



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### [<sup>F1</sup>PART 15B

#### VIDEO GAMES DEVELOPMENT

##### Textual Amendments

- F1** Pt. 15B inserted (17.7.2013 for specified purposes and 1.4.2014 in so far as not already in force) by Finance Act 2013 (c. 29), **Sch. 17 paras. 1, 2**; S.I. 2014/1962, art. 2(1)(2)

#### CHAPTER 1

##### INTRODUCTION

###### *Introductory*

#### **1217A Overview of Part**

- (1) This Part is about video games development.
- (2) Sections 1217AA to 1217AF contain definitions and other provisions about interpretation that apply for the purposes of this Part. See, in particular—
  - (a) section 1217AA, which contains provision about the meaning of “video game”, and
  - (b) section 1217AB, which explains how a company comes to be treated as the video games development company in relation to a video game.
- (3) Chapter 2 is about the taxation of the activities of a video games development company and includes—
  - (a) provision for the company's activities in relation to [<sup>F2</sup>each qualifying] video game to be treated as a separate trade, and
  - (b) provision about the calculation of the profits and losses of that trade.

*Status: Point in time view as at 26/03/2015.*

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- (4) Chapter 3 is about relief (called “video games tax relief”) which can be given to a video games development company—
  - (a) by way of additional deductions to be made in calculating the profits or losses of the company's separate trade, or
  - (b) by way of a payment (a “video game tax credit”) to be made on the company's surrender of losses from that trade.
- (5) Chapter 4 is about the relief which can be given for losses made by a video games development company in its separate trade, including provision for certain such losses to be transferred to other separate trades.
- (6) Chapter 5 provides—
  - (a) for relief under Chapters 3 and 4 to be given on a provisional basis, and
  - (b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

#### **Textual Amendments**

- F2** Words in s. 1217A(3)(a) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(2\)](#)

### *Interpretation*

#### **1217AA “Video game” etc**

- (1) This section applies for the purposes of this Part.
- (2) “Video game” does not include—
  - (a) anything produced for advertising or promotional purposes, or
  - (b) anything produced for the purposes of gambling (within the meaning of the Gambling Act 2005).
- (3) References to a video game include the game's soundtrack.
- (4) A video game is completed when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and made available to the general public.

#### **1217AB Video games development company**

- (1) For the purposes of this Part “video games development company” is to be read in accordance with this section.
- (2) There cannot be more than one video games development company in relation to a video game.
- (3) A company is the video games development company in relation to a video game if the company (otherwise than in partnership)—
  - (a) is responsible for designing, producing and testing the video game,
  - (b) is actively engaged in planning and decision-making during the design, production and testing of the video game, and

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- (c) directly negotiates, contracts and pays for rights, goods and services in relation to the video game.
- (4) If there is more than one company meeting the description in subsection (3), the company that is most directly engaged in the activities referred to in that subsection is the video games development company in relation to the video game.
- (5) If there is no company meeting the description in subsection (3), there is no video games development company in relation to the video game.
- (6) A company may elect to be regarded as a company which does not meet the description in subsection (3).
- (7) The election—
  - (a) must be made by the company by being included in its company tax return for an accounting period (and may be included in the return originally made or by amendment), and
  - (b) may be withdrawn by the company only by amending its company tax return for that accounting period.
- (8) The election has effect in relation to video games which begin to be produced in that or any subsequent accounting period.

#### **1217AC “Video game development activities” etc**

- (1) In this Part “video game development activities”, in relation to a video game, means the activities involved in designing, producing and testing the video game.
- (2) The Treasury may by regulations—
  - (a) amend subsection (1),
  - (b) provide that specified activities are or are not to be regarded as video game development activities or as video game development activities of a particular description, and
  - (c) provide that, in relation to a specified description of video game, references to video game development activities of a particular description are to be read as references to such activities as may be specified.

“Specified” means specified in the regulations.

#### **1217AD “Core expenditure”**

- (1) In this Part “core expenditure”, in relation to a video game, means expenditure on designing, producing and testing the video game.
- (2) But the following descriptions of expenditure are not to be regarded as core expenditure for the purposes of this Part—
  - (a) any expenditure incurred in designing the initial concept for a video game;
  - (b) any expenditure incurred in debugging a completed video game or carrying out any maintenance in connection with such a video game.

#### **1217AE “[<sup>F3</sup>EEA] expenditure” etc**

- [<sup>F4</sup>(1) In this Part, “EEA expenditure”, in relation to a video game, means expenditure on goods or services that are provided from within the European Economic Area.]

