BOARD OF INLAND REVENUE **FINANCE (No.2) BILL 2005**
RESOLUTION 23 **CLAUSE 58**

EXPLANATORY NOTE

CLAUSE 58: RELIEF FOR PRODUCTION AND ACQUSITION EXPENDITURE ON LIMITED-BUDGET FILMS

SUMMARY

1. Clause 58 extends the tax relief currently available for limited budget films, which applies to expenditure incurred on or before 1 July 2005. Relief for production expenditure will now apply to:

   - limited budget films (i.e. those with total production expenditure of £15 million or less), which
   - commence principal photography before 1 April 2006, and
   - are completed before 1 January 2007.

2. Relief for acquisition expenditure will be available for films that meet these conditions and which are acquired before 1 October 2007.

3. Clause 58 also gives the Treasury power to further extend the relief by substituting later dates for those given above.

DETAILS OF THE CLAUSE

4. Subsection (1) extends the tax relief for the production or acquisition of limited-budget films in section 48 of the Finance (No.2) Act 1997. Production expenditure will qualify where the film’s first day of principal photography is before 1 April 2006 and the film is completed before 1 January 2007. Acquisition expenditure must meet the same conditions, and must also be incurred before 1 October 2007.

5. Subsection (2) extends the tax relief for production expenditure incurred on limited-budget films in section 139 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) to expenditure to films whose first day of principal photography is before 1 April 2006 and which are completed before 1 January 2007.

6. Subsection (3) extends the tax relief for acquisition expenditure incurred on limited-budget films in section 140 of ITTOIA 2005 to

expenditure incurred before 1 October 2007 on films whose first day of principal photography is before 1 April 2006 and which are completed before 1 January 2007.

7. Subsection (4) gives the Treasury power to amend any of the dates in sub-paragraphs (1) – (3) to later dates.

8. Subsection (5) provides that the amendments in Subsection (1) have effect on claims made under section 42 of the Finance (no 2) Act 1992 on or after 2 July 2005.

9. Subsection (6) provides that the amendments in Subsections (2) and (3) have effect on deductions made under Sections 139 or 140 of ITTOIA 2005 on or after 2 July 2005.

BACKGROUND NOTES

10. The current film tax reliefs provided by sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. Without the film reliefs, expenditure on producing or buying a film would be capital expenditure, eligible for capital allowances. The film reliefs treat such expenditure as revenue expenditure and give rules as to how this expenditure can be written off.

11. The provisions in F(No.2)A 1992 allow expenditure on the production or acquisition of a qualifying British film, which would otherwise be on capital account, to be treated as a revenue expense and either matched against income from the same film of written off over three years. Section 48 F(No.2)A 1997 allows production or acquisition expenditure on a low budget qualifying British film (one with a budget of up to £15m) to be written off immediately, rather than over three years.

12. In Budget 2004 the Government announced its intention to replace section 48 relief with a new relief, intended to concentrate support on film producers rather than financiers. Details of this new relief were set out in an Inland Revenue Technical Note on 21 September.

13. The current legislation extends Section 48 relief until the new relief is introduced.

BOARD OF INLAND REVENUE
RESOLUTION 23

FINANCE (No. 2) BILL 2005
CLAUSE 59
SCHEDULE 3

EXPLANATORY NOTE

CLAUSE 59 AND SCHEDULE 3: RESTRICTIONS ON RELIEF FOR PRODUCTION AND ACQUISITION EXPENDITURE

SUMMARY

1. Clause 59 and Schedule 3 counter tax avoidance schemes that exploit film tax relief. They prevent film tax relief from being given more than once in relation to any film and limit relief to the cost of production. They also align terms used in the film relief legislation. The provisions are effective from 2 December 2004, with transitional rules for films in production on that date.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces Schedule 3.

3. Subsection (2) sets out the contents of the Schedule:

    - Part 1 prevents relief being given more than once in respect of any film,
    - Part 2 aligns restrictions on relief for large budget films with the existing restrictions for films costing £15m or less,
    - Part 3 makes minor and consequential amendments and aligns terminology in film relief legislation,
    - Part 4 contains interpretation provisions applicable to the entire Schedule.

DETAILS OF THE SCHEDULE

Part 1 – Restrictions on circumstances in which relief may be obtained

4. Paragraph 1(1) states that the paragraph amends section 42 Finance (No.2) Act 1992 ("section 42").

5. Paragraph 1(2) adds the requirement that a person claiming relief for film production expenditure must have owned the master version of the film when it was completed.

6. Paragraph 1(3) adds the requirement that a person claiming relief for acquisition expenditure is acquiring it for the first time.

7. Paragraph 1(4) inserts subsections (3A) to (3E) into section 42 that ensure that relief can only be given once on any film, either for production expenditure or for acquisition expenditure, but not both, and that relief will be given to the first person who makes a claim.

   - Subsection (3A) allows only one claim to relief in any period: either for production expenditure or for acquisition expenditure.
   - Subsection (3B) prevents a company from obtaining relief, under section 42 in a trade or business where any previous claims, or deductions under sections 138 to 140 ITTOIA 2005, have been made in relation to another trade, or in respect of a different type of expenditure (production or acquisition) in relation to the same trade or business.
   - Subsection (3C) makes it clear that the earlier claim in subsection (3B) can be before or after 2 December 2004, and defines relevant period in that sub-section.
   - Subsection (3D) allows the Inland Revenue to decide which deduction is made first where there are simultaneous deductions.
   - Subsection (3E) clarifies that Inland Revenue means any officer of the Board

8. Paragraph 1(5) inserts a new subsection (5A) into section 42 to put it beyond doubt that a claim for relief cannot mix production and acquisition expenditure.

9. Paragraph 1(6) brings the changes in this paragraph into force from the 2 December 2004, which was the date that the intention to make these changes was announced.

10. Paragraph 1(7) disapplies the changes in relation to claims made before 2 December 2004 and all claims in relation to expenditure relating to films in production on 2 December 2004. (See paragraph 33).

11. Paragraph 1(8) disapplies the requirement introduced by paragraphs 1(2) and 1(3) in relation to pre-announcement expenditure. (See paragraph 32).

12. Paragraph 1(9) ensures that the rules preventing more than one claim to relief in new section 42(3B), introduced by sub-paragraph 4, do not apply where both claims relate, in entirety, to expenditure which the claimant was obliged to incur under a contractual obligation existing before 2 December 2004. (See paragraph 32).

13. Paragraph 1(10) ensures that the changes to section 42 made by this paragraph apply to individuals as well as companies until 6 April 2005, when ITTOIA 2005 comes into effect.

14. Paragraph 1(11) makes it clear that the changes also apply to section 42 as amended by section 48 Finance (No. 2) Act 1997.

15. Paragraph 2(1) repeals section 101 Finance Act 2002.

16. Paragraph 2(2) makes this repeal effective from 2 December 2004.

17. Paragraph 2(3) ensures that section 101 Finance Act 2002 is not repealed and will continue to apply to any claims for relief under section 42 that are not subject to the amendments made by paragraph 1.

