

*This draft supersedes that laid on 22nd February 2007.*

*Draft Regulations laid before the House of Commons under section 52 of the Finance Act 2006 for approval by resolution of that House.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2007 No.**

**CORPORATION TAX**

**The Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007**

*Made*     -   -   -   -

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*Coming into force in accordance with regulation 1*

The Treasury in exercise of the powers conferred upon them by section 52 of the Finance Act 2006<sup>(a)</sup> make the following Regulations.

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with section 52(4) of the Finance Act 2006.

*Preliminary*

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007 and shall come into force on the day after the day on which they are made.

(2) The provisions of Chapter 3 of Part 3 of the Finance Act 2006 (films and sound recordings) applied by these Regulations shall have effect as if they had been in force at all material times.

**Interpretation**

**2.** In these Regulations a reference to a “Chapter”, “Part”, “section” or “Schedule” without more is a reference to a Chapter, Part, section or Schedule of the Finance Act 2006, unless the context otherwise requires.

**Application of enactments**

**3.** The provisions of Chapter 3 of Part 3, the enactments amended by that Chapter and the Corporation Tax Acts apply with the modifications provided in regulations 4 to 12 in relation to films that commenced principal photography before 1st January 2007 but are not completed before that date.

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(a) 2006 c. 25; section 52 was amended by S.I. 2006/3265.

**Modification of section 32 (meaning of “film production company”)**

4. In section 32 (meaning of “film production company”), in subsection (3), in relation to a film that commenced principal photography before 1st April 2006, omit “pre-production,” in both places.

**Modification of section 40 (conditions of relief: British film)**

5. In section 40 (conditions of relief: British film) at the end insert “for the purposes of film tax relief”.

**Modification of section 46 (films: withdrawal of existing reliefs (corporation tax))**

6.—(1) Modify section 46 (films: withdrawal of existing reliefs (corporation tax))(a) as follows.

(2) In the provisions listed below for the words “commences principal photography on or after 1st January 2007” substitute “is certified by the Secretary of State under Schedule 1 to the Films Act 1985(b) as a British film for the purposes of film tax relief and is intended for theatrical release at the time the film commences principal photography”.

The provisions are—

- subsection (1)(a);
- subsection (1)(b)(i);
- subsection (3)(a); and
- subsection (3)(b)(i).

(3) In subsections (1)(b)(ii) and (3)(b)(ii) for “1st October 2007” substitute “31st March 2008”.

**Modification of section 47 (films: withdrawal of existing reliefs (income tax))**

7.—(1) Modify section 47 (films: withdrawal of existing reliefs (income tax))(c) as follows.

(2) In the provisions listed below for the words “commences principal photography on or after 1st January 2007” substitute “is certified by the Secretary of State under Schedule 1 to the Films Act 1985 as a British film for the purposes of film tax relief and is intended for theatrical release at the time the film commences principal photography”.

The provisions are—

- subsection (1)(a);
- subsection (1)(b)(i);
- subsection (3)(a); and
- subsection (3)(b)(i).

(3) In subsections (1)(b)(ii) and (3)(b)(ii) for “1st October 2007” substitute “31st March 2008”.

**Modification of section 51 (supplementary provisions)**

8.—(1) In the substitution made by section 51(1) (supplementary provisions) for paragraph 80 (exclusion of films and sound recordings) of Schedule 29 to the Finance Act 2002 (corporation

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(a) Section 46 was amended by S.I. 2006/3265.

(b) 1985 c. 21; Schedule 1 was amended by section 578 of, and paragraph 9(1) and (2) of Schedule 2 to, the Capital Allowances Act 2001 (c. 2), sections 882 and 883 of, and paragraphs 397 and 399 of Part 2 of Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5), S.I. 1999/2386, S.I. 2000/756, S.I. 2006/643, S.I. 2006/3430.

(c) Section 47 was amended by S.I. 2006/3265.

tax: gains and losses from intangible fixed assets)(a) modify substituted paragraph 80A(2)(b) as follows.

(2) In paragraphs (a) and (b) for the words “that commenced principal photography before 1st January 2007” substitute “to which Schedule 4 of the Finance Act 2006 does not apply”.

(3) In paragraph (b) for “1st October 2007” substitute “31st March 2008”.

#### **Modification of Schedule 4 (taxation of activities of film production company)**

**9.** In Schedule 4 (taxation of activities of film production company), in paragraph 1 (films to which this Schedule applies)(c) for the words “commence principal photography on or after 1st January 2007” substitute “are certified by the Secretary of State under Schedule 1 to the Films Act 1985 as British films for the purposes of film tax relief and are intended for theatrical release at the time principal photography commences”.

#### **Modifications of Schedule 5 (film tax relief: further provisions)**

**10.**—(1) Modify Schedule 5 (film tax relief: further provisions) as follows.

(2) In paragraph 1(1) omit the words from “, and” to the end.

