

SCHEDULES

SCHEDULE 3

FILMS: RESTRICTIONS ON RELIEF FOR PRODUCTION AND ACQUISITION EXPENDITURE

PART 1

RESTRICTIONS ON CIRCUMSTANCES IN WHICH RELIEF MAY BE OBTAINED

Section 42 of the Finance (No.2) Act 1992 (c. 48)

- 1 (1) Section 42 of F(No 2)A 1992 (relief for production or acquisition expenditure) is amended as follows.
- (2) In subsection (2) omit “and” immediately before paragraph (b) and after that paragraph insert “, and
- (c) that version was owned by the claimant at the time the film was completed.”
- (3) In subsection (3) omit “and” immediately before paragraph (b) and after that paragraph insert “, and
- (c) that version has not previously been acquired by the claimant.”
- (4) After subsection (3) insert—
- “(3A) A claim under this section for a relevant period, in relation to the original master version of a film, may be made in respect of either expenditure to which subsection (2) applies or expenditure to which subsection (3) applies, but not both.
- (3B) Where, in relation to a trade or business, a company (“C”) makes a claim under this section (“the relevant claim”) for a deduction in respect of expenditure relating to the original master version of a film, C is not entitled to make that deduction if—
- (a) the relevant claim is in respect of expenditure to which subsection (2) applies and—
- (i) a previous claim under this section has been made in relation to the same trade or business for any relevant period, or
- (ii) in computing the profits of that trade or business of any relevant period, a deduction has been made under section 138, 138A or 140 of the Income Tax (Trading and Other Income) Act 2005,
- in respect of expenditure incurred on the acquisition of that version,
- (b) the relevant claim is in respect of expenditure to which subsection (3) applies and—

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- (i) a previous claim under this section has been made in relation to the same trade or business for any relevant period, or
- (ii) in computing the profits of that trade or business of any relevant period, a deduction has been made under section 138 or 139 of that Act,

in respect of expenditure incurred on the production of that version,

- (c) a previous claim under this section has been made in relation to another trade or business, for any relevant period, in respect of expenditure to which subsection (2) or (3) applies which relates to that version, or
- (d) a deduction has been made in respect of expenditure relating to that version under any of sections 138 to 140 of the Income Tax (Trading and Other Income) Act 2005 in computing the profits of another trade or business of any relevant period.

(3C) For the purposes of subsection (3B)—

- (a) it does not matter whether the previous claim was made before, or on or after, 2nd December 2004, and
- (b) “relevant period”, in relation to a deduction under the Income Tax (Trading and Other Income) Act 2005, means a relevant period within the meaning of section 133 of that Act.

(3D) Where, in relation to any particular film, more than one claim under this section is made at the same time, the Inland Revenue may determine which of the claims is to be regarded as made first for the purposes of subsection (3B).

In this subsection references to a claim under this section are to be read as including references to a deduction of a kind mentioned in that subsection.

(3E) In this section “the Inland Revenue” means any officer of the Board.”

(5) After subsection (5) insert—

“(5A) For the purposes of subsection (4) the total expenditure incurred by the claimant on the production or acquisition of the original master version of the film concerned is—

- (a) in the case of a deduction in respect of expenditure to which subsection (2) applies, the total expenditure incurred by the claimant on the production of the original master version of the film concerned, and
- (b) in the case of a deduction in respect of expenditure to which subsection (3) applies, the total expenditure incurred by the claimant on the acquisition of that original master version (“the claimant’s acquisition expenditure”).”

(6) Subject to sub-paragraphs (7) to (10), the amendments made by this paragraph are deemed to have come into force on 2nd December 2004.

(7) The amendments made by this paragraph do not have effect in relation to any claim for relief which—

- (a) is made before 2nd December 2004, or
- (b) is in respect of expenditure relating to a film which was in production on that date.

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- (8) The amendments made by sub-paragraphs (2) and (3) do not have effect in relation to pre-announcement expenditure.
- (9) Where the relevant claim within the meaning of subsection (3B) of section 42 of F(No 2)A 1992 is a claim in respect of pre-announcement expenditure only, the references in paragraphs (a) to (d) of that subsection to a previous claim, or a deduction, do not include a previous claim, or a deduction, in respect of pre-announcement expenditure only.
- (10) Section 42 of F(No 2)A 1992 (as amended by this Schedule) has effect, for income tax purposes, for the year 2004-05 and earlier years of assessment, as if in subsection (3B) for “company” there were substituted “person”.
- (11) For the purposes of this paragraph “claim for relief” means a claim for relief under section 42 of F(No 2)A 1992 (including a claim for relief under that section as modified by section 48 of F(No 2)A 1997).