18. Paragraph 2(4) makes it clear that claims for relief in this paragraph only applies to claims under section 42 as extended by section 48 Finance (No. 2) Act 1997.

19. Paragraph 3(1) substitutes a new section 138 ITTOIA 2005 and inserts a new section 138A ITTOIA 2005. Old section 138 applied to both production and acquisition expenditure; the new sections apply to production expenditure (section 138) and acquisition expenditure (section 138A) separately.

20. New section 138 makes the following changes to the old section 138:
    - it only applies to production expenditure rather than to production and acquisition expenditure,

- it allows a person to deduct production expenditure only if the person owns the master version at the time the film is completed (sub-section (1)(d)),
- it allows a deduction only if there has not already been a disqualifying deduction (sub-section (1)(f)) – see paragraph 6.

21. New section 138A is the same as old section 138 except for the following changes:
    - it only applies to acquisition expenditure rather than to production and acquisition expenditure,
    - it allows a person to deduct acquisition expenditure only if it relates to that person's first acquisition of the film (sub-section (1)(b)),
    - it allows a deduction only if there has not already been a disqualifying deduction (sub-section (1)(f)) – see paragraph 6.

22. Paragraph 3(2) makes the changes in paragraph 3(1) effective from 6 April 2005 – except for the exclusions in sub- paragraphs 3 and 4.

23. Paragraph 3(3) excludes films in production (see paragraph 33) from the changes made by this paragraph.

24. Paragraph 3(4) removes, for pre-announcement expenditure (see paragraph 32), the requirement that a person incurring production expenditure must own the film on completion, or that a person acquiring a film can obtain a deduction only in relation to his first acquisition.

25. Paragraph 4(1) states that the paragraph amends section 139 ITTOIA 2005.

26. Paragraph 4(2) inserts the requirement that the person who wishes to deduct production expenditure under section 139 must own the master version when the film is completed.

27. Paragraph 4(3) inserts sub-section 1(f) which allows a deduction under section 139 only if there has not already been a disqualifying deduction – see paragraph 6.

28. Paragraph 4(4) makes the changes in this paragraph effective from 6 April 2005 – except for the exclusions in sub-paragraphs 5 and 6.

29. Paragraph 4(5) excludes films in production (see paragraph 33) from the changes made by this paragraph.

30. Paragraph 4(6) removes, for pre-announcement expenditure (see paragraph 32), the requirement that a person incurring production expenditure must own the film on completion.

31. Paragraph 5(1) states that paragraph 5 amends section 140 ITTOIA 2005.

32. Paragraph 5(2) amends section 140(1) as follows:-
    - removes the requirement that the acquisition must be a relevant acquisition as defined by sub-section (2)
    - allows a person to deduct acquisition expenditure only if it relates to that person's first acquisition of the film (sub-section (1)(ba))
    - allows a deduction only if there has not already been a disqualifying deduction (sub-section (1)(g)) – see paragraph 6.

33. Paragraph 5(3) repeals sub-section 2 which prevents deductions for multiple acquisitions.

34. Paragraph 5(4) makes the changes in this paragraph effective from 6 April 2005 – except for the exclusions in sub- paragraphs 5 and 6.

35. Paragraph 5(5) excludes films in production (see paragraph 33) from the changes made by this paragraph.

36. Paragraph 5(6) ensures that the rules preventing multiple acquisitions in sections 140(1)(b) and 140(2) are not repealed and will continue to apply to any deductions which are not subject to the new rules preventing more than one deduction.

37. Paragraph 5(7) removes, for pre-announcement expenditure (see paragraph 32), the requirement that a person acquiring a film can obtain a deduction only in relation to his first acquisition.

38. Paragraph 6(1) inserts a new section 140A into ITTOIA 2005.

39. Section 140A(1) defines disqualifying deduction for sections 138 and 139 (deduction for production expenditure) as a deduction or claim for acquisition expenditure in the same trade or a deduction for acquisition or production expenditure in another trade.

40. Section 140A(2) defines disqualifying deduction for sections 138A and 140 (deduction for acquisition expenditure) as a deduction or claim for production expenditure in the same trade or a deduction for acquisition or production expenditure in another trade.

41. Section 140A(3) ensures that a claim under section 42 can be treated as a disqualifying deduction even if it is made before 2 December 2004; and imports the definition of relevant period in relation to such a claim from section 40B Finance (No.2) Act 1992.

42. Section 140A(4) allows the Inland Revenue to decide which deduction is made first where there are simultaneous deductions.

43. Section 140A(5) ensures that "deduction" in section 140A(4) is read to include a claim under section 42 Finance (No.2) Act 1992.

44. Paragraph 6(2) makes the changes in this paragraph effective from 6 April 2005 – except for the exclusions in sub-paragraphs 3 and 4.

45. Paragraph 6(3) ensures that the rules preventing more than one deduction in sections 138 to 140 do not apply where both deductions relate, in entirety, to expenditure which the claimant was obliged to incur under a contractual obligation existing before 2 December 2004 (see paragraph 32).

46. Paragraph 6(4) defines disqualifying deduction (see paragraph 3) in accordance with new section 140A ITTOIA 2005.

47. Paragraph 7(1) applies a new rule for claims in relation to acquisition expenditure under section 42 F(No.2)A 1992 where a film was in production at 2 December 2004 (see paragraph 33). This rule does not apply to claims under section 42 as modified by section 48 F(No.2)A 1997.

48. Paragraph 7(2) prevents relief under section 42 F(No.2)A 1992 if the acquisition is not the first acquisition by the claimant, or if there has been a previous claim or deduction for another acquisition of the film.

49. Paragraph 7(3) allows the Inland Revenue to decide which claim or deduction is made first where there are simultaneous claims or deductions.

50. Paragraph 7(4) makes it clear that, in this paragraph, reference to the Inland Revenue means any officer of the Board.

51. Paragraph 7(5) gives effect to this paragraph from 2 December 2004.

52. Paragraph 8(1) applies a new rule for deductions in relation to acquisition expenditure under section 138 ITTOIA 2005 where a film was in production at 2 December 2004 (see paragraph 33).

53. Paragraph 8(2) prevents a deduction under section 138 ITTOIA 2005 if the acquisition is not the first acquisition by the acquirer, or if there has been a previous claim or deduction for another acquisition of the film.

54. Paragraph 8(3) allows the Inland Revenue to decide which deduction is made first where there are simultaneous deductions.

55. Paragraph 8(4) makes it clear that, in this paragraph, the reference to the Inland Revenue means any officer of the Board.

56. Paragraph 8(5) gives effect to this paragraph from 6 April 2005.

Part 2 – restriction on amount of relief which may be obtained

57. Paragraph 9(1) states that the paragraph amends section 42 F(No.2)A 1992.

58. Paragraph 9(2) inserts new subsections (3ZA) and (3ZB) which restrict the amount of expenditure that qualifies for a deduction on the acquisition of the original master version to no more than the total production expenditure on the film.

59. Paragraph 9(3) inserts new subsection (5B) which deems the acquisition expenditure to be equal to the total production expenditure where the acquisition expenditure would otherwise be a greater amount.