(3) After paragraph 15 insert—

“**15A.** After section 6 of that Act insert—

“**6A.** Where the Secretary of State refuses an application for interim or final certification of a film as a British film for the purposes of film tax relief, Schedule 1A to this Act has effect with respect to the certification by the Secretary of State of a master negative, tape or disc of a film as a qualifying film, tape or disc for the purposes of section 40D of the Finance (No. 2) Act 1992(d) (election for sections 40A and 40B not to apply) or Chapter 9 of Part 2 of the Income Tax (Trading and Other Income) Act 2005(e) (election relating to tax treatment of films expenditure).”.”.

(4) In paragraph 17, in the substituted paragraph 1 of Schedule 1 to the Films Act 1985 after “Schedule” insert “and Schedule 1A” in each place.

(5) In paragraph 19, in the substituted paragraph 3 of Schedule 1 to the Films Act 1985, in subparagraph (4) after “otherwise” insert “and except in relation to sections 46 and 47 (films: withdrawal of existing reliefs) of, and paragraph 1 of Schedule 4 (taxation of activities of film production company) to, the Finance Act 2006”.

(6) After paragraph 20 insert—

“**20A.** For paragraphs 4A to 4C of that Schedule(f) substitute—

“**4A.**—(1) The cultural test for a film other than a documentary (see paragraph 4B) or an animation (see paragraph 4C) is as follows.

(2) Subject to sub-paragraph (7), a film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 16 points shall be awarded in respect of the content of the film as follows—

(a) up to 4 points depending on the percentage of the film that is set in the United Kingdom as follows—

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(a) 2002 c.23.

(b) Substituted paragraph 80A(2) was amended by S.I. 2006/3265.

(c) Paragraph 1 was amended by S.I. 2006/3265.

(d) 1992 c. 48; section 40D was inserted by section 578 of, and paragraph 82 of Schedule 2 to, the Capital Allowances Act 2001 (c. 2).

(e) 2005 c. 5.

(f) Paragraphs 4A to 4C of Schedule 1 to the Films Act 1985 were inserted by S.I. 2006/643 and substituted by S.I. 2006/3430.

- (i) 4 points for at least 75%;
  - (ii) 3 points for at least 66%;
  - (iii) 2 points for at least 50%;
  - (iv) 1 point for at least 25%;
- (b) up to 4 points depending on the number of the characters depicted in the film that are British as follows—
- (i) if there are more than three characters depicted in the film, 4 points if two or three of the three lead characters are British or, if only one of the three lead characters is British, 2 points if he is the first or second lead, 1 point if he is the third lead;
  - (ii) if there are only three characters depicted in the film, 4 points if two or three of them are British or, if only one of them is British, 2 points if he is the first or second lead, 1 point if he is the third lead;
  - (iii) if there are only two characters depicted in the film, 4 points if both of them are British, 2 points if one of them is;
  - (iv) if there is only one character depicted in the film, 4 points if he is British;
- (c) 4 points if the film depicts a British story;
- (d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—
- (i) 4 points for at least 75%;
  - (ii) 3 points for at least 66%;
  - (iii) 2 points for at least 50%;
  - (iv) 1 point for at least 25%.
- (4) Up to 4 points may be awarded in respect of the contribution of the film to the promotion, development and enhancement of British culture.
- (5) Up to 3 points shall be awarded in respect of work carried out in the making of the film as follows—
- (a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
    - (i) principal photography;
    - (ii) visual effects;
    - (iii) special effects;
  - (b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
    - (i) performing and recording the music score created for the film;
    - (ii) audio post production;
    - (iii) picture post production.
- (6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the film as follows—
- (a) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;
  - (b) 1 point if at least one of the scriptwriters (or, if there are more than three, of the three lead scriptwriters) is a qualifying person;
  - (c) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;

- (d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
  - (e) 1 point if at least one of the actors (or, if there are more than three, of the three lead actors) is a qualifying person;
  - (f) 1 point if at least 50% of the cast are qualifying persons;
  - (g) 1 point if at least one of the heads of department is a qualifying person;
  - (h) 1 point if at least 50% of the production crew are qualifying persons.
- (7) A film that is awarded all the points available under sub-paragraphs (3)(d) (language), (5) (where work carried out) and (6) (personnel) does not pass the cultural test unless—
- (a) it is awarded at least 2 points under sub-paragraph (3)(a) (setting),
  - (b) it is awarded at least 2 points under sub-paragraph (3)(b) (characters), or
  - (c) it is awarded 4 points under sub-paragraph (3)(c) (story).

**4B.**—(1) The cultural test for a documentary is as follows.

(2) Subject to sub-paragraph (7), a film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 16 points shall be awarded in respect of the content of the film as follows—

- (a) up to 4 points depending on the percentage of the film that is set in the United Kingdom as follows—
  - (i) 4 points for at least 75%;
  - (ii) 3 points for at least 66%;
  - (iii) 2 points for at least 50%;
  - (iv) 1 point for at least 25%;
- (b) up to 4 points depending on the number of the characters depicted in the film that are British as follows—
  - (i) if there are more than three characters depicted in the film, 4 points if two or three of the three lead characters are British or, if only one of the three lead characters is British, 2 points if he is the first or second lead, 1 point if he is the third lead;
  - (ii) if there are only three characters depicted in the film, 4 points if two or three of them are British or, if only one of them is British, 2 points if he is the first or second lead, 1 point if he is the third lead;
  - (iii) if there are only two characters depicted in the film, 4 points if both of them are British, 2 points if one of them is;
  - (iv) if there is only one character depicted in the film, 4 points if he is British;
- (c) 4 points if the film depicts a British story;
- (d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—
  - (i) 4 points for at least 75%;
  - (ii) 3 points for at least 66%;
  - (iii) 2 points for at least 50%;
  - (iv) 1 point for at least 25%.