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- (2) Any apportionment of expenditure as between [<sup>F5</sup>EEA expenditure and non-EEA expenditure] for the purposes of this Part is to be made on a just and reasonable basis.
- (3) The Treasury may by regulations amend subsection (1).

#### Textual Amendments

- F3** Word in s. 1217AE heading substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(3\)\(a\)](#)
- F4** S. 1217AE(1) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(3\)\(b\)](#)
- F5** Words in s. 1217AE(2) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(3\)\(c\)](#)

### 1217AF “Company tax return”

In this Part “company tax return” has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1)).

## CHAPTER 2

### TAXATION OF ACTIVITIES OF VIDEO GAMES DEVELOPMENT COMPANY

#### *Separate video game trade*

### 1217B Activities of video games development company treated as a separate trade

- (1) This Chapter applies for corporation tax purposes to a company that is the video games development company in relation to a [<sup>F6</sup>qualifying] video game.
- (2) The company's activities in relation to the video game are treated as a trade separate from any other activities of the company (including any activities in relation to any other [<sup>F7</sup>qualifying] video game).
- (3) In this Chapter the separate trade is called “the separate video game trade”.
- (4) The company is treated as beginning to carry on the separate video game trade—
  - (a) when the design of the video game begins, or
  - (b) if earlier, when any income from the video game is received by the company.

[ In this section “qualifying video game” means a video game in relation to which the <sup>F8</sup>(5) conditions for video games tax relief are met (see section 1217C(2)).]

#### Textual Amendments

- F6** Word in s. 1217B(1) inserted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(4\)\(a\)](#)
- F7** Word in s. 1217B(2) inserted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(4\)\(b\)](#)

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**F8** S. 1217B(5) inserted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 34\(4\)\(c\)](#)

### **1217BA Calculation of profits or losses of separate video game trade**

- (1) This section applies for the purpose of calculating the profits or losses of the separate video game trade.
- (2) For the first period of account the following are brought into account—
  - (a) as a debit, the costs of the video game incurred (and represented in work done) to date, and
  - (b) as a credit, the proportion of the estimated total income from the video game treated as earned at the end of that period.
- (3) For subsequent periods of account the following are brought into account—
  - (a) as a debit, the difference between the amount of the costs of the video game incurred (and represented in work done) to date and the corresponding amount for the previous period, and
  - (b) as a credit, the difference between the proportion of the estimated total income from the video game treated as earned at the end of that period and the corresponding amount for the previous period.
- (4) The proportion of the estimated total income treated as earned at the end of a period of account is given by—

$$CT \times I$$

where—

C is the total to date of costs incurred (and represented in work done),

T is the estimated total cost of the video game, and

I is the estimated total income from the video game.

### *Supplementary*

### **1217BB Income from the video game**

- (1) References in this Chapter to income from the video game are to any receipts by the company in connection with the production or exploitation of the video game.
- (2) This includes—
  - (a) receipts from the sale of the video game or rights in it,
  - (b) royalties or other payments for use of the video game or aspects of it (for example, characters or music),
  - (c) payments for rights to produce games or other merchandise, and
  - (d) receipts by the company by way of a profit share agreement.
- (3) Receipts that (apart from this subsection) would be regarded as of a capital nature are treated as being of a revenue nature.

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### **1217BC Costs of the video game**

- (1) References in this Chapter to the costs of the video game are to expenditure incurred by the company on—
  - (a) video game development activities in connection with the video game, or
  - (b) activities with a view to exploiting the video game.
- (2) This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.
- (3) Expenditure that (apart from this subsection) would be regarded as of a capital nature by reason only of being incurred on the creation of an asset (the video game) is treated as being of a revenue nature.

### **1217BD When costs are taken to be incurred**

- (1) For the purposes of this Chapter costs are incurred when they are represented in the state of completion of the work in progress.
- (2) Accordingly—
  - (a) payments in advance for work to be done are ignored until the work has been carried out, and
  - (b) deferred payments are recognised to the extent that the work is represented in the state of completion.
- (3) The costs incurred on the video game are taken to include an amount that has not been paid only if it is the subject of an unconditional obligation to pay.
- (4) If an obligation is linked to income being earned from the video game, no amount is to be brought into account in respect of the costs of the obligation unless an appropriate amount of income is or has been brought into account.