60. Paragraph 9(4) inserts new subsections (8A) and (8B) which restrict total production expenditure to sums that have been paid during production or which are unconditionally payable within 4 months of the film being completed. The provisions of Section 5 CAA 2001 are adopted for determining when expenditure is incurred for the purposes of section 42.

61. Paragraph 9(5) deems these amendments to come into force on 2 December 2004 subject to sub-paragraphs 6 to 9.

62. Paragraph 9(6) disapplies these amendments to claims in respect of expenditure on films where the first day of principal photography is before 2 December 2004.

63. Paragraph 9(7) applies where a person has an unconditional obligation, before 2 December 2004, to incur expenditure ("pre-announcement expenditure" – see paragraph 32) greater than the total production expenditure on the acquisition of a film. In such cases, the restriction on acquisition expenditure in new sections 42(3ZA) and 42(5B) will be increased to the amount of that pre-existing obligation.

64. Paragraphs 9(8) & (9) take pre-announcement expenditure out of the amendments introduced by Paragraph 9(4) except for the purposes of computing total production expenditure as defined in Section 42(3ZB) so that acquisition expenditure which is not paid under an obligation existing before 2 December 2004 will be restricted to total production expenditure subject to the new rules introduced by paragraph 9(4).

65. Paragraph 9(10) makes it clear that in this paragraph claims for relief under section 42 F(No.2)A 1992 includes claims for relief under the provisions of section 42 as modified by Section 48 F(No.2)A 1997.

66. Paragraph 10(1) amends Section 48 F(No.2)A 1997 (subject to sub-paragraphs 2 to 5) to omit subsections (3), (4) and (5) of that section. This makes it clear that relief under section 42 F(No.2)A 1992 can only be obtained for films with total production expenditure in excess of £15 million.

67. Paragraph 10(2) deems the amendments in paragraph 10(1) to come into force on 2 December 2004 subject to sub-paragraphs 3 and 4.

68. Paragraph 10(3) disapplies these amendments to films where the first day of principal photography is before 2 December 2004.

69. Paragraph 10(4) disapplies these amendments in respect of pre-announcement expenditure and sums that include pre-announcement expenditure (see paragraph 32).

70. Paragraph 10(5) makes it clear that a 'claim for relief' in this paragraph is a claim for relief under Section 42 F(No.2)A 1992 as modified by S48 F(No.2)A 1997.

71. Paragraph 11(1) states that the paragraph amends Section 138 ITTOIA 2005 (production expenditure) as substituted by paragraph 3.

72. Paragraph 11(2) inserts new subsection (1)(aa) which prevents section 138 applying to films costing £15 million or less.

73. Paragraph 11(3) inserts new subsection (1A) which restricts deductions for expenditure on production to sums that have been paid during production or which are unconditionally payable within 4 months of the film being completed.

74. Paragraph 11(4) omits subsection (5)(c) and amends subsection (5)(a) and (b), as a consequence of section 138 no longer applying to films costing £15m or less (see paragraph 11(2)).

75. Paragraph 11(5) makes the amendments in this paragraph effective for 2005/06 and subsequent years of assessment subject to Paragraphs 11(6) and (7).

76. Paragraph 11(6) disapplies the amendments in this paragraph for films where the first day of principal photography is before 2 December 2004.

77. Paragraph 11(7) disapplies the amendments made by Paragraph 11(2) and (4) where the production expenditure includes any amount of pre-announcement expenditure.

78. Paragraph 11(8) disapplies the amendment made by Paragraph 11(3) in relation to pre-announcement expenditure.

79. Paragraph 12(1) amends Section138A ITTOIA 2005 (acquisition expenditure).

80. Paragraph 12(2) inserts new subsection (1)(aa) which ensures that section 138A cannot apply to films costing £15 million or less.

81. Paragraph 12(3) inserts new subsection (3A), which restricts the total amount that can be allocated under Section 138A to total production expenditure in respect of the original master version.

82. Paragraph 12(4) omits Calculation 2 from subsection (5) because section 138A no longer applies to films costing £15 million or less.

83. Paragraph 12(5) inserts new subsection (6A), which restricts the total acquisition expenditure that may be allocated under section 138A to the total production expenditure on the film.

84. Paragraph 12(6) makes these amendments effective for 2005/06 and subsequent years of assessment subject to paragraphs 12(7) to (9).

85. Paragraph 12(7) disapplies these amendments for films where the first day of principal photography is before 2 December 2004.

86. Paragraph 12(8) disapplies the amendments made by paragraphs 12(2) and 12(4) where the acquisition expenditure includes any amount of pre-announcement expenditure.

87. Paragraph 12(9) applies where a person has an unconditional obligation, before 2 December 2004, to incur expenditure ("pre-announcement expenditure" – see paragraph 32) on the acquisition of a film. Where that pre-announcement expenditure is greater than the total production expenditure on the film the restriction on acquisition expenditure in new sections 138A(3A) and 138A(6A) applies to the amount of pre-announcement expenditure rather than the total production expenditure.

88. Paragraph 13(1) amends Section 139(5)(d) ITTOIA 2005 (production expenditure on limited-budget films) to remove a redundant reference to relief under section 42 F(No.2)A 1992 which can no longer apply to limited budget films.

89. Paragraph 13(2) makes this amendment effective for 2005/06 and subsequent years of assessment.

90. Paragraph 13(3) disapplies the amendment in this paragraph for films where the first day of principal photography is before 2nd December 2004 or where any of the production expenditure on the film is pre-announcement expenditure (see paragraph 32).

91. Paragraph 14(1) amends section 140(6)(d) ITTOIA 2005 (acquisition expenditure on limited-budget films) to remove a redundant reference to relief under section 42 F(No.2)A 1992 which can no longer apply to limited budget films.

92. Paragraph 14(2) makes this amendment effective for 2005/06 and subsequent years of assessment.

93. Paragraph 14(3) disapplies the amendment in this paragraph for films where the first day of principal photography is before 2 December 2004 or where any of the acquisition expenditure on the film is pre-announcement expenditure (see paragraph 32).

94. Paragraph 15(1) amends Section 141 ITTOIA 2005 which defines "total production expenditure in respect of the original master version".

95. Paragraph 15(2) applies the definition of total production expenditure to new section 138A.

96. Paragraph 15(3) ensures that the arm's length rule in subsection (4) is only applied for determining whether the total production expenditure on the film exceeds £15m.

97. Paragraph 15(4) makes these amendments effective for 2005/06 and subsequent years of assessment subject to sub-paragraphs 5 to 7.

98. Paragraph 15(5) disapplies the amendments in this paragraph for films where the first day of principal photography is before 2nd December 2004.

99. Paragraph 15(6) applies sub-paragraph 7 where the amount of pre-announcement acquisition expenditure (see paragraph 32) is greater than the total production expenditure on the film, and the amount of total production expenditure would be greater if it were not for the change in sub-paragraph 3 above.

