragraph (7), the company has, in relation to each of those claims, a surrenderable loss in the relevant trade in that period by virtue of sub-paragraph (2)(a).
- (7) For the purposes of determining the amount of surrenderable loss in relation to each of those claims, the company’s trading loss for that period is, for the purposes of sub-paragraph (3), to be treated as reduced by the amount of the loss surrendered (see paragraph 19) in relation to any earlier claim for a film tax credit made by the company for that period. 25
- (8) Where two or more claims are made at the same time, an officer of Revenue and Customs may determine the order in which they are to be regarded as made for the purposes of sub-paragraph (7). 30

Amount of film tax credit

- 17 (1) The amount of the film tax credit to which a company is entitled for the completion accounting period is an amount equal to Y% of the amount of the surrenderable loss in that period. 35
- (2) The Treasury may by order substitute for the percentage for the time being specified in sub-paragraph (1) such other percentage as they think fit.
- (3) An order under sub-paragraph (2) may make such supplementary, incidental, consequential or transitional provision as the Treasury think fit. 40
- (4) In this paragraph “surrenderable loss” has the meaning given in paragraph 16(2).

Payment in respect of film tax credit

- 18 (1) Where the company –

- (a) is entitled to a film tax credit for the completion accounting period,
 and
 (b) makes a claim,
 the Commissioners must pay to the company the amount of that credit (or,
 where less than the maximum amount is claimed, the amount of the credit
 claimed). 5
- (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. 10
 To the extent that it is so applied the Commissioners' obligation under sub-
 paragraph (1) is discharged.
- (3) Where the company's company tax return for the completion accounting
 period is enquired into by any officer of Revenue and Customs, no payment
 in respect of a film tax credit for that period need be made before the enquiry
 is completed (see paragraph 32 of Schedule 18 to FA 1998). 15
 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 before the company
 has paid to the Commissioners any amount that it is required to pay for
 payment periods ending in the completion accounting period – 20
 (a) under PAYE regulations, or
 (b) in respect of Class 1 national insurance contributions.
- (5) In this paragraph – 25
 "the Commissioners" means the Commissioners of Her Majesty's
 Revenue and Customs;
 "the maximum amount" means the amount specified in paragraph
 17(1);
 "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); 30
 "payment period" means a period which ends on the 5th day of a
 month and for which the company is liable to account for income tax
 and national insurance contributions to the Commissioners. 35

Restriction on losses carried forward

- 19 (1) For the purposes of section 393 of ICTA (relief of trading losses against
 future trading profits), where the company claims a film tax credit for the
 completion accounting period, its trading loss in the relevant trade in that
 period is treated as reduced by the amount of the loss surrendered. 40
- (2) The amount of the loss surrendered is –
 (a) where the maximum amount of film tax credit was claimed, the
 whole of the surrenderable loss in that period;
 (b) where less than the maximum amount was claimed, a corresponding
 proportion of the surrenderable loss in that period. 45
- (3) For this purpose –

“the maximum amount” means the amount specified in paragraph 17(1), and
“surrenderable loss” has the meaning given in paragraph 16(2).

Payment in respect of film tax credit not income

- 20 A payment in respect of a film tax credit is not income of the company for any tax purpose. 5

PART 3

SUPPLEMENTARY PROVISIONS

Artificially inflated claims for deduction or film tax credit

- 21 (1) Where arrangements are entered into for a disqualifying purpose, the amount of any relief under paragraph 11, 12, 13 or 15, or any film tax credit, does not include any amount which on a just and reasonable apportionment is attributable to those arrangements. 10
- (2) For this purpose, arrangements are entered into for a disqualifying purpose if the main purpose, or one of the main purposes, of any person in entering into the arrangements is to enable a company (whether or not itself party to the arrangements) to obtain – 15
- (a) relief under paragraph 11, 12, 13 or 15 to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or 20
- (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.