(4) Up to 4 points may be awarded in respect of the contribution of the film to the promotion, development and enhancement of British culture.

(5) Up to 3 points shall be awarded in respect of work carried out in the making of the film as follows—

- (a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
  - (i) shooting;
  - (ii) visual effects;
  - (iii) research and development;
  - (iv) special effects;
- (b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
  - (i) performing and recording the music score created for the film;
  - (ii) audio post production;
  - (iii) picture post production.

(6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the film as follows—

- (a) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;
- (b) 1 point if at least one of the scriptwriters (or, if there are more than three, of the three lead scriptwriters) is a qualifying person;
- (c) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;
- (d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
- (e) 1 point if at least one of the participants (or, if there are more than three, of the three lead participants) is a qualifying person;
- (f) 1 point if at least 50% of the participants are qualifying persons;
- (g) 1 point if at least one of the heads of department is a qualifying person;
- (h) 1 point if at least 50% of the production crew are qualifying persons.

(7) A film that is awarded all the points available under sub-paragraphs (3)(d) (language), (5) (where work carried out) and (6) (personnel) does not pass the cultural test unless—

- (a) it is awarded at least 2 points under sub-paragraph (3)(a) (setting),
- (b) it is awarded at least 2 points under sub-paragraph (3)(b) (characters), or
- (c) it is awarded 4 points under sub-paragraph (3)(c) (story).

**4C.—**(1) The cultural test for an animation is as follows.

(2) Subject to sub-paragraph (7), a film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 16 points shall be awarded in respect of the content of the film as follows—

- (a) up to 4 points depending on the percentage of the film that is set in the United Kingdom as follows—
  - (i) 4 points for at least 75%;
  - (ii) 3 points for at least 66%;
  - (iii) 2 points for at least 50%;
  - (iv) 1 point for at least 25%;
- (b) up to 4 points depending on the number of the characters depicted in the film that are British as follows—

- (i) if there are more than three characters depicted in the film, 4 points if two or three of the three lead characters are British or, if only one of the three lead characters is British, 2 points if he is the first or second lead, 1 point if he is the third lead;
  - (ii) if there are only three characters depicted in the film, 4 points if two or three of them are British or, if only one of them is British, 2 points if he is the first or second lead, 1 point if he is the third lead;
  - (iii) if there are only two characters depicted in the film, 4 points if both of them are British, 2 points if one of them is;
  - (iv) if there is only one character depicted in the film, 4 points if he is British;
- (c) 4 points if the film depicts a British story;
- (d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—
- (i) 4 points for at least 75%;
  - (ii) 3 points for at least 66%;
  - (iii) 2 points for at least 50%;
  - (iv) 1 point for at least 25%.
- (4) Up to 4 points may be awarded in respect of the contribution of the film to the promotion, development and enhancement of British culture.
- (5) Up to 3 points shall be awarded in respect of work carried out in the making of the film as follows—
- (a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
    - (i) shooting;
    - (ii) visual design;
    - (iii) layout and storyboarding;
    - (iv) visual effects;
    - (v) special effects;
  - (b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
    - (i) performing and recording the music score created for the film;
    - (ii) voice recording;
    - (iii) audio post production;
    - (iv) picture post production.
- (6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the film as follows—
- (a) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;
  - (b) 1 point if at least one of the scriptwriters (or, if there are more than three, of the three lead scriptwriters) is a qualifying person;
  - (c) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;
  - (d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
  - (e) 1 point if at least one of the actors (or, if there are more than three, of the three lead actors) is a qualifying person;

- (f) 1 point if at least 50% of the cast are qualifying persons;
- (g) 1 point if at least one of the heads of department is a qualifying person;
- (h) 1 point if at least 50% of the production crew are qualifying persons.

(7) A film that is awarded all the points available under sub-paragraphs (3)(d) (language), (5) (where work carried out) and (6) (personnel) does not pass the cultural test unless—

- (a) it is awarded at least 2 points under sub-paragraph (3)(a) (setting),
- (b) it is awarded at least 2 points under sub-paragraph (3)(b) (characters), or
- (c) it is awarded 4 points under sub-paragraph (3)(c) (story).”.

**20B.** In paragraph 4D(a) of that Schedule—

- (a) in sub-paragraph (4)(a) for “paragraph 4A(4)(a)” substitute “paragraph 4A(5)(a)(i)”;
- (b) for sub-paragraph (4)(b) substitute—
  - “(b) for the purposes of the rest of paragraph 4A(5) and paragraphs 4B(5) and 4C(5) (other matters), by reference to the amount of expenditure on the work.”;
- (c) in sub-paragraph (5) for “paragraph 4A(4), 4B(4) or 4C(4) (points awarded in respect of the making of the film)” substitute “paragraph 4A(5), 4B(5) or 4C(5) (where work carried out)”.