### **1217BE Estimates**

Estimates for the purposes of this Chapter must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

## **CHAPTER 3**

### VIDEO GAMES TAX RELIEF

#### *Introductory*

### **1217C Availability and overview of video games tax relief**

- (1) This Chapter applies for corporation tax purposes to a company that is the video games development company in relation to a video game.
- (2) Relief under this Chapter (“video games tax relief”) is available to the company if the conditions specified in the following sections are met in relation to the video game—

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- (a) section 1217CA (intended for supply),
  - (b) section 1217CB (British video game), and
  - (c) section 1217CE ([<sup>F9</sup>EEA expenditure]).
- (3) Video games tax relief is given by way of—
- (a) additional deductions (see sections 1217CF and 1217CG), and
  - (b) video game tax credits (see sections 1217CH to 1217CJ).
- (4) But video games tax relief is not available in respect of any expenditure if—
- (a) the company is entitled to an R&D expenditure credit under Chapter 6A of Part 3 in respect of the expenditure, or
  - (b) the company has obtained relief under Part 13 (additional relief for expenditure on research and development) in respect of the expenditure.
- (5) Sections 1217CK to 1217CN contain provision about unpaid costs, artificially inflated claims and confidentiality of information.
- (6) In this Chapter “the separate video game trade” means the company's separate trade in relation to the video game (see section 1217B).
- (7) See Schedule 18 to FA 1998 (in particular, Part 9D) for information about the procedure for making claims for video games tax relief.

#### Textual Amendments

- F9** Words in s. 1217C(2)(c) substituted (with effect in accordance with s. 34(8) of the amending Act) by Finance Act 2014 (c. 26), s. 34(6)(a)

*“Intended for supply”*

#### 1217CA Intended for supply

- (1) The video game must be intended for supply to the general public.
- (2) Whether this condition is met is determined when video game production activities begin, so that—
  - (a) where a video game is originally intended for supply, this condition continues to be met even if that ceases to be the intention, and
  - (b) where a video game is not originally intended for supply, this condition is not met even if that becomes the intention.

*British video games*

#### 1217CB British video game

- (1) The video game must be certified by the Secretary of State as a British video game.
- (2) The Secretary of State, with the approval of the Treasury, may by regulations specify conditions which must be met by a video game before it may be certified as a British video game.

These conditions are known as the “cultural test”.

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- (3) Regulations under subsection (2) may—
- (a) specify different conditions in relation to different descriptions of video game,
  - (b) provide that specified descriptions of video game may not be certified as a British video game, and
  - (c) enable the Secretary of State to direct that any provision made by virtue of paragraph (b) does not apply to a video game that meets specified conditions.
- “Specified” means specified in the regulations.
- (4) Regulations under subsection (2) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) Sections 1217CC and 1217CD contain further provision about certification of video games as British video games, including provision about applications for, and withdrawal of, certification.

### **1217CC Applications for certification**

- (1) An application for certification of a video game as a British video game is to be made to the Secretary of State by the video games development company.
- (2) The application may be for an interim or final certificate.
- (3) An interim certificate is a certificate that—
  - (a) is granted before the video game is completed, and
  - (b) states that the video game, if completed in accordance with the proposals set out in the application, will be a British video game.
- (4) A final certificate is a certificate that—
  - (a) is granted after the video game is completed, and
  - (b) states that the video game is a British video game.
- (5) The applicant must provide the Secretary of State with any documents or information which the Secretary of State requires in order to determine the application.
- (6) The Secretary of State may require information provided for the purposes of the application to be accompanied by a statutory declaration, made by the person providing it, as to the truth of the information.
- (7) The Secretary of State may by regulations make provision supplementing this section, including—
  - (a) provision about the form of applications,
  - (b) provision about the particulars and evidence necessary for satisfying the Secretary of State that a video game meets the cultural test, and
  - (c) provision that any statutory declaration which is required by subsection (6) to be made by any person may be made on the person's behalf by such person as is specified in the regulations.
- (8) Regulations under subsection (7) are to be made by statutory instrument.
- (9) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of the House of Commons.



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## 1217CD Certification and withdrawal of certification

- (1) If the Secretary of State is satisfied that the requirements are met for interim or final certification of a video game as a British video game, the Secretary of State must certify the video game accordingly.
- (2) If the Secretary of State is not satisfied that those requirements are met, the Secretary of State must refuse the application.
- (3) An interim certificate—
  - (a) may be given subject to conditions, and (unless the Secretary of State directs otherwise) is of no effect if the conditions are not met, and
  - (b) may be expressed to expire after a specified period, and (unless the Secretary of State directs otherwise) ceases to have effect at the end of that period.
- (4) An interim certificate ceases to have effect when a final certificate is issued.
- (5) If it appears to the Secretary of State that a video game certified under this Part ought not to have been certified, the Secretary of State may revoke its certification.
- (6) Unless the Secretary of State directs otherwise, a certificate that is revoked is treated as never having had effect.

