These notes refer to the Finance Act 2009 (c.10) which received Royal Assent on 21 July 2009

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 65 and Schedule 33: Long Funding Leases of Films

Background Note

19. This section and Schedule counter avoidance involving the leasing of films under long funding leases of plant or machinery.

20. Partnerships typically acquired or produced films and leased them to other companies to be exploited over a period of up to 15 years (referred to here as “sale and leaseback arrangements”). The partnerships were able to claim relief for the cost of those films under section 42 of the Finance (No.2) Act 1992, section 48 of the Finance (No.2) Act 1997 or sections 138 to 140 of ITTOIA.

21. The rents under the lease are taxable and, in effect, these sale and leaseback arrangements allow the partners to defer their tax liability for up to 15 years.

22. The avoidance involves the partnerships ending the existing leases and replacing them with new leases that are intended to qualify as long funding finance leases of plant or machinery.

23. If these new leases are long funding finance leases the majority of the rents receivable will not be taxed as section 148A of ITTOIA (for income tax) or section 502B of ICTA (for corporation tax) will apply. In effect, the partnerships will have replaced a taxable income stream with one that is largely untaxed.

24. Although the known avoidance involves partnerships, it is possible that others could seek to avoid tax using the same methods. Therefore the new rules are not limited to partnerships.