(7) After paragraph 25 insert—

## “PART 2A

### CERTIFICATION OF MASTER NEGATIVE, TAPE OR DISC OF A FILM AS A QUALIFYING FILM, TAPE OR DISC FOR THE PURPOSES OF SECTION 40D OF THE FINANCE (NO. 2) ACT 1992 OR CHAPTER 9 OF PART 2 OF ITTOIA 2005

**25A.** After Schedule 1 to the Films Act 1985 insert—

## “SCHEDULE 1A

Section 6A

### CERTIFICATION OF MASTER NEGATIVE, TAPE OR DISC OF A FILM AS A QUALIFYING FILM, TAPE OR DISC FOR THE PURPOSES OF SECTION 40D OF THE FINANCE (NO. 2) ACT 1992 OR CHAPTER 9 OF PART 2 OF THE INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

*Preliminary*

**1.—(1)** In this Schedule—

“maker”, in relation to a film, means the person by whom the arrangements necessary for the making of the film are undertaken;

“master disc”, in relation to a film, means the original master film disc or the original master audio disc of the film;

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(a) Paragraph 4D of Schedule 1 to the Films Act 1985 was inserted by S.I. 2006/643 and amended by S.I. 2006/3430.

“master negative”, in relation to a film, means the original master negative of the film and its soundtrack (if any);

“master tape”, in relation to a film, means the original master film tape or the original master audio tape of the film;

(2) Any reference in this Schedule to a master negative, tape or disc certified under paragraph 3(1) or to a certificate issued under that provision includes a reference to a master negative, tape or disc certified in pursuance of section 72(7)(b) of the Finance Act 1982(a) as originally enacted or to a certificate issued in pursuance of that provision.

### **Applications for certification of master negatives, tapes and discs**

2.—(1) An application for the certification by the Secretary of State of a master negative, master tape or master disc of a film as a qualifying film, qualifying tape or qualifying disc for the purposes of section 40D of the Finance (No 2) Act 1992, or Chapter 9 of Part 2 of the Income Tax (Trading and Other Income) Act 2005, may be made by any person who has incurred expenditure on the production or acquisition of that negative, tape, or disc.

(2) In sub-paragraph (1) the reference to the acquisition of a master negative, tape or disc includes a reference to the acquisition of any description of rights in it.

(3) On an application under this paragraph for the certification of a master negative, tape or disc the applicant shall—

(a) produce to the Secretary of State such books and other documents relating to it; and

(b) furnish to the Secretary of State such other information with respect to it,

as the Secretary of State may require for the purpose of determining the application.

(4) Any information furnished for the purposes of sub-paragraph (3) shall, if the Secretary of State so directs, be accompanied by a statutory declaration as to the truth of the information made by the person furnishing it.

### **Certification by Secretary of State of master negatives, tapes and discs**

3.—(1) If the Secretary of State is satisfied that a master negative, tape or disc with respect to which an application is made under paragraph 2 is a master negative, tape or disc of a film which, in his opinion, is a British film for the purposes of this Schedule, he shall certify that negative, tape or disc as a qualifying film, qualifying tape or qualifying disc for the purposes of section 40D of the Finance (No 2) Act 1992 or, as the case may be, Chapter 9 of Part 2 of the Income Tax (Trading and Other Income) Act 2005.

(2) If the Secretary of State is for any reason not satisfied as mentioned in sub-paragraph (1) he shall refuse the application.

(3) If it appears to the Secretary of State that any negative, tape or disc certified by him under sub-paragraph (1) ought for any reason not to have been so certified he shall revoke its certification.

(4) Where an application is made under paragraph 2 in relation to a negative, tape or disc of a film which has already been certified by the Secretary of State under sub-paragraph (1) on a prior application, the Secretary of State may issue the applicant with a duplicate or copy of the certificate issued on that prior application.

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(a) 1982 c. 39. Section 72 was repealed in part by sections 6(2) and 7(1) of, and Schedule 2 to, the Films Act 1985, the remainder was repealed by section 164(4) of, and Schedule 2 to, the Capital Allowances Act 1990 (c. 1).

### **British films for purposes of the Schedule**

4.—(1) A film is a British film for the purposes of this Schedule if it passes the relevant cultural test (see paragraph 4A, 4B or 4C).

(2) For the purposes of this paragraph and paragraphs 4A to 4D a state shall be treated as if it were a member State if—

- (a) it is a party to an agreement under Article 310 of the Treaty establishing the European Community, and
- (b) the agreement requires a maker of a film who is ordinarily resident or registered in that state to be treated for the purposes of this Schedule in the same way as a maker of a film who is ordinarily resident or registered in a member State.

(3) This paragraph has effect subject to paragraph 5 (excluded films).

4A.—(1) The cultural test for a film other than a documentary (see paragraph 4B) or an animation (see paragraph 4C) is as follows.