Section 101 of the Finance Act 2002 (c. 23)

- 2 (1) Section 101 of FA 2002 (restriction of relief for successive acquisitions of the same film) shall cease to have effect.
- (2) The repeal made by this paragraph is deemed to have come into force on 2nd December 2004.
- (3) But that repeal does not have effect in relation to—
 - (a) any claim for relief which was made before 2nd December 2004,
 - (b) any claim for relief which is in respect of expenditure relating to a film which was in production on that date, or
 - (c) any claim for relief—
 - (i) which is made on or after that date, and
 - (ii) in relation to which section 42(3B) of F(No 2)A 1992 (as inserted by paragraph 1) would operate to prevent a deduction being made, but for paragraph 1(9) (transitional provision in respect of pre-announcement expenditure).
- (4) For the purposes of sub-paragraph (3) “claim for relief” means a claim for relief under section 42 of F(No 2)A 1992 as modified by section 48 of F(No 2)A 1997.

Section 138 of the Income Tax (Trading and Other Income) Act 2005 (c. 5)

- 3 (1) For section 138 of ITTOIA 2005 (certified master versions: production or acquisition expenditure) substitute—

“Certified master versions: production expenditure

- (1) This section applies if—
 - (a) the person carrying on the trade has incurred production expenditure in respect of the original master version of a film in, or before, the relevant period,
 - (b) the film was completed in, or before, that period,
 - (c) the original master version is a certified master version,

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- (d) the original master version was owned by that person at the time the film was completed,
 - (e) the film is genuinely intended for theatrical release, and
 - (f) there has not already been a disqualifying deduction in respect of expenditure relating to the film (see section 140A).
- (2) A deduction is allowed for the amount of the expenditure allocated to the relevant period, but this is subject to the application of any prohibitive rule.
- (3) The person carrying on the trade may allocate up to the permissible amount of the expenditure to the relevant period.
- (4) The permissible amount of the expenditure is the smallest amount given by the following calculations.
- (5) The calculations are—
- Calculation 1*
- Calculate one-third of the total production expenditure incurred by the person in respect of the original master version (“the total expenditure”).
- Calculation 2*
- Calculate one-third of the sum obtained by deducting from the total expenditure—
- (a) any amount of the total expenditure already allocated under section 137,
 - (b) any amount of the total expenditure already allocated under section 41 of F(No 2)A 1992, and
 - (c) any amount of the total expenditure that has already been, or is capable of being, allocated under section 139 below or under section 42 of F(No 2)A 1992 as applied by section 48(1) to (3) of F(No 2)A 1997 (corresponding corporation tax provision).
- Calculation 3*
- Calculate so much of the total expenditure as has not already been allocated to the relevant period or any other relevant period—
- (a) under this section or any other provision of this Chapter, or
 - (b) under any of sections 40B, 41 or 42 of F(No 2)A 1992.
- (6) If the relevant period is less than 12 months the above references to one-third are to be read as references to a proportionately smaller fraction.
- (7) If any production expenditure in respect of the original master version is allocated to the relevant period—
- (a) under section 135 above, or
 - (b) under section 40B of F(No 2)A 1992,
- no other production expenditure in respect of the original master version may be allocated to the relevant period under this section.