100. Paragraph 15(7) applies where the conditions in sub-paragraph 6 are met, and replaces the restriction to total production expenditure in section 140(5) to the lower of the pre-announcement expenditure and the amount that total production expenditure would be if sub-paragraph 3 above were not applied.

101. Paragraph 15(8) makes definitions for the purposes of sub-paragraphs 6 and 7.

102. Paragraph 16(1) amends Section 142 ITTOIA 2005 so that the definition of when expenditure is incurred in that section applies to new sections 138 and 138A.

103. Paragraph 16(2) makes this amendment effective for 2005/06 and subsequent years of assessment.

104. Paragraph 16(3) disapplies the changes in this paragraph for films where the first day of principal photography is before 2nd December 2004 or to any expenditure which is pre-announcement expenditure (see paragraph 32).

Part 3 – Minor and consequential amendments

105. Paragraph 17 redefines "film" in S118ZM(4) ICTA 1988 as the original master version of the film.

106. Paragraph 18 substitutes the phrase 'the original master' for references to 'a master' or 'the master' in Section 40A F(No.2)A 1992 and repeals Section 40A(5) of that Act which has a redundant definition of master version.

107. Paragraph 19 substitutes the phrase 'the original master' for references to 'a master' or 'the master' in section 40B F(No.2)A 1992.

108. Paragraph 20 substitutes the phrase 'the original master' for references to 'a master' or 'the master' in Section 40C F(No.2)A 1992.

109. Paragraph 21 substitutes the phrase 'the original master' for references to 'a master' or 'the master' in Section 40D F(No.2)A 1992.

110. Paragraph 22 amends Section 41 F(No.2)A 1992 by inserting references to 'the original master version' and substituting that phrase for references to master negative, master tape and master disc.

111. Paragraph 23 amends Section 42 F(No.2)A 1992 by inserting references to 'the original master version' and substituting that phrase for references to a film or to a master negative, master tape and master disc.

112. Paragraph 24 amends the interpretation provisions in Section 43 F(No.2)A 1992 to include the definition of film and original master version. References to master disc, master negative and master tape are omitted. References to 'the original master version' are inserted or substituted for references to 'master' as appropriate.

113. Paragraph 25 inserts a reference to new section 138A ITTOIA 2005 in Paragraph 11(9) Schedule 12 FA 1997 (as amended by Schedule 1 to ITTOIA 2005).

114. Paragraph 26(1) amends Section 48 F(No.2)A 1997.

115. Paragraph 26(2) amends section 48(1) to reflect the amended wording incorporating original master version in section 42(4) F(No.2)A 1992.

116. Paragraph 26(3) substitutes a clearer definition of ‘total production expenditure’ in Section 48(6), in particular replacing “whenever incurred” with “including expenditure incurred before 2nd July 1997”.

117. Paragraphs 26(4) and 26(5) substitutes original master version for film in sections 48(6A) and 48(7)

118. Paragraph 26(6) inserts a new Section 48(7A) that takes definitions from the revised Section 43 F(No.2)A 1992.

119. Paragraph 27 amends Paragraph 116 of Schedule 3 CAA 2001 by substituting references to ‘the original master version’ for references to master, negative, tape and disc, and makes a number of other minor changes for consistency with other provisions relating to film reliefs.

120. Paragraph 28 substitutes a reference to ‘master version of the film’ in Section 99 FA 2002 with a reference to ‘the original master version’ as defined in the revised Section 43 F(No.2)A 1992.

121. Paragraph 29 substitutes the definition of master version in Paragraph 80(2)(a) Schedule 29 FA 2002 with the definition of original master version in the revised Section 43 F(No.2)A 1992 for.

122. Paragraph 30(1) amends ITTOIA 2005.

123. Paragraphs 30(2) and (3) insert references to the completion of the film in or before the period of production or acquisition in Sections 139 and 140 ITTOIA 2005 in order to restore consistency with the provisions in section 42 F(No. 2)A 1992 as extended by section 48 F(No. 2)A 1997, from which sections 139 and 140 were derived.

124. Paragraph 30(4) makes a minor consequential change to Schedule 2 of ITTOIA arising from the insertion of new section 138A of that Act.

125. Paragraph 31 details the dates that the amendments in Part 3 become effective. The amendments are effective from 2nDecember

2004 except for the amendment made by Paragraph 21(3), which is effective for accounting periods ending after 5 April 2005, and the amendments made by Paragraphs 25 and 30, which are effective for the 2005-0606 year of assessment onwards.

Part 4 - Interpretation

126. Paragraph 32 defines the meaning of 'pre-announcement expenditure'.

127. Paragraph 32(1) defines pre-announcement expenditure as expenditure incurred before 2nd December 2004 or expenditure under an unconditional obligation that existed before 2nd December 2004.

128. Paragraph 32(2) explains the circumstances in which an obligation to incur expenditure is regarded as unconditional. An obligation is conditional only if the condition that had to be fulfilled was outside the control of the person incurring the expenditure or is contingent on a film being certified as a qualifying British film.

129. Paragraph 32(3) explains what is meant by a claim or deduction "in respect of pre-announcement expenditure only"; and is where all of the expenditure incurred on the production or acquisition of the master version is pre-announcement expenditure.

130. Paragraph 33(1) defines the meaning of a film in production on 2 December 2004 as a film where principal photography had commenced, but the film had not been not completed, before that date.

131. Paragraph 33(2) defines a film as being completed when it is first in a form in which it is reasonably to be regarded as ready for copying and distributing for presentation to the general public.

132. Paragraph 34 defines 'film' by reference to Paragraph 1 of Schedule 1 of the Films Act 1985 and 'original master version' by reference to Section 43 F(No.2)A 1992.

BACKGROUND NOTE

133. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only,

sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, to be treated as revenue expenses. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For such films, costing £15 million or less, expenditure may be written off immediately under section 48 F(No. 2)A 1997 or over three years under section 42 F(No. 2)A 1992.

134. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

135. Clause 59 and Schedule 3 give effect to the measures described in Part I of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004.

EXPLANATORY NOTE

CLAUSE 60: DEFERRED INCOME AGREEMENTS WHICH EXIST WHEN RELIEF CLAIMED

SUMMARY

1. Clauses 60 to 65 counter tax avoidance by persons who benefit from film tax relief and defer income from the film for more than 15 years. The clauses apply where any deferred income agreements are entered into on or after 2 December 2004. This clause addresses tax avoidance by companies which claim the film tax relief at Section 42 F(No.2)A 1992 and either, at that time have an agreement in place for income to be deferred for more than 15 years, or subsequently enter into such an agreement. The clause effectively restricts the tax relief in proportion to the length of the income stream beyond 15 years by treating such companies as having received income in the period for which the claim is made equal to the excess relief.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the circumstances where the clause applies. These are that a company which carries on a trade or business – the "relevant trade" – makes a claim on or after 2 December 2004 for film relief under Section 42 F(No.2)A 1992, and at the time the claim is made, the company is or has been a party to one or more deferred income agreements (defined in clause 61) which it entered into on or after 2 December 2004.