Treatment of deemed trading loss 25

- 22 (1) This paragraph applies where under paragraph 13 (alternative treatment of pre-trading expenditure) a company is treated as incurring a trading loss in a trade in the completion accounting period.
- (2) If the company begins in a later accounting period to carry on the relevant trade then – 30
- (a) subject to paragraph 19 (restrictions on losses carried forward), and
- (b) to the extent that –
- (i) the company has not obtained relief in respect of the trading loss under any other provision, and
- (ii) the loss has not been surrendered under section 403(1) of ICTA (surrender of relief to group or consortium members), 35
- the loss is to be treated as if it were a loss in that trade brought forward under section 393 of ICTA (relief of trading losses against future trading profits).

Films which are trading stock

- 23 (1) A company is not entitled to film tax relief by virtue of paragraph 1 in respect of qualifying UK production expenditure on a film where the 40

original master version of the film constitutes trading stock of the trade of the company which consists of or includes the exploitation of that film.

- (2) In sub-paragraph (1) “trading stock” has the meaning given by section 100(2) of ICTA.

CLAUSES 1-5 AND SCHEDULE:

TAX RELIEF FOR PRODUCTION EXPENDITURE ON FILMS

SUMMARY

1. The draft is exposed for comment as part of HM Treasury consultations on “The reform of Film Tax Incentives: promoting the sustainable production of culturally British films” and is intended to form the basis of a chapter in the 2006 Finance Bill which will include all legislation specifically concerning the taxation of companies in respect of their income and expenditure on films. It is intended that the legislation, in its final form, will be exposed in advance of publication of the Finance Bill. It is envisaged that it will also include existing s40A – s40C F(No. 2)A 1992 or similar provisions. These are not in the current draft, which focuses on the new relief for the production of films.
2. Subject to consultation, s40D and s41 F(No. 2)A 1992 would not be included but would be repealed (as would s143 and s137 ITTOIA 2005, which have a similar effect for income tax as s40D and s41).
3. The Chapter begins with general provisions and definitions, and will also include anti-avoidance provisions (see paragraph 5.19 et seq. of the consultation document). It then enacts a Schedule which sets out the rules for the new relief for expenditure by companies on eligible films, which replaces s42 F(No 2)A 1992 and s48 F(No 2)A 1997. The Chapter will also provide for s42 F (No 2)A 1992 and s138 and s138A ITTOIA 2005 to cease to have effect, broadly from 31 March 2006.

Clause 1

4. Clause 1 provides for an explicit definition of the production expenditure incurred on the original master version of a film. It is intended that this definition will apply for all the tax provisions relating to films. The definition would have effect for films commencing principal photography on or after 1 April 2006, and those commencing principal photography before then but which are not completed until on or after 1 January 2007.
5. The definition is not set out in detail in the draft but is to be set out in regulations to be made by the Treasury. See paragraph 5.10 et seq. of the consultative document for further details of what these might cover.
6. Subsection (1) of clause 1 provides that the starting point for the definition is generally accepted accounting practice.

7. Subsection (2) includes within the definition anything that may be prescribed under regulations to be made by the Treasury.
8. Subsection (3) makes a number of exclusions. These are any amount incurred on goods, services or facilities that exceeds the market value of the item in question, any reciprocal payment, or anything excluded in regulations to be made by the Treasury.
9. Subsection (4) will define a “reciprocal payment” to include in particular any “reinvestment”. See paragraphs 5.11 and 5.19 – 5.21 of the consultative document for further details.
10. Subsection (5) provides for the Treasury to make the regulations referred to in subsections (2) and (3).
11. Subsection (6) allows such regulations to make any provisions necessary, including different provisions in different cases.
12. Subsection (7) allows the first regulations made by the Treasury to have retrospective effect. This is necessary because the first regulations cannot be made until the legislation containing clause 1 receives Royal Assent. If the films legislation is included in FB 2006, it may therefore not be possible to make the first regulations until summer 2006. As the new definition is to have effect for films that commence principal photography on or after 1 April 2006 (or in certain cases – see paragraph 4 above – before that date), those regulations will need to be able to make provision having retrospective effect in relation to expenditure incurred before the regulations are made or FB 2006 receives Royal Assent.
13. Because these first regulations will have retrospective effect, they will be introduced under the affirmative resolution procedure, that is, only after the House of Commons has approved them.
14. Subsequent regulations cannot have retrospective effect.