(2) A film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 4 points shall be awarded in respect of the content of the film as follows—

- (a) 1 point if at least 50% of the film is set in the United Kingdom;
- (b) 1 point if at least one of the three principal characters depicted in the film (or, if there are three or fewer characters depicted in the film, any of them) is a British character;
- (c) 1 point if the film depicts a British story;
- (d) 1 point if at least 50% of the original dialogue is recorded in the English language or in a recognised regional or minority language.

(4) Up to 15 points shall be awarded in respect of work carried out in the making of the film as follows—

- (a) up to 6 points depending on the percentage of principal photography that is carried out in the United Kingdom as follows—
  - (i) 6 points for 75%,
  - (ii) 5 points for 62.5%,
  - (iii) 4 points for 50%,
  - (iv) 3 points for 37.5%,
  - (v) 2 points for 25%,
  - (vi) 1 point for 10%;
- (b) up to 4 points depending on the percentage of the work on visual effects that is carried out in the United Kingdom as follows—
  - (i) 4 points for 75%,
  - (ii) 3 points for 50%,
  - (iii) 2 points for 25%,
  - (iv) 1 point for 10%;
- (c) 1 point if at least 75% of the work on special effects is carried out in the United Kingdom;
- (d) up to 2 points depending on the percentage of the work on performing and recording the original music score created for the film that is carried out in the United Kingdom as follows—
  - (i) 2 points for 75%,
  - (ii) 1 point for 50%;

- (e) 1 point if at least 75% of the work on audio post production is carried out in the United Kingdom;
  - (f) 1 point if at least 75% of the work on image processing is carried out in the United Kingdom.
- (5) Up to 13 points shall be awarded in respect of the personnel involved in the making of the film as follows—
- (a) 2 points if the director (or, if there is more than one, the lead director) is a qualifying person;
  - (b) up to 2 points depending on the number of the scriptwriters who are qualifying persons as follows—
    - (i) if there is only one scriptwriter, 2 points if he is a qualifying person,
    - (ii) if there are only two scriptwriters, 2 points if both of them are qualifying persons, 1 point if one of them is,
    - (iii) if there are only three scriptwriters, 2 points if two or more of them are qualifying persons, 1 point if one of them is,
    - (iv) if there are more than three scriptwriters, 2 points if two or more of the three lead scriptwriters are qualifying persons, 1 point if one of the three lead scriptwriters is a qualifying person;
  - (c) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;
  - (d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
  - (e) up to 2 points depending on the number of the actors who are qualifying persons as follows—
    - (i) if there are more than three actors, 2 points if two or more of the three lead actors are qualifying persons, 1 point if one of the three lead actors is a qualifying person,
    - (ii) if there are only three actors, 2 points if two or more of them are qualifying persons, 1 point if one of them is,
    - (iii) if there are only two actors, 2 points if both of them are qualifying persons, 1 point if one of them is,
    - (iv) if there is only one actor, 2 points if he is a qualifying person;
  - (f) 1 point if at least 50% of the cast are qualifying persons;
  - (g) up to 3 points depending on the number of the heads of department who are qualifying persons as follows—
    - (i) 3 points for five or more,
    - (ii) 2 points for three or four,
    - (iii) 1 point for one or two;
  - (h) 1 point if at least 50% of the production crew are qualifying persons.

**4B.**—(1) The cultural test for a documentary is as follows.

(2) A film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 4 points shall be awarded in respect of the content of the film as follows—

- (a) 1 point if at least 50% of the film is set in the United Kingdom;
- (b) 1 point if at least one of the three principal characters depicted in the film (or, if there are three or fewer characters depicted in the film, any of them) is a British character;
- (c) 1 point if the film depicts a British story;

- (d) 1 point if at least 50% of the original dialogue is recorded in the English language or in a recognised regional or minority language.
- (4) Up to 15 points shall be awarded in respect of work carried out in the making of the film as follows—
- (a) up to 6 points depending on the percentage of the work on shooting and visual effects that is carried out in the United Kingdom as follows—
    - (i) 6 points for 75%,
    - (ii) 5 points for 62.5%,
    - (iii) 4 points for 50%,
    - (iv) 3 points for 37.5%,
    - (v) 2 points for 25%,
    - (vi) 1 point for 10%;
  - (b) up to 4 points depending on the percentage of the work on research and development that is carried out in the United Kingdom as follows—
    - (i) 4 points for 75%,
    - (ii) 3 points for 50%,
    - (iii) 2 points for 25%,
    - (iv) 1 point for 10%;
  - (c) 1 point if at least 75% of the work on special effects is carried out in the United Kingdom;
  - (d) up to 2 points depending on the percentage of the work on performing and recording the original music score created for the film that is carried out in the United Kingdom as follows—
    - (i) 2 points for 75%,
    - (ii) 1 point for 50%;
  - (e) 1 point if at least 75% of the work on audio post production is carried out in the United Kingdom;
  - (f) 1 point if at least 75% of the work on image processing is carried out in the United Kingdom.
- (5) Up to 13 points shall be awarded in respect of the personnel involved in the making of the film as follows—
- (a) 2 points if the director (or, if there is more than one, the lead director) is a qualifying person;
  - (b) up to 2 points depending on the number of the scriptwriters who are qualifying persons as follows—
    - (i) if there is only one scriptwriter, 2 points if he is a qualifying person,
    - (ii) if there are only two scriptwriters, 2 points if both of them are qualifying persons, 1 point if one of them is,
    - (iii) if there are only three scriptwriters, 2 points if two or more of them are qualifying persons, 1 point if one of them is,
    - (iv) if there are more than three scriptwriters, 2 points if two or more of the three lead scriptwriters are qualifying persons, 1 point if one of the three lead scriptwriters is a qualifying person;
  - (c) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;
  - (d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;