3. Subsection (2) provides that, when the section applies, the company is regarded, for corporation tax purposes, as receiving an amount of income equal to the "excess relief" (defined in subsection (4)) in the period in respect of which the claim is made, as income from the relevant trade.

4. Subsection (3) provides that, if the company is carrying on the relevant trade immediately after the end of a period of 15 years from the "operative date" (defined in subsection (6)), then at that time it is to be treated, for the purpose of section 40B F(No.2)A 1992, as incurring expenditure on film production or acquisition equal to the excess relief.

5. Subsection (4) defines the amount of "excess relief" as D x (1 – T1/T2) where D is the amount that the company is entitled to deduct by virtue of its claim under section 42 F(no.2)A 1992, T1 is the period of 15 years starting with the operative date and T2 is the period from the operative date to the final deferral date (defined in subsection (7)).

6. Subsection (5) defines the "15 year period".

7. Subsection (6) defines the "operative" date as the date that the film is first acquired (where the claim is for acquisition expenditure only) or the completion date (in all other cases).

8. Subsection (7) defines the "final deferral date". This is either the last date of deferral (see section 61(4)) in relation to the deferral agreement, or where there is more than one such agreement, the latest of the last dates of deferral in relation to any of them.

9. Subsection (8) defines "relevant film expenditure".

10. Subsection (9) makes it clear that any income received as a result of the section is in addition to any other income received.

11. Subsection (10) deems the section to have come into force on 2 December 2004.

BACKGROUND NOTE

12. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more

quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

13. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

14. Clauses 60 to 65 give effect to the scheme described in Part II of the Technical Note "Tax avoidance using film and partnership reliefs" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the 2004 Pre-Budget Report.

EXPLANATORY NOTE

CLAUSE 61: MEANING OF "DEFERRED INCOME AGREEMENT IN RESPECT OF A FILM"

SUMMARY

1. Clauses 60 to 65 counter tax avoidance by persons who benefit from film tax relief and defer income from the film for more than 15 years. The clauses apply where any deferred income agreements are entered into on or after 2 December 2004. Clause 61 applies to companies and defines a "deferred income agreement" for the purposes of clauses 60 and 62.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that a deferred income agreement in respect of a film is an agreement which satisfies either condition A (see subsection (2)) or condition B (see subsection (3)).

3. An agreement meets condition A in subsection (2) if it guarantees any person an amount of income from exploitation of the film, and has a last date of deferral more than 15 years from the operative date.

4. An agreement meets condition B in subsection (3) if it supplements or varies an earlier agreement that guarantees any person an amount of income from exploitation of the film, and the supplemented or varied agreement has a last date of deferral that:
   - is more than 15 years from the operative date (see clause 62(7)), and
   - is later than the last date of deferral in the earlier agreement (if there was such a date).

5. Subsection (4) defines the "last date of deferral" as the last date upon which any amount of the guaranteed income will or may arise.

6. Subsection (5) provides that it is irrelevant whether any of the agreements existed before 2 December 2004.

7. Subsection (6) defines an agreement as including a series of agreements and specifies that an agreement is deemed to "guarantee" an amount of income for these purposes when it is designed to ensure that at least that amount is received. The emphasis is therefore on what the agreement sets out to achieve, but does not imply a need for absolute certainty.

8. Subsection (7) provides that the section comes into force on 2 December 2004.

BACKGROUND NOTE

9. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

10. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent the use of them for tax avoidance.

11. Clauses 60 to 65 give effect to the scheme described in Part II of the Technical Note "Tax avoidance using film and partnership reliefs" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the 2004 Pre-Budget Report.

BOARD OF INLAND REVENUE RESOLUTION 23

FINANCE (No. 2) BILL 2005 CLAUSE 62

EXPLANATORY NOTE

CLAUSE 62: DEFERRED INCOME AGREEMENTS ENTERED INTO AFTER RELIEF CLAIMED

SUMMARY

1. Clauses 60 to 65 counter tax avoidance by persons who benefit from film tax relief and defer income from the film for more than 15 years. The clauses apply where any deferred income agreements are entered into on or after 2 December 2004. This clause applies where a deferred income agreement is entered into after a claim has been made, and claws back excessive relief in the period that the agreement is entered into.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the circumstances where the provision applies. These are that the company enters into a deferred income agreement (see clause 61) on or after 2 December 2004, and that at the time the agreement is made, the company has already claimed film tax relief under Section 42 F(No.2)A 1992.

3. Subsection (2) sets out what happens when the provision applies. The company is regarded, for corporation tax purposes, as receiving an amount of income (the "net excess relief" defined in subsections (4) and (5)) in its trade or business in the period in which it entered into the agreement.

4. Subsection (3) provides that if the company is carrying on the same trade or business immediately after the end of a period of 15 years from the "operative date" (see subsection (8)) then at that time it is to be treated, for the purpose of section 40B F(No.2)A 1992, as incurring expenditure on film production or acquisition of the same film equal to the "net excess relief".

5. Subsection (4) defines the "net excess relief" as the amount of "excess relief" reduced (but not below zero) by the "recovered amount".

6. Subsection (5) defines the amount of "excess relief". This is D x (1 – T1/T2) where D is the amount that the company was entitled to deduct though its claim under section 42 F(no.2)A 1992, T1 is the period of 15 years starting with the operative date and T2 is the period from the operative date to the final deferral date.

7. Subsection (6) defines the "recovered amount" as the total of
   - any amount treated under clause 60 as income of the company from its trade or business, as a result of the application of that clause in relation to the claim, and
   - the total of any amounts treated under this clause as income of the company from its trade or business, as a result of any previous application of this clause in relation to the claim.

8. Subsection (7) defines the "15 year period".

9. Subsection (8) defines the "operative date" as the date that the film is first acquired (where the claim is for acquisition expenditure only) or the completion date of the film (in all other cases).

10. Subsection (9) gives "deferred income agreement in respect of a film" the same meaning as in clause 60 (which uses the definition in clause 61) and defines the terms "final deferral date", "previous relevant agreement" and "relevant film expenditure".

11. Subsection (10) provides that it makes no difference whether the claim was made before, after or on 2 December 2004.

12. Subsection (11) makes it clear that any income received as a result of the clause is in addition to any other income received.

13. Subsection (12) deems the clause to have come into force on 2 December 2004.

BACKGROUND NOTE

14. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005.

The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15m or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

15. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent the use of them for tax avoidance.

16. Clauses 60 to 65 give effect to the scheme described in Part II of the Technical Note "Tax avoidance using film and partnership reliefs" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the Pre-Budget Report.

EXPLANATORY NOTE

CLAUSE 63: SECTIONS 60 TO 62: SUPPLEMENTARY

SUMMARY

1. Clauses 60 to 65 counter tax avoidance by persons who benefit from film tax relief and defer income from the film for more than 15 years. The clauses apply where any deferred income agreements are entered into on or after 2 December 2004. This clause contains provisions supplementary to clauses 60 to 62.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that a company is not considered to have entered into an agreement before 2 December 2004 for the purposes of clauses 60 to 62 unless it was unconditionally obliged to carry through with that agreement.