Clause 2

15. Clause 2 introduces the Schedule which sets out the rules for the new relief for production expenditure on eligible films.

Clause 3

16. Clause 3 sets out a number of definitions which apply throughout the Chapter (i.e. not only to the new relief, but to the whole body of films legislation for corporation tax). They are broadly similar to the definitions applying for income tax in s131 and s132 ITTOIA 2005 and for corporation tax in s40A and s43 F(No2)A 1992.

17. Subsection (1) of clause 3 defines a film according to Paragraph 1 of Schedule 1 to the Films Act 1985, that is, as “any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture”.
18. Subsection (2) of clause 3 provides that a film is “completed” when it is first ready to be copied and shown to the public. This follows the existing provision in s43(3) F(No. 2)A 1992.
19. Subsection (3) of clause 3 defines “original master version” as the original master tape, disc or negative. This follows the existing provision in s43(1) F(No. 2)A 1992.
20. Subsection (4) of clause 3 provides that any reference to the original master version includes the original master soundtrack, and any rights held or acquired with the original master version. This follows the existing definitions in s40A(5) and s43(2) F(No. 2)A 1992.

Clause 4

21. Clause 4 defines when expenditure on an original master version is treated as incurred for the purposes of the Chapter. It applies the general rules on the timing of expenditure for capital allowances purposes in s5 of the Capital Allowances Act 2001, which already apply to determine when expenditure is incurred on the production or acquisition of qualifying British films under s42 F(No. 2)A 1992, and s42 F(No. 2)A 1992 as modified by s48 F(No. 2)A 1997.

Clause 5

22. Clause 5 sets out abbreviations for a number of statutes referred to in the Chapter.

DETAIL OF THE SCHEDULE

Part 1

23. Part 1 of the Schedule sets out the rules for entitlement to relief for production expenditure on films.
24. Paragraph 1 of the Schedule sets out the circumstances in which a company is entitled to the new film tax relief in respect of “qualifying UK” production expenditure on a film. The company must be the producer of the film, and the film must be an eligible film. It must be genuinely intended for theatrical release, and either the first day of principal photography must be on or after 1 April 2006, or if the first day

of principal photography is before that date, the film must not be completed until on or after 1 January 2007.

25. Paragraph 2 of the Schedule provides that paragraph 1 is subject to any other provisions of the Tax Acts.
26. Paragraph 3 of the Schedule sets out the meaning of the “producer” of a film. For a company to be a film’s producer, the company must:
 - own the original master version of the film and all the rights in it at the time the film is completed, and
 - incur all the production expenditure on the film.
27. Paragraph 4 of the Schedule sets out what is meant by an “eligible film”.
28. Sub-paragraph (1) provides that such a film is one that meets requirements to be prescribed in regulations made by the Treasury (sub-paragraph (2)). See paragraphs 5.6 and 5.7 of the consultative document for details of proposals of what would be required for films to qualify.
29. Sub-paragraph (3) of the Schedule provides that such regulations may apply provisions of Schedule 1 to the Films Act 1985, with any modifications that may be necessary; that they may appoint a person to exercise discretion in deciding whether a film meets the requirements; that they may make such other provision as is necessary, and that they may make different provisions for different purposes.
30. Paragraph 5 of the Schedule sets out when a film is “genuinely intended for theatrical release”. The intention at the time the film is completed must be that a significant proportion of the earnings from the film will be obtained by the exhibition of the film to the paying public at the commercial cinema. This follows the existing provisions in s99 FA 2002.
31. Paragraph 6 of the Schedule modifies what is meant by “production expenditure”, as defined at clause 1, specifically for the purpose of the new relief. If, at the time a film is completed, an amount has not been paid and there is no unconditional obligation for it to be paid within four months of completion, then it is not treated as production expenditure. This follows the existing treatment at s42(8A) F(No.2)A 1992 and s48(6A) F(No.2)A 1997.
32. Paragraph 7 of the Schedule defines the “qualifying UK production expenditure” (QUKPE) on a film, which is the amount on which enhanced relief is given.
33. Sub-paragraph (1) of paragraph 7 sets out that if the film’s “relevant UK production expenditure” is more than 80% of the total production expenditure, then QUKPE is deemed to be 80% of the total production expenditure. The effect is that QUKPE can never exceed 80% of the total production expenditure.