- (e) up to 2 points depending on the number of the participants who are qualifying persons as follows—
  - (i) if there are more than three participants, 2 points if two or more of the three lead participants are qualifying persons, 1 point if one of the three lead participants is a qualifying person,
  - (ii) if there are only three participants, 2 points if two or more of them are qualifying persons, 1 point if one of them is,
  - (iii) if there are only two participants, 2 points if both of them are qualifying persons, 1 point if one of them is,
  - (iv) if there is only one participant, 2 points if he is a qualifying person;
- (f) 1 point if at least 50% of all of the participants are qualifying persons;
- (g) up to 3 points depending on the number of the heads of department who are qualifying persons as follows—
  - (i) 3 points for four,
  - (ii) 2 points for three,
  - (iii) 1 point for one or two;
- (h) 1 point if at least 50% of the production crew are qualifying persons.

**4C.—**(1) The cultural test for an animation is as follows.

(2) A film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 4 points shall be awarded in respect of the content of the film as follows—

- (a) 1 point if at least 50% of the film is set in the United Kingdom;
- (b) 1 point if at least one of the three principal characters depicted in the film (or, if there are three or fewer characters depicted in the film, any of them) is a British character;
- (c) 1 point if the film depicts a British story;
- (d) 1 point if at least 50% of the original dialogue is recorded in the English language or in a recognised regional or minority language.

(4) Up to 15 points shall be awarded in respect of work carried out in the making of the film as follows—

- (a) up to 6 points depending on the percentage of the work on shooting, visual design, layout and storyboarding that is carried out in the United Kingdom as follows—
  - (i) 6 points for 75%,
  - (ii) 5 points for 62.5%,
  - (iii) 4 points for 50%,
  - (iv) 3 points for 37.5%,
  - (v) 2 points for 25%,
  - (vi) 1 point for 10%;
- (b) up to 4 points depending on the percentage of the work on visual effects that is carried out in the United Kingdom as follows—
  - (i) 4 points for 75%,
  - (ii) 3 points for 50%,
  - (iii) 2 points for 25%,
  - (iv) 1 point for 10%;
- (c) 1 point if at least 75% of the work on special effects is carried out in the United Kingdom;

- (d) up to 2 points depending on the percentage of the work on performing and recording the original music score created for the film that is carried out in the United Kingdom as follows—
    - (i) 2 points for 75%,
    - (ii) 1 point for 50%;
  - (e) 1 point if at least 75% of the work on voice recording and audio post production is carried out in the United Kingdom;
  - (f) 1 point if at least 75% of the work on image processing is carried out in the United Kingdom.
- (5) Up to 13 points shall be awarded in respect of the personnel involved in the making of the film as follows—
- (a) 2 points if the director (or, if there is more than one, the lead director) is a qualifying person;
  - (b) up to 2 points depending on the number of the scriptwriters who are qualifying persons as follows—
    - (i) if there is only one scriptwriter, 2 points if he is a qualifying person,
    - (ii) if there are only two scriptwriters, 2 points if both of them are qualifying persons, 1 point if one of them is,
    - (iii) if there are only three scriptwriters, 2 points if two or more of them are qualifying persons, 1 point if one of them is,
    - (iv) if there are more than three scriptwriters, 2 points if two or more of the three lead scriptwriters are qualifying persons, 1 point if one of the three lead scriptwriters is a qualifying person;
  - (c) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;
  - (d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;
  - (e) up to 2 points depending on the number of the actors who are qualifying persons as follows—
    - (i) if there are more than three actors, 2 points if two or more of the three lead actors are qualifying persons, 1 point if one of the three lead actors is a qualifying person,
    - (ii) if there are only three actors, 2 points if two or more of them are qualifying persons, 1 point if one of them is,
    - (iii) if there are only two actors, 2 points if both of them are qualifying persons, 1 point if one of them is,
    - (iv) if there is only one actor, 2 points if he is a qualifying person;
  - (f) 1 point if at least 50% of the cast are qualifying persons;
  - (g) up to 3 points depending on the number of the heads of department who are qualifying persons as follows—
    - (i) 3 points for five or more,
    - (ii) 2 points for three or four,
    - (iii) 1 point for one or two;
  - (h) 1 point if at least 50% of the production crew are qualifying persons.

**4D.—(1)** In paragraphs 4A to 4C—

“cast” means all the actors and performers but not the extras who appear in a film;

“heads of department” has the meaning given by sub-paragraph (2);

“participant” means a presenter, narrator, subject or other person who participates and appears in a documentary;

“production crew” means all the persons directly involved in the production of a film who do not appear in the film;

“qualifying person” means a citizen of, or a person ordinarily resident in, a member State;

“recognised regional or minority language” means Welsh, Scottish-Gaelic, Irish, Scots, Ulster Scots or Cornish;

“special effects” means artificial techniques or processes, which are not visual effects, used to create an illusion in a film;

“visual effects” means digital alterations to a film’s images.