3. Subsection (2) makes it clear that for the purposes of subsection (1) an obligation that is contingent only on events outside the control of the company it is still an unconditional obligation, so that where the company has any choice or control over whether to continue with the agreement it will not be treated as an unconditional obligation.

4. Subsection (3) defines “film”, “original master version” and “relevant period” for the purposes of clauses 60 to 62, and this clause.

5. Subsection (4) defines when a film is completed for the purposes of clauses 60 to 62.

6. Subsection (5) deems this clause to have come into force on 2 December 2004.

BACKGROUND NOTE

7. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

8. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

9. Clauses 60 to 65 give effect to the scheme described in Part II of the Technical Note "Tax avoidance using film and partnership reliefs" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance using the films reliefs which was announced in the 2004 Pre-Budget Report.

BOARD OF INLAND REVENUE **FINANCE (No. 2) BILL 2005**
RESOLUTION 23 **CLAUSE 64**

EXPLANATORY NOTE

CLAUSE 64: TRANSITIONAL PROVISION FOR YEARS OF ASSESSMENT BEFORE THE YEAR 2005-06

SUMMARY

1. Clauses 60 to 65 counter tax avoidance by persons who benefit from film tax relief and defer income from the film for more than 15 years. The clauses apply where any deferred income agreements are entered into on or after 2 December 2004. This clause contains transitional income tax provisions for clauses 60 to 63 for years prior to 2005-06.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) apply clauses 60 and 62 for income tax purposes for 2004-05 and earlier years of assessment, substituting "person" for "company" and "income tax" for "corporation tax".

3. Subsection (3) applies clause 63 for income tax purposes for 2004-05 and earlier years of assessment, substituting "person" for "company".

4. Subsection (4) deems this clause to have come into force on 2 December 2004.

BACKGROUND NOTE

5. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides

rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

6. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

7. Clauses 60 to 65 give effect to the scheme described in Part II of the Technical Note "Note "Tax avoidance using film and partnership reliefs" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance using the films reliefs which was announced in the 2004 Pre-Budget Report.

EXPLANATORY NOTES

CLAUSE 65: DEFERRED INCOME AGREEMENTS: CORRESPONDING PROVISIONS IN ITTOIA 2005

SUMMARY

1. Clauses 60 to 65 counter tax avoidance by persons who benefit from film tax relief and defer income from the film for more than 15 years. The clauses apply where any deferred income agreements are entered into on or after 2 December 2004. This clause makes changes to the film tax reliefs legislation in the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) corresponding to those made for corporation tax in clauses 60 – 63.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts new sections 142A – 142E into ITTOIA 2005.

New section 142A

3. New section (142A) applies to deferred income agreements already in existence when a deduction under any of sections 138 – 140 ITTOIA 2005 is made. It makes similar provisions to those made by clause 60.

   - Subsection (1) sets out the circumstances where the provision applies. These are that a person makes a deduction under any of sections 138 – 140 ITTOIA 2005, and that at the time the deduction is made one or more deferred income agreements (defined in new section 142B) entered into on or after 2 December 2004 exist to which that person is or has been a party.

   - Subsection (2) provides that when the conditions in subsection (1) are met, an amount, equal to the "excess relief" defined in

subsection (4)), is to be brought into account as a trading receipt in the period in respect of which the deduction is made.

- Subsection (3) provides that if the person is carrying on the same trade immediately after the end of a period of 15 years from the "operative date" (see subsection (6)) then at that time they are to be treated, for the purpose of section 135 ITTOIA 2005, as incurring expenditure on production or acquisition of the film equal to the amount of excess relief.

- Subsection (4) defines the amount of excess relief as D x (1 – T1/T2) where D is the amount that the person deducts in the relevant period, T1 is the period of 15 years starting with the operative date and T2 is the period from the operative date to the final deferral date (see subsection (7)).

- Subsection (5) defines the period of 15 years.

- Subsection (6) defines the operative date as the date that the film is first acquired (where the deduction is of acquisition expenditure only) or the completion date (in all other cases).

- Subsection (7) defines the final deferral date. This is either the last date of deferral (see subsection (3)) in relation to the deferred income agreement, or where there are more than one such agreements, the latest of the dates of deferral in relation to those agreements.

- Subsection (8) defines "relevant film expenditure".

New section 142B

4. New section 142B of ITTOIA 2005 defines a "deferred income agreement in respect of a film", and related terms, for the purposes of new sections 142A and 142C. It makes similar provisions to those made by clause 61.

   - Subsection (1) provides that a deferred income agreement is an agreement which satisfies either condition A (see subsection (2)) or condition B (see subsection (3)).

   - An agreement meets condition A in subsection (2) if it guarantees any person an amount of income from exploitation of the film, and has a last date of deferral more than 15 years from the operative date.

- An agreement meets condition B in subsection (3) if it supplements or varies an earlier agreement that guarantees any person an amount of income from exploitation of the film, and the supplemented or varied agreement has a last date of deferral that is
  - more than 15 years from the operative date, and
  - later than the last date of deferral in the earlier agreement (if there was such a date).

- Subsection(4) defines the "last date of deferral" as the last date on which any amount of the guaranteed income will or may arise.

- Subsection (5) provides that it is irrelevant whether any of the agreements in subsections (2) or (3) existed before 2 December 2004.

- Subsection (6) defines an agreement as including a series of agreements and specifies that an agreement is deemed to "guarantee" an amount of income for these purposes when it is designed to ensure that at least that amount is received. The emphasis is therefore on what the agreement sets out to achieve, but does not imply a need for absolute certainty.

New section 142C

5. New section (142C) applies to deferred income agreements entered into after a deduction under any of sections 138 – 140 ITTOIA 2005, or a claim under S 42 F(No.2)A 1992 has been made. It makes similar provisions to those made by clause 86.

   - Subsections (1 - 3) set out the circumstances where the new section applies. These are that a person enters into a deferred income agreement (see subsection (8)) on or after 2 December 2004 and that at the time the agreement is made, either they had made a deduction under any of sections 138 – 140 ITTOIA 2005 (event A) or had claimed film tax relief under Section 42 F(No.2)A 1992 (event B). It makes no difference whether the claim was made before, after or on 2 December 2004.

   - Subsection (4) provides that, when the section applies, an amount is to be brought into account as a trading receipt equal to the "net excess relief" (see section 142D) in the period when the deferred income agreement is entered into.

- Subsection (5) provides that if the person is carrying on the same trade immediately after the end of a period of 15 years from the "operative date" (see subsection (7)) then at that time they are to be treated, for the purpose of section 135 ITTOIA 2005, as incurring expenditure on production or acquisition of the film equal to the net excess relief (see section 142D).

- Subsection (6) defines the "15 year period".

- Subsection (7) defines the operative date as the date that the film is first acquired (where the claim or deduction is in respect of acquisition expenditure only) or the completion date (in all other cases).

- Subsection (8) provides that a "deferred income agreement" has the same meaning as for new section 142A (and defined in new section 142B).

- Subsection (9) defines "relevant film expenditure".