*[<sup>F10</sup>EEA expenditure]*

### Textual Amendments

**F10** S. 1217CE cross-heading substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(6\)\(b\)](#)

## 1217CE [<sup>F11</sup>EEA expenditure]

- (1) At least 25% of the core expenditure on the video game incurred by the company must be [<sup>F12</sup>EEA expenditure].
- (2) The Treasury may by regulations amend the percentage specified in subsection (1).

### Textual Amendments

**F11** S. 1217CE heading substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(6\)\(c\)](#)

**F12** Words in s. 1217CE(1) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(6\)\(d\)](#)

*Additional deductions*

## 1217CF Additional deduction for qualifying expenditure

- (1) If video games tax relief is available to the company, it may (on making a claim) make an additional deduction in respect of qualifying expenditure on the video game.
- (2) The deduction is made in calculating the profit or loss of the separate video game trade.

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(3) In this Chapter “qualifying expenditure” means core expenditure on the video game that falls to be taken into account under Chapter 2 in calculating the profit or loss of the separate video game trade for tax purposes.

[ But if the core expenditure on the video game includes sub-contractor payments which <sup>F13</sup>(3A) (in total) exceed £1 million, the excess is not “qualifying expenditure”.]

(4) The Treasury may by regulations—

- (a) amend [<sup>F14</sup>subsections (3) and (3A)], and
- (b) provide that expenditure of a specified description is or is not to be regarded as qualifying expenditure.

[ In this section, “sub-contractor payment” means a payment made by the company to <sup>F15</sup>(5) another person in respect of work on design, production or testing of the video game that is contracted out by the company to the person.]

#### Textual Amendments

**F13** S. 1217CF(3A) inserted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(5\)\(a\)](#)

**F14** Words in s. 1217CF(4)(a) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(5\)\(b\)](#)

**F15** S. 1217CF(5) inserted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(5\)\(c\)](#)

#### 1217CG Amount of additional deduction

(1) For the first period of account during which the separate video game trade is carried on, the amount of the additional deduction is—

E

where E is—

- a so much of the qualifying expenditure as is [<sup>F16</sup>EEA expenditure], or
- b if less, 80% of the total amount of qualifying expenditure.

(2) For any period of account after the first, the amount of the additional deduction is given by—

E–P

where—

E is—

- (a) so much of the qualifying expenditure incurred to date as is [<sup>F17</sup>EEA expenditure], or
- (b) if less, 80% of the total amount of qualifying expenditure incurred to date, and

P is the total amount of the additional deductions given for previous periods.

(3) The Treasury may by regulations amend this section.

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### Textual Amendments

- F16** Words in s. 1217CG(1)(a) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(6\)\(e\)](#)
- F17** Words in s. 1217CG(2)(a) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(6\)\(e\)](#)

## *Video game tax credits*

### **1217CH Video game tax credit claimable if company has surrenderable loss**

- (1) If video games tax relief is available to the company, it may claim a video game tax credit for an accounting period in which it has a surrenderable loss.
- (2) The company's surrenderable loss in an accounting period is—
  - (a) the company's available loss for the period in the separate video game trade (see subsection (3)), or
  - (b) if less, the available qualifying expenditure for the period (see subsections (5) and (6)).

- (3) The company's available loss for an accounting period is given by—

$$L+RUL$$

where—

L is the amount of the company's loss for the period in the separate video game trade, and

RUL is the amount of any relevant unused loss of the company (see subsection (4)).

- (4) The “relevant unused loss” of a company is so much of any available loss of the company for the previous accounting period as has not been—
  - (a) surrendered under section 1217CI(1), or
  - (b) carried forward under section 45 of CTA 2010 and set against profits of the separate video game trade.

- (5) For the first period of account during which the separate video game trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1217CG(1).

- (6) For any period of account after the first, the available qualifying expenditure is given by—

$$E-S$$

where—

E is the amount that is E for that period for the purposes of section 1217CG(2), and

S is the total amount previously surrendered under section 1217CI(1).

- (7) If a period of account of the separate video game trade does not coincide with an accounting period, any necessary apportionments are to be made by reference to the number of days in the periods concerned.

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### **1217CI Surrendering of loss and amount of video game tax credit**

- (1) The company may surrender the whole or part of its surrenderable loss in an accounting period.
- (2) If the company surrenders the whole or part of that loss, the amount of the video game tax credit to which it is entitled for the accounting period is 25% of the amount of the loss surrendered.
- (3) The company's available loss for the accounting period is reduced by the amount surrendered.