(2) “Heads of department” means—

- (a) in paragraph 4A, the lead cinematographer, the lead production designer, the lead costume designer, the lead editor, the lead sound designer, the lead visual effects supervisor and the lead hair and makeup supervisor;
- (b) in paragraph 4B, the lead cameraman, the lead sound recordist, the lead editor and the lead researcher;
- (c) in paragraph 4C, the lead layout supervisor, the lead production designer, the lead character designer, the lead editor, the lead sound designer, the lead visual effects supervisor and the lead modelling supervisor.

(3) For the purposes of paragraphs 4A to 4C—

- (a) a film is set in the United Kingdom if it is set in a country which is now part of the United Kingdom; and
- (b) a film depicts a British story if the subject matter of the film or the underlying material on which the film is based is British.

(4) The amount of work that is carried out in the United Kingdom or elsewhere shall be determined—

- (a) for the purposes of paragraph 4A(4)(a) (principal photography), by reference to the number of days spent on the work;
- (b) for the purposes of paragraphs 4A(4)(b) to (f), 4B(4)(a) to (f) and 4C(4)(a) to (f) (other matters), by reference to the amount of expenditure on the work..

(5) No points shall be awarded under any provision of paragraph 4A(4), 4B(4) or 4C(4) (points awarded in respect of the making of the film) in respect of work the expenditure on which is, in the opinion of the Secretary of State, insignificant in relation to the expenditure on all the work carried out in the making of the film.

*Excluded films*

5.—(1) Subject to sub-paragraph (2), a film is not a British film for the purposes of this Schedule by virtue of paragraph 4(1) if parts of the film are derived from—

- (a) any film of which the master negative, tape or disc is certified under paragraph 3(1), or
- (b) any film not made by the same maker as the first-mentioned film, and the playing time of those parts exceeds 10 per cent of the total playing time of the film.

(2) The Secretary of State may direct that sub-paragraph (1) shall not apply in relation to a film if in his opinion—

- (a) it is a documentary; and
- (b) its subject matter makes it appropriate for sub-paragraph (1) not to be applied.

*Determination of disputes*

6.—(1) Any person who is aggrieved by any decision of the Secretary of State to refuse an application under paragraph 2 or to revoke any certification under paragraph 3(1) may, subject to rules of court, apply to the High Court, and the decision of that Court shall be final.

(2) In relation to any person whose principal place of business is in Scotland, subparagraph (1) shall have effect as if for any reference to the High Court there were substituted a reference to the Court of Session.

*Application for certification*

7.—(1) The Films (Certification) Regulations 1985(a) shall apply to an application for certification under paragraph 2 as if a reference to Schedule 1 in those Regulations were a reference to this Schedule.

(2) For the purposes of subparagraph (1) the application under paragraph 2 shall be treated as an application to be determined by the Secretary of State in accordance with Schedule 1 as in force immediately before the commencement of the Films (Certification) Regulations 2006(b).”.

*Modification of other enactments*

**Modification of the Finance (No. 2) Act 1992**

11.—(1) Modify the Finance (No. 2) Act 1992(c) as follows.

(2) In section 40D (election for sections 40A and 40B not to apply)(d), in subsection (2)(b)—

(a) for “Schedule 1” substitute “Schedule 1A”; and

(b) at the end insert “or certified by the Secretary of State under paragraph 3 of Schedule 1 to that Act as a British film for the purposes of film tax relief”.

(3) In section 43 (interpretation of sections 41 and 42)(e), in subsection (1), in the definitions of “qualifying disc”, “qualifying film” and “qualifying tape”—

(a) for “Schedule 1” substitute “Schedule 1A”; and

(b) at the end insert “or certified by the Secretary of State under paragraph 3 of Schedule 1 to that Act as a British film for the purposes of film tax relief”.

**Modification of ITTOIA 2005**

12. In section 132 (meaning of “original master version” and “certified master version”) of ITTOIA 2005(f), in subsection (3)(g)—

(a) for “Schedule 1” substitute “Schedule 1A”; and

(b) at the end insert “or certified by the Secretary of State under paragraph 3 of Schedule 1 to that Act as a British film for the purposes of film tax relief”.

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(a) S.I. 1985/994, amended by S.I. 1999/2224, S.I. 1999/2334 and S.I. 2006/642.

(b) S.I. 2006/3281.

(c) 1992 c. 48.

(d) Section 40D and section 43 are repealed by section 178 to, and Part 3(4) of Schedule 26 to the Finance Act 2006 but have effect in relation to films to which these Regulations apply by virtue of the modifications to section 46 of that Act by regulation 6.

(e) The definition of “qualifying film” was amended by sections 578 and 580 to, and paragraph 85 of Schedule 2 to, the Capital Allowances Act 2001 and sections 59 and 104 of, and paragraphs 24 and 31(3) of Schedule 3 and Part 2(3) of Schedule 11 to, the Finance Act 2005 (c. 7).