New section 142D

6. New section 142D defines the "net excess relief" for the purpose of new section 142C.

- Subsection (1) provides that the net excess relief is the amount of "excess relief" reduced (but not below zero) by the "recovered amount".

- Subsection (2) defines the amount of "excess relief". This is D x (1 – T1/T2) where D is
  - in the case of event A, the amount of the deduction allowed,
  - in the case of event B, the amount of the claim under section 42 F(No.2)A 1992.

T1 is the period of 15 years starting with the operative date and T2 is the period from the operative date to the final deferral date.

- Subsection (3) defines the "final deferral date" as the last date of deferral under the deferred income agreement in 142C(1)(a).

- Subsections (4) and (5) define the amount of reclaimed relief in cases of event A and event B respectively.

Where event A has occurred, the "recovered amount" is the total of:

- any amount treated as a receipt under new section 142A as a result of the deduction made, and
- the total amounts, if any, treated under new section 142C as receipts because of its previous application to the deduction.

Where event B has occurred, the "recovered amount" is the total of:

- any amount treated as a receipt under clause 60 in relation to the claim,
- the total of any amounts treated as receipts under clause 62 in relation to the claim, and
- the total amounts, if any, treated under new section 142C as receipts, because of its previous application in relation to the claim.

- Subsection (6) defines a "previous relevant agreement" as any previous deferred income agreement in respect of the film in question entered into after the deduction (for event A) or claim (for event B) was made.

New section 142E

7. New section 142E contains provisions relating to the time that a person is held to have entered into an agreement.

   - Subsection (1) provides that a person is not considered to have entered into an agreement before 2 December 2004 for the purposes of new sections 142A to 142D unless it was unconditionally obliged to carry through with that agreement.

   - Subsection (2) makes it clear that for the purposes of subsection (1) an obligation that is contingent only on events outside the control of the person is still an unconditional obligation, so that where a person has any choice or control over whether to continue with the agreement it will not be treated as an unconditional obligation.

8. Subsection (2) of clause 65 provides that the new sections have effect for 2005-06 and subsequent years of assessment.

BACKGROUND NOTES

9. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15m or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

10. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent the use of them for tax avoidance.

11. Clauses 60 to 65 give effect to the scheme described in Part II of the Technical Note "Tax avoidance using film and partnership reliefs", published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance using the films reliefs which was announced in the Pre-Budget Report 2004.

EXPLANATORY NOTE

CLAUSE 66: WHEN A CHARGEABLE EVENT OCCURS

SUMMARY

1. Clauses 66 to 71 counter tax avoidance schemes used by groups of companies to convert the deferral of tax offered by the special reliefs for expenditure on the production or acquisition of films into a permanent tax advantage. These rules apply to all exit events occurring on or after 2 December 2004. Clause 66 determines when a chargeable exit event occurs.

DETAILS OF THE CLAUSE

2. Subsection (1) details when a chargeable event occurs in relation to a company. It provides that the company must be party to an agreement that exploits rights in or over a film and that a claim for the special film reliefs is made at any time by that or another company. The exit charge is designed to apply even though the company that effects the exit may not be the same company that benefited from the relief afforded by the special film reliefs.

3. Subsection (2) defines when the company is a 'film rights company'. The company must be a party to an agreement that provides for a guaranteed amount of income. The company must also carry on a trade or business of exploiting film or receive income derived from films and it must be a member of a group for group relief purposes.

4. Subsection (3) defines the circumstances in which an agreement guarantees an amount of income. It is when the agreement is designed to secure that the company receives at least a minimum amount of income. The emphasis is therefore on what the agreement sets out to achieve, but "guarantee" does not require a need for absolute certainty.

5. Subsection (4) provides for an exit charge to arise should any of the following events happen -
   - the company ceases to be a member of the group for group relief purposes, or
   - the company ceases to be within the charge to corporation tax, or
   - the rights that give rise to the guaranteed minimum income are disposed of for consideration that is less than the net present value of those rights (see clause 68).

6. Subsection (5) details the special film reliefs for which a claim is made as Section 42 Finance (No.2) Act 1992.

7. Subsection (6) defines the guaranteed income agreement and guaranteed income. The guaranteed income agreement is one that satisfies the definition in subsection (3) and the guaranteed income is income which is or would be income of the company's trade from exploitation of the film under the agreement.

8. Subsection (7) provides for more than one agreement to secure the guaranteed income and construes the term 'film' in accordance with the Films Act 1985. It also provides that the clause shall apply to a company that has succeeded another person under the guaranteed income agreement.

9. Subsection (8) deems this clause to have come into force on 2 December 2004.

BACKGROUND NOTES

10. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992

11. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

12. Clauses 66 to 71 give effect to the scheme described in Part III of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the Pre-Budget Report 2004.

EXPLANATORY NOTE

CLAUSE 67: CONSEQUENCES OF A CHARGEABLE EVENT: EXIT EVENT X OR Y

SUMMARY

1. Clauses 66 to 71 counter tax avoidance schemes used by groups of companies to convert the deferral of tax offered by the special reliefs for expenditure on the production or acquisition of films into a permanent tax advantage. These rules apply to all exit events occurring on or after 2 December 2004. Clause 67 deals with the consequences of an exit either through a company's ceasing to be a member of a group or its ceasing to be within the charge to corporation tax.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for an exit charge where the company either ceases to be a member of a group or ceases to be within the charge to corporation tax.

3. Subsection (2) treats the company as receiving an amount of trading income equal to the chargeable amount immediately before the exit event occurs.

4. Subsection (3) provides that where the company leaves the group an amount equal to the exit charge is treated as if it was a loss of the company's trade. This is because the company will remain chargeable to corporation tax in respect of the minimum guaranteed income as it arises after the exit. This subsection prevents a double charge to tax in respect of this income.

5. Subsection (4) deals with how the loss provided for in subsection (3) is to be set off. It is carried forward and can be set off against the minimum guaranteed income as it arises. This loss cannot be set off against any other income or gains of the company, and in

particular cannot be set against the trading income treated as arising under subsection (2).

6. Subsection (5) provides that the chargeable amount is equal to the value of the rights to the guaranteed income immediately before the exit event (see clause 70).

7. Subsection (6) provides that any income of, or losses brought forward to a period as a result of applying this clause are in addition to any other income of, or losses brought forward to the period.

8. Subsection (7) defines the exit accounting period of the company as the accounting period in which the exit event occurs.

9. Subsection (8) deems this clause to come into effect from 2 December 2004.

BACKGROUND NOTE

10. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992

11. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

12. Clauses 66 to 71 give effect to the scheme described in Part III of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the Pre-Budget Report 2004.

BOARD OF INLAND REVENUE **FINANCE (No. 2) BILL 2005**
RESOLUTION 23 **CLAUSE 68**

EXPLANATORY NOTE

CLAUSE 68: EXIT EVENT Z: A RELEVANT DISPOSAL AT AN UNDERVALUE

SUMMARY

1. Clauses 60 to 71 counter tax avoidance schemes used by groups of companies to convert the deferral of tax offered by the special reliefs for expenditure on the production or acquisition of films into a permanent tax advantage. These rules apply to all exit events occurring on or after 2 December 2004. Clause 68 deals with a disposal of film rights at undervalue.