Certified master versions: acquisition expenditure

- (1) This section applies if—

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- (a) the person carrying on the trade has incurred acquisition expenditure in respect of the original master version of a film in, or before, the relevant period,
 - (b) the original master version has not previously been acquired by that person,
 - (c) the film was completed in, or before, that period,
 - (d) the original master version is a certified master version,
 - (e) the film is genuinely intended for theatrical release, and
 - (f) there has not already been a disqualifying deduction in respect of expenditure relating to the film (see section 140A).
- (2) A deduction is allowed for the amount of the expenditure allocated to the relevant period, but this is subject to the application of any prohibitive rule.
- (3) The person carrying on the trade may allocate up to the permissible amount of the expenditure to the relevant period.
- (4) The permissible amount of the expenditure is the smallest amount given by the following calculations.
- (5) The calculations are—
- Calculation 1*
Calculate one-third of the total acquisition expenditure incurred by the person in respect of the original master version (“the total expenditure”).
- Calculation 2*
Calculate one-third of the sum obtained by deducting from the total expenditure any amount of the total expenditure that has already been, or is capable of being, allocated under section 140 below or under section 42 of F(No 2)A 1992 as applied by section 48(1) to (3) of F(No 2)A 1997 (corresponding corporation tax provision).
- Calculation 3*
Calculate so much of the total expenditure as has not already been allocated to the relevant period or any other relevant period—
- (a) under this section or any other provision of this Chapter, or
 - (b) under any of sections 40B or 42 of F(No 2)A 1992.
- (6) If the relevant period is less than 12 months the above references to one-third are to be read as references to a proportionately smaller fraction.
- (7) If any acquisition expenditure in respect of the original master version is allocated to the relevant period—
- (a) under section 135 above, or
 - (b) under section 40B of F(No 2)A 1992,
- no other acquisition expenditure in respect of the original master version may be allocated to the relevant period under this section.”
- (2) Subject to sub-paragraphs (3) and (4), the amendments made by this paragraph have effect for the year 2005-06 and subsequent years of assessment.
- (3) Those amendments do not have effect in relation to any film which was in production on 2nd December 2004.

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- (4) In relation to pre-announcement expenditure—
 - (a) section 138 of ITTOIA 2005 (as substituted by this paragraph) has effect as if subsection (1)(d) of that section were omitted, and
 - (b) section 138A of that Act (as so substituted) has effect as if subsection (1)(b) of that section were omitted.

Section 139 of the Income Tax (Trading and Other Income) Act 2005 (c. 5)

- 4 (1) Section 139 of ITTOIA 2005 (certified master versions: production expenditure on limited-budget films) is amended as follows.
 - (2) In subsection (1), after paragraph (c) insert—
 - “(ca) the original master version was owned by that person at the time the film was completed.”
 - (3) In that subsection omit “and” immediately before paragraph (e) and after that paragraph insert “, and
 - (f) there has not already been a disqualifying deduction in respect of expenditure relating to the film (see section 140A).”
 - (4) Subject to sub-paragraphs (5) and (6), the amendments made by this paragraph have effect for the year 2005-06 and subsequent years of assessment.
 - (5) Those amendments do not have effect in relation to any film which was in production on 2nd December 2004.
 - (6) The amendment made by sub-paragraph (2) does not have effect in relation to pre-announcement expenditure.

Section 140 of the Income Tax (Trading and Other Income) Act 2005 (c. 5)

- 5 (1) Section 140 of ITTOIA 2005 (certified master versions: acquisition expenditure on limited-budget films) is amended as follows.
 - (2) In subsection (1)—
 - (a) omit paragraph (b),
 - (b) before paragraph (c) insert—
 - “(ba) the original master version has not previously been acquired by that person.”, and
 - (c) omit “and” immediately before paragraph (f) and after that paragraph insert “, and
 - (g) there has not already been a disqualifying deduction in respect of expenditure relating to the film (see section 140A).”
 - (3) Omit subsection (2).
 - (4) Subject to sub-paragraphs (5) to (7), the amendments made by this paragraph have effect for the year 2005-06 and subsequent years of assessment.
 - (5) Those amendments do not have effect in relation to any film which was in production on 2nd December 2004.

- (6) The amendments made by sub-paragraphs (2)(a) and (3) do not have effect in a case where subsection (1)(g) of section 140 of ITTOIA 2005 (as inserted by this paragraph) would operate to prevent a deduction being made under that section, but for paragraph 6(3) of this Schedule (transitional provision in respect of pre-announcement expenditure).
- (7) The amendment made by sub-paragraph (2)(b) does not have effect in relation to pre-announcement expenditure.

Meaning of “disqualifying deduction”

- 6 (1) After section 140 of ITTOIA 2005 insert—

“Interpretation of sections 138 to 140

140A “Disqualifying deduction”