34. If the “relevant UK production expenditure” is 80% or less of the total production expenditure, then all of the relevant UK production expenditure is QUKPE.
35. Sub-paragraph (2) of paragraph 7 defines “relevant UK production expenditure”. There are three conditions which must be met.
- The intention is that the first condition will identify the expenditure incurred on services which will be eligible. See paragraph 5.12 of the Consultative Document.
 - The production expenditure must be incurred in the completion accounting period, or an earlier accounting period. Because the definition of production expenditure in paragraph 6(2) excludes most expenditure after completion of the film, this means that “relevant UK production expenditure” primarily includes expenditure incurred before the film is completed.
 - The expenditure must not have received relief under any of the other film provisions (i.e. that it is “unrelieved” expenditure – defined in sub-paragraph (3)).
36. Sub-paragraph (3) of paragraph 7 defines the “unrelieved expenditure” referred to above.
37. Sub-paragraph (4) of paragraph 7 defines the “total production expenditure” on the film. Again, this primarily includes expenditure up to the date of completion.
38. Paragraph 8 of the Schedule defines the “completion accounting period” for the purpose of the relief as the accounting period in which the film is completed.

Part 2

39. Part 2 of the Schedule sets out how the relief is given effect.
40. Paragraph 9 of the Schedule provides that the Part applies where a company is entitled to the relief under paragraph 1.
41. Paragraph 10 of the Schedule defines the terms “relevant film”, “relevant trade” and “relevant trading income” for the purposes of this Part. “Relevant trade” is a trade or business of exploiting the film in respect of which relief is to be claimed. “Relevant trading income” includes both income from the exploitation of the film, and any grant or subsidy obtained in respect of production expenditure on the film. This ensures that where a company is trading, but only has income from a grant or subsidy, it can still meet the condition at paragraph 11(2)(b) and is able to claim an enhanced deduction against this income.

42. Paragraph 11 of the Schedule sets out the rules for a company, which is carrying on a trade of exploiting the relevant film, to obtain a deduction to be used in computing its profits for the completion accounting period.
43. Sub-paragraph (1) provides that the paragraph applies where the company is carrying on a trade or business of exploiting a film, which meets the conditions of paragraph 1, and it makes a claim.
44. Sub-paragraph (2) sets out the deduction to which the company is then entitled. This is equal to 100% of the qualifying UK production expenditure on the relevant film, plus (if the company has relevant trading income in the completion accounting period) either X% of the expenditure, or, if less, the trading income itself. X here takes the place of the proposed different rates of additional relief for small or large films set out at paragraph 5.14 of the Consultative Document.
45. Paragraph 12 of the Schedule contains the rules which enable a company which claims under paragraph 11 but whose relevant trading income in the completion accounting period is less than X% of its qualifying UK production expenditure, to carry forward unused relief and deduct it from profits in later accounting periods. Again, in the draft legislation. X takes the place of the proposed different rates of additional relief for small or large films set out at paragraph 5.14 of the Consultative Document.
46. Sub-paragraph (1) sets out the conditions for paragraph 12 to apply.
47. Sub-paragraph (2) provides that the unused relief may be deducted from the profits of the relevant trade in a later period.
48. Sub-paragraph (3) defines the unused relief. For a company with no relevant trading income in the completion accounting period, the unused relief is X% of the qualifying UK production expenditure. For a company which has, in the completion accounting period, relevant trading income I of less than X% of the qualifying UK production expenditure Q, it is equal to $X\% \times Q - I$. Again X takes the place of the proposed different rates of additional relief for small or large films set out at paragraph 5.14 of the Consultative Document.
49. Sub-paragraph (4) specifies that the unused relief is to be deducted from the company's relevant trading income for the first accounting period (following the completion accounting period) in which there is such income.
50. Sub-paragraph (5) specifies that if only part of the unused relief is used up, the balance is taken forward again to the next period in which there is relevant trading income. This process continues until the unused relief is exhausted.
51. Paragraph 13 of the Schedule allows a company which is not carrying on the relevant trade in the completion accounting period to elect for an

alternative treatment of pre-trading expenditure to that in section 401 ICTA 1988, should it so choose. Making such an election preserves the ability of such a company to claim for payment of film tax credit under paragraph 16.