DETAILS OF THE CLAUSE

2. Subsection (1) applies to a relevant disposal of the guaranteed income at undervalue.

3. Subsection (2) defines a relevant disposal. It is a disposal of rights to the guaranteed income under the guaranteed income agreement to a third party. The subsection allows for a disposal either directly or indirectly to a third party to cater for the situation where the rights are transferred to another group company before being transferred to the third party.

4. Subsection (3) defines the disposed rights to be valued as the rights to the guaranteed income that are the object of the disposal.

5. Subsection (4) defines a disposal at undervalue as one where the consideration received for disposal of the rights is less than the value of the disposed rights immediately before the disposal (see clause 70).

6. Subsection (5) provides for the provisions to apply where the rights are disposed of alone or as part of a larger disposal.

7. Subsection (6) enables a just and reasonable apportionment of the disposal consideration of a larger disposal to arrive at the amount attributable to the disposed rights.

8. Subsection (7) defines disposal, disposal consideration and third party for these purposes. In particular it identifies a third party as any person who is not a member of the same group as the company for group relief purposes.

   - ensures disposal includes any surrender, giving up or assignment,
   - defines disposal consideration as the amount brought into account as income of the company's trade, and
   - identifies a third party as any person who is not a member of the same group as the company for group relief purposes.

9. Subsection (8) deems this clause to come into force on 2 December 2004.

BACKGROUND NOTES

10. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

11. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

12. Clauses 66 to 71 give effect to the scheme described in Part III of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004.

They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the Pre-Budget Report 2004.

BOARD OF INLAND REVENUE **FINANCE (No. 2) BILL 2005**
RESOLUTION 23 **CLAUSE 69**

EXPLANATORY NOTE

CLAUSE 69: CONSEQUENCES OF A CHARGEABLE EVENT: EXIT EVENT Z

SUMMARY

1. Clauses 66 to 71 counter tax avoidance schemes used by groups of companies to convert the deferral of tax offered by the special reliefs for expenditure on the production or acquisition of films into a permanent tax advantage. These rules apply to all exit events occurring on or after 2 December 2004. Clause 69 deals with the consequences of a disposal of rights by a company at undervalue.

DETAILS OF THE CLAUSE

2. Subsection (1) applies the section to a relevant disposal at undervalue.

3. Subsection (2) treats the company as receiving an amount of trading income as a result of the exit event. The amount is deemed to arise immediately before the exit event occurs.

4. Subsection (3) provides that where another company acquires the guaranteed income rights it will deemed to have a trading loss brought forward equal to the chargeable amount in the accounting period that it acquires those rights.

5. Subsection (4) similarly provides a deemed loss brought forward for a person acquiring the guaranteed income rights who is within the charge to income tax.

6. Subsection (5) provides that a loss brought forward under either subsection (3) or (4) can only be set off against future income arising from the disposed rights. The losses cannot be set-off against any other income or gains.

7. Subsection (6) determines the chargeable amount as the difference between the disposal consideration and the value of the disposed rights.

8. Subsection (7) provides that any income of, or losses brought forward to a period as a result of applying this clause are in addition to any other income of, or losses brought forward to the period.

9. Subsection (8) deems this clause to come into force on 2 December 2004.

BACKGROUND NOTES

10. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15m or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

11. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

12. Clauses 66 to 71 give effect to the scheme described in Part III of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the Pre-Budget Report 2004.

BOARD OF INLAND REVENUE
RESOLUTION 23

FINANCE (No. 2) BILL 2005
CLAUSE 70

EXPLANATORY NOTE

CLAUSE 70: VALUATION OF THE "RIGHTS TO GUARANTEED INCOME" AND "DISPOSED RIGHTS"

SUMMARY

1. Clauses 66 to 71 counter tax avoidance schemes used by groups of companies to convert the deferral of tax offered by the special reliefs for expenditure on the production or acquisition of films into a permanent tax advantage. These rules apply to all exit events occurring on or after 2 December 2004. Clause 70 deals with the valuation of rights to income and the disposed rights.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out how the value of the rights to the income is to be calculated in the event of an exit by ceasing to be a member of a group or by ceasing to be within the charge to corporation tax.

3. Subsection (2) sets out how the value of the rights to the income is to be calculated where the exit is a disposal of the rights to the income at undervalue.

4. Subsection (3) sets the discount rate to be used in the calculations in subsections (1) and (2) at 3.5 per cent and enables this rate to be changed from time to time by Treasury regulations.

5. Subsection (4) links the making of the regulations in subsection (3) to the Treasury powers in S178(3) Finance Act 1989.

6. Subsection (5) enables the temporal discount rate applied by Section 178 Finance Act 1989 to be applied to this provision.

7. Subsection (6) deems this clause to come into effect on 2 December 2004.

BACKGROUND NOTES

8. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

9. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

10. Clauses 66 to 71 give effect to the scheme described in Part III of the Technical Note “Tax avoidance using film and partnership relief” published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the Pre-Budget Report 2004.

BOARD OF INLAND REVENUE
RESOLUTION 23 | FINANCE (No. 2) BILL 2005
CLAUSE 71

EXPLANATORY NOTE

CLAUSE 71: MEANING OF "COMPANY" AND RELATED TERMS

SUMMARY

1. Clauses 66 to 71 counter tax avoidance schemes used by groups of companies to convert the deferral of tax offered by the special reliefs for expenditure on the production or acquisition of films into a permanent tax advantage. These rules apply to all exit events occurring on or after 2 December 2004. Clause 71 deals with the meaning of "company" and of related terms.

DETAILS OF THE CLAUSE

2. Subsection (1) defines when two companies are members of the same group of companies for the purposes of clauses 66 to 70.

3. Subsection (2) provides the definition of a 'principal company' for the purposes of those clauses.

4. Subsection (3) links the definition of a '75 per cent subsidiary' and 'company' to similar definitions in the group relief provisions in Section 402 ICTA 1988.

5. Subsection (4) deems the clause to come into effect on 2 December 2004.

BACKGROUND

6. The current film tax reliefs are at sections 40A to 43 Finance (No.2) Act 1992, section 48 Finance (No.2) Act 1997 and sections 99 to 101 Finance Act 2002. For income tax purposes only, sections 130 – 144 ITTOIA 2005 replace these from 6 April 2005. The film reliefs treat expenditure on the production or acquisition

of the master version of a film, which would otherwise be on capital account, as a revenue expense. The legislation provides rules on how this expenditure can be written off for tax purposes. For qualifying British films expenditure can be written off more quickly. For qualifying films costing £15 million or less expenditure may be written off immediately under section 48 F(No. 2)A 1997 or, for other qualifying films, over three years under section 42 F(No. 2)A 1992.

7. The Government has acted on a number of occasions, since the film reliefs were introduced, to prevent their use for tax avoidance.

8. Clauses 66 to 71 give effect to the scheme described in Part III of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance through the films tax reliefs which was announced in the Pre-Budget Report 2004.