- (1) For the purposes of sections 138 and 139 a disqualifying deduction in respect of expenditure relating to the film occurs when—
 - (a) under sections 138, 138A or 140 a deduction is made in respect of acquisition expenditure in respect of the original master version of the film in calculating the profits of the trade of any relevant period,
 - (b) a claim under section 42 of F(No 2)A 1992 is made in relation to the trade, for any relevant period, in respect of expenditure incurred on the acquisition of that version,
 - (c) under any of sections 138 to 140 a deduction is made in respect of production or acquisition expenditure in respect of that version in calculating the profits of another trade or business of any relevant period, or
 - (d) a claim under section 42 of F(No 2)A 1992 is made in relation to another trade or business, for any relevant period, in respect of expenditure incurred on the production or acquisition of that version.
- (2) For the purposes of sections 138A and 140 a disqualifying deduction in respect of expenditure relating to the film occurs when—
 - (a) under section 138 or 139 a deduction is made in respect of production expenditure in respect of the original master version of the film in calculating the profits of the trade of any relevant period,
 - (b) a claim under section 42 of F(No 2)A 1992 is made in relation to the trade, for any relevant period, in respect of expenditure incurred on the production of that version,
 - (c) under any of sections 138 to 140 a deduction is made in respect of production or acquisition expenditure in respect of that version in calculating the profits of another trade or business of any relevant period, or
 - (d) a claim under section 42 of F(No 2)A 1992 is made in relation to another trade or business, for any relevant period, in respect of expenditure incurred on the production or acquisition of that version.
- (3) For the purposes of subsections (1) and (2)—

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- (a) it does not matter whether a claim under section 42 of F(No 2)A 1992 was made before, on or after, 2nd December 2004, and
 - (b) references to a relevant period in relation to such a claim are to a relevant period within the meaning of section 40B of that Act.
- (4) Where more than one deduction is made at the same time, the Inland Revenue may determine which of those deductions is to be regarded as made first for the purposes of determining, for the purposes of sections 138 to 140, whether a disqualifying deduction has already been made.
- (5) In subsection (4) references to a deduction are to be read as including references to a claim under section 42 of F(No 2)A 1992.”
- (2) Subject to sub-paragraphs (3) and (4), the amendment made by this paragraph has effect for the year 2005-06 and subsequent years of assessment.
- (3) When determining whether a deduction under any of sections 138 to 140 of ITTOIA 2005 in respect of pre-announcement expenditure only is allowed, any other deduction under any of those sections, or previous claim under section 42 of F(No 2)A 1992, in respect of pre-announcement expenditure only is to be ignored for the purposes of determining whether there has already been a disqualifying deduction.
- (4) In sub-paragraph (3) “disqualifying deduction” is to be construed in accordance with section 140A of ITTOIA 2005.

Transitional provision for films in production

- 7 (1) This paragraph applies in relation to any claim for relief under section 42 of F(No 2)A 1992 (other than any claim for relief under that section as modified by section 48 of F(No 2)A 1997) which is in respect of expenditure incurred on the acquisition of the original master version of a film which was in production on 2nd December 2004.
- (2) No relief is available under section 42 of F(No 2)A 1992 in respect of that expenditure if—
- (a) the acquisition is not the first acquisition by the claimant of the original master version of the film, or
 - (b) a claim has already been made under that section, or a deduction has already been made under section 138, 138A or 140 of ITTOIA 2005, in respect of expenditure incurred on another acquisition of that version.
- (3) Where, in relation to any particular film, more than one claim under section 42 of F(No 2)A 1992 is made at the same time, the Inland Revenue may determine which of the claims is to be regarded as made first for the purposes of this paragraph.
- In this sub-paragraph references to a claim under section 42 of F(No 2)A 1992 are to be read as including references to a deduction of the kind mentioned in sub-paragraph (2)(b).
- (4) For the purposes of this paragraph “the Inland Revenue” means any officer of the Board.
- (5) This paragraph is deemed to have come into force on 2nd December 2004.
- 8 (1) This paragraph applies in relation to relief under section 138 of ITTOIA 2005 in respect of any expenditure incurred on the acquisition of the original master version of a film which was in production on 2nd December 2004.

- (2) No deduction is allowed under that section in respect of expenditure incurred by a person on the acquisition of that version if—
- (a) the acquisition is not the first acquisition by that person of the original master version of the film, or
 - (b) a deduction has already been made under section 138, 138A or 140 of ITTOIA 2005, or a claim has already been made under section 42 of F(No 2)A 1992, in respect of expenditure incurred on another acquisition of that version.
- (3) Where, in relation to any particular film, more than one deduction of the kind mentioned in sub-paragraph (2)(b) is made at the same time, the Inland Revenue may determine which of the deductions is to be regarded as made first for the purposes of this paragraph.
- In this sub-paragraph references to a deduction of the kind mentioned in sub-paragraph (2)(b) are to be read as including references to a claim under section 42 of F(No 2)A 1992.
- (4) For the purposes of this paragraph “the Inland Revenue” means any officer of the Board.
- (5) This paragraph has effect for the year 2005-06 and subsequent years of assessment.