(f) 2005 c. 5.

(g) Section 132(3) is repealed by section 178 to, and Part 3(4) of Schedule 26 to the Finance Act 2006 but have effect in relation to films to which these Regulations apply by virtue of the modifications to section 47 of that Act by regulation 7.

*Consequential provision*

**Returns, amendments to returns and assessments**

13.—(1) Where the provisions of Chapter 3 of Part 3, of the enactments amended by that Chapter and the Corporation Tax Acts apply in accordance with these Regulations, returns must be made or amended, and assessments may be made in relation to past accounting periods or tax years (whether before or after the commencement of that Chapter) in accordance with those provisions as modified by these Regulations.

(2) Any return, amendment or assessment necessary to give effect to paragraph (1) may be made notwithstanding any limitation on the time within which a return, amendment or assessment may normally be made.

Date

Two of the Lords Commissioners of Her Majesty's Treasury

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the application of the provisions of Chapter 3 of Part 3 of the Finance Act 2006 (c. 25) (films and sound recordings), of the enactments amended by that Chapter and the Corporation Tax Acts in relation to films that commenced principal photography before 1st January 2007 but are not completed before that date (“transitional films”).

Regulation 1 provides for citation, commencement and effect. Authority for the retrospective effect of these Regulations is given by section 52(3)(a) and (b) of the Finance Act 2006.

Regulation 2 provides for the interpretation of terms used in the Regulations.

Regulation 3 provides for the application of the provisions of Chapter 3 of Part 3 of the Finance Act 2006, the enactments amended by that Chapter and provisions of the Corporation Tax Acts with the adaptations and modifications made by these Regulations.

Regulations 4 to 10 set out the adaptations and modifications to Chapter 3 of Part 3 of the Finance Act 2006.

Regulation 4 modifies section 32 (meaning of “film production company”) so a company that commenced principal photography before 1st April 2006 may be a film production company in relation to that film notwithstanding that the company is not responsible for pre-production of the film or is not actively engaged in production planning and decision-making during pre-production.

Regulation 5 modifies section 40 (conditions of relief: British film) so only films certified as British films for the purposes of film tax relief (and so satisfy the cultural test applied by these Regulations (see regulation 11)) qualify for film tax relief.

Regulation 6 modifies section 46 (films: withdrawal of existing reliefs (corporation tax)) and regulation 7 modifies section 47 (films: withdrawal of existing reliefs (income tax)) so that existing reliefs under sections 40A to 40D and 42 of the Finance (No. 2) Act 1992 (c. 48) and sections 134, 135 and 138 to 144 of the Income Tax (Trading and Other Income) Act 2005 (c. 5) (treatment of expenditure on production or acquisition of films and special reliefs for British films) are only withdrawn where a film qualifies for film tax relief under Chapter 3 of Part 3 of the Finance Act 2006.

Regulation 8 modifies section 51(1) (supplementary provisions) in relation to the application of provisions relating to intangible fixed assets.

Regulation 9 modifies Schedule 4 (taxation of activities of film production company) so that the Schedule will only apply to transitional films certified as British films for the purposes of film tax relief.

Regulation 10 modifies Schedule 5 (film tax relief: further provisions) to modify the amendments to Schedule 1 to the Films Act 1985 (c. 21). Schedule 1 of the Films Act 1985 is modified to apply the cultural test introduced by the Films (Definition of “British Film”) (No. 2) Order 2006 (S.I. 2006/3430) to transitional films for the purposes of film tax relief. The Films Act 1985 is further modified to include a new Schedule 1A which applies the same cultural test as introduced in the Films (Definition of “British Film”) Order 2006 (S.I. 2006/643) (with the omission of the requirement that the maker is resident in the EC) to films that do not meet the requirements of the Schedule 1 test. Films that are certified in accordance with this test may qualify for relief under sections 40A to 40D and 42 of the Finance (No. 2) Act 1992 or sections 134, 135 and 138 to 144 of the Income Tax (Trading and Other Income) Act 2005.

Regulation 11 provides for modifications to the Finance (No. 2) Act 1992 and regulation 12 provides for modifications to the Income Tax (Trading and Other Income) Act 2005 so that tax relief is available under these provisions by reference to the cultural test in Schedule 1A to the Films Act 1985 inserted by these Regulations.

Regulation 13 provides for the making or amending of returns, and the making of assessments, in relation to past accounting periods or tax years consequent on the application of provisions by these Regulations.

A regulatory impact analysis has been prepared in relation to the provisions of the Finance Act 2006 dealing with the taxation of film production and is available on HM Treasury's website at [http://www.hm-treasury.gov.uk/media/1E6/1B/bud06\\_rias\\_896.pdf](http://www.hm-treasury.gov.uk/media/1E6/1B/bud06_rias_896.pdf).

*This draft supersedes that laid on 22nd February 2007.*

*Draft Regulations laid before the House of Commons under section 52 of the Finance Act 2006 for approval by resolution of that House.*

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DRAFT STATUTORY INSTRUMENTS

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**2007 No.**

**CORPORATION TAX**

**The Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007**

**£3.50**

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