52. Sub-paragraph (1) states that the paragraph applies where the company is not carrying on the relevant trade (see the definition in paragraph 10 of the Schedule and paragraph 41 above) in the completion accounting period.
53. Sub-paragraph (2) sets out the alternative treatment. The company is treated as though it had incurred a trading loss, in the period in question, equal to the amount of qualifying UK production expenditure on the relevant film.
54. Sub-paragraph (3) disapplies s401 ICTA 1988, in relation to the qualifying UK production expenditure (but not any other pre-trading expenditure) where an election is made.
55. Sub-paragraph (4) specifies the conditions applying to any such election – it must be made in writing to an officer of HM Revenue and Customs, must identify the completion accounting period in question, and must be made within two years of the end of that period.
56. Sub-paragraph (5) provides that once made, such an election is irrevocable.
57. Paragraph 14 of the Schedule provides that, where the company is not carrying on the relevant trade in the completion accounting period, and makes no election under paragraph 13, clause 4 applies to determine whether – for the purposes of s401 ICTA 1988 – the qualifying UK production expenditure is incurred before trading commences so that the production expenditure is pre-trading expenditure.
58. Paragraph 15 of the Schedule allows enhanced relief to a company which is not carrying on the relevant trade in the completion accounting period and has made an election under paragraph 13 or a claim under this paragraph. It is the counterpart to paragraph 12, which applies to a company carrying on such a trade.
59. Sub-paragraph (1) sets out when the paragraph applies. The company must make an election under paragraph 13, or a claim under paragraph 15.
60. Sub-paragraph (2) allows the company to deduct the enhanced relief from its relevant trading income once it begins the relevant trade. Relevant trading income will include any grants or subsidies received before trading commenced.

61. Sub-paragraph (3) defines the enhanced relief as X% of the qualifying UK production expenditure on the film. Again, X here is a label for the different rates that might apply to large and small budget films.
62. Sub-paragraph (4) specifies how the enhanced relief is to be applied. It is to be deducted from the company's relevant trading income for the first accounting period in which there is such income. If not all of the enhanced relief is used up, the balance is taken forward again to the next period in which there is relevant trading income. This process continues until the unused relief is exhausted.
63. Paragraph 16 of the Schedule provides for a company to claim a film tax credit of Y% of its "surrenderable loss". (Y takes the place of the proposed different rates of credit for small or large films set out at paragraph 5.16 of the Consultative Document.) The amount of the company's surrenderable loss is the lesser of its unrelieved trading loss from the relevant trade and the amount of the qualifying UK production expenditure it has incurred in respect of the relevant film.
64. Sub-paragraph (1) provides that where a company has a "surrenderable loss" in its relevant trade in the period in which it completes a film, it can claim a film tax credit for that period.
65. Sub-paragraph (2) sets out the circumstances in which a company has a surrenderable loss in the accounting period in which it completes a film. These are that it claims relief under paragraph 11 and has a trading loss in the relevant trade in the completion accounting period, or that it is not carrying on that trade in the completion accounting period, but makes an election under paragraph 13 to deem it to have incurred such a loss in that period.
66. Sub-paragraph (3) sets out the amount of the surrenderable loss, which is the lesser of the company's "unrelieved" trading loss for the period and its qualifying UK production expenditure on the film.
67. Sub-paragraph (4) sets out what is meant by an "unrelieved" trading loss. This is the amount of the loss, less any relief obtained by the company (or any relief that could have been obtained) under s393A(1)(a) ICTA 1988 or s393A(1)(b) ICTA 1988 against profits of any description and any loss surrendered as group relief under s403(1) ICTA 1988.
68. Sub-paragraph (5) provides that in calculating the "unrelieved" trading loss, losses brought forward from an earlier period under s393(1) ICTA 1988 or carried back from a later one under s393A(1)(b) ICTA 1988 are not taken into account. This means that the amount of surrenderable losses must be reduced by the amount of any other taxable profits of the company, whether or not there are other losses which might be used to set against those profits.

69. Sub-paragraphs (6) - (8) address the situation where a company claims film tax credit in respect of more than one film for the same period. They provide a rule to ensure this cannot result in the company being entitled to a greater amount of tax credit than would otherwise be due.
70. Sub-paragraph (6) sets out the conditions for sub-paragraphs (7) and (8) to apply. These are that the company claims film tax credit on more than one film for the same period, and has a surrenderable loss under sub-paragraph (2)(a) in relation to each of those claims (including any losses already surrendered for that period).
71. Sub-paragraph (7) provides that, in calculating the surrenderable loss for each of these films, the trading loss referred to in sub-paragraph (3) is reduced by the amount of loss surrendered (as defined in paragraph 19) for any earlier claim. So if, for example, a company claims in respect of three films at the same time, the surrenderable loss for the second film takes account of what was surrendered for the first film; and the surrenderable loss for the third film takes account of what was surrendered for the first and second films.
72. Sub-paragraph (8) allows an officer of HM Revenue and Customs to determine the order in which the claims are dealt with for this purpose.
73. Paragraph 17 of the Schedule sets out the amount of the film tax credit to which a company is entitled. This is Y% of the surrenderable loss in the completion accounting period. Again, Y is a label for the different credit rates that might apply to small and large budget films. The Treasury may vary this percentage by order, making such incidental provisions as are thought fit at the time.
74. Paragraph 18 of the Schedule contains the rules for payment of the tax credit.
75. Sub-paragraph (1) requires HM Revenue and Customs to pay the company the amount of any credit which it is entitled to, and for which it makes a claim. A company may claim less than the full amount.
76. Sub-paragraph (2) allows HM Revenue and Customs to set the amount of the tax credit (or any interest owing to the company on it under s826 ICTA 1988, which will be amended to take account of the existence of the new credit) against outstanding corporation tax.
77. Sub-paragraph (3) allows HM Revenue and Customs to withhold payment of the tax credit if they open an enquiry into the company's corporation tax return for the completion accounting period.
78. Sub-paragraph (4) allows HM Revenue and Customs to withhold payment of the tax credit if the company has amounts of PAYE or Class 1 National Insurance Contributions outstanding for the completion accounting period.

79. Sub-paragraph (5) defines terms used in the rest of paragraph 18 – the “Commissioners”, the “maximum amount” of tax credit which the company may claim, “National Insurance Contributions” and “payment period”.
80. Paragraph 19 of the Schedule prevents a company from carrying forward under s393 ICTA 1988 any trading loss which it surrenders in return for a tax credit.
81. Paragraph 20 of the Schedule provides that payment of a film tax credit is not income of the company for any tax purpose.

Part 3

82. Paragraph 21 of the Schedule contains provisions preventing artificially inflated claims for film tax relief (either deductions or tax credits).
83. Sub-paragraph (1) provides that where arrangements are entered into for a disqualifying purpose, relief under paragraphs 11, 12, 13 or 15, and film tax credit, will not be given on any amount attributable to those arrangements on a just and reasonable apportionment.
84. Sub-paragraph (2) defines when arrangements are entered into for a disqualifying purpose. These are arrangements where the main, or one of the main, purposes of someone (not necessarily the company) in entering into the arrangement is to enable the company to obtain more relief than it would otherwise be entitled to.
85. Sub-paragraph (3) defines “arrangements”.
86. Paragraph 22 of the Schedule sets out what happens when a company elects for a deemed trading loss for pre-trading expenditure under paragraph 13.
87. Sub-paragraph (1) specifies where the paragraph applies.
88. Sub-paragraph (2) provides that, if the company begins the relevant trade in a later accounting period, it may (subject to paragraph 19) treat the deemed trading loss as if it were a loss brought forward under s393 ICTA 1988, except for any part of that loss for which it has already obtained relief or which has been surrendered as group relief under s 403(1) ICTA 1988.
89. Paragraph 23 of the Schedule provides that a company is not entitled to relief by virtue of paragraph 1 in respect of a film whose original master version is trading stock, that is, a film which the company makes intending to sell rather than to retain and exploit.