### **1217CJ Payment in respect of video game tax credit**

- (1) If the company—
  - (a) is entitled to a video game tax credit for a period, and
  - (b) makes a claim,
 the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) must pay to the company the amount of the credit.
- (2) An amount payable in respect of—
  - (a) a video game tax credit, or
  - (b) interest on a video game tax credit under section 826 of ICTA,
 may be applied in discharging any liability of the company to pay corporation tax.  
  
 To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.
- (3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a video game tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).  
  
 In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.
- (4) No payment need be made in respect of a video game tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period—
  - (a) under PAYE regulations,
  - (b) under section 966 of ITA 2007 (visiting performers), or
  - (c) in respect of Class 1 national insurance contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (5) A payment in respect of a video game tax credit is not income of the company for any tax purpose.

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### Miscellaneous

#### 1217CK No account to be taken of amount if unpaid

- (1) In determining for the purposes of this Chapter the amount of costs incurred on a video game at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.
- (2) This is without prejudice to the operation of section 1217BD (when costs are taken to be incurred).

#### 1217CL Artificially inflated claims for additional deduction or tax credit

- (1) So far as a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be ignored in determining for any period—
  - (a) any additional deduction which a company may make under this Chapter, and
  - (b) any video game tax credit to be given to a company.
- (2) Arrangements are entered into wholly or mainly for a disqualifying purpose if their main object, or one of their main objects, is to enable a company to obtain—
  - (a) an additional deduction under this Chapter to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or
  - (b) a video game tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.
- (3) “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

#### Modifications etc. (not altering text)

- C1** S. 1217CL(1)(a) modified by 2010 c. 4, s. 357TE (as inserted (with effect in accordance with s. 5 of the amending Act) by Corporation Tax (Northern Ireland) Act 2015 (c. 21), s. 1)
- C2** S. 1217CL(2)(a) modified by 2010 c. 4, s. 357TE (as inserted (with effect in accordance with s. 5 of the amending Act) by Corporation Tax (Northern Ireland) Act 2015 (c. 21), s. 1)

#### 1217CM Confidentiality of information

- (1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to the Secretary of State for the purposes of the Secretary of State's functions under any of the provisions listed in subsection (2).
- (2) The provisions referred to in subsection (1) are—
  - (a) sections 1216CB to 1216CD (certification of relevant programmes as British),
  - (b) sections 1217CB to 1217CD (certification of video games as British), and
  - (c) Schedule 1 to the Films Act 1985 (certification of films as British).
- (3) Information so disclosed may be disclosed to the British Film Institute.
- (4) The Treasury may by order amend subsection (3)—

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- (a) so as to substitute for the person or body specified in that subsection a different person or body, or
  - (b) in consequence of a change in the name of the person or body so specified.
- (5) A person to whom information is disclosed under subsection (1) or (3) may not otherwise disclose it except—
- (a) for the purposes of the Secretary of State's functions under any of the provisions listed in subsection (2),
  - (b) if the disclosure is authorised by an enactment,
  - (c) in pursuance of an order of a court,
  - (d) for the purposes of a criminal investigation or legal proceedings (whether civil or criminal) connected with the operation of any of Parts 15 to 15B of this Act or Schedule 1 to the Films Act 1985,
  - (e) with the consent of the Commissioners for Her Majesty's Revenue and Customs, or
  - (f) with the consent of each person to whom the information relates.

### **1217CN Wrongful disclosure**

- (1) A person (“X”) commits an offence if—
- (a) X discloses revenue and customs information relating to a person (as defined in section 19(2) of the Commissioners for Revenue and Customs Act 2005),
  - (b) the identity of the person to whom the information relates is specified in the disclosure or can be deduced from it, and
  - (c) the disclosure contravenes section 1217CM(5).
- (2) If a person (“Y”) is charged with an offence under subsection (1), it is a defence for Y to prove that Y reasonably believed—
- (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (4) A prosecution for an offence under subsection (1) may be brought in England and Wales [<sup>F18</sup>only by or with the consent of the Director of Public Prosecutions.]
- (5) A prosecution for an offence under subsection (1) may be brought in Northern Ireland only—
- (a) by the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (6) In the application of this section—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003, or
  - (b) in Northern Ireland,
- the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

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### Textual Amendments

- F18** Words in s. 1217CN(4) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 2 para. 64](#)

## CHAPTER 4

### VIDEO GAME LOSSES

#### 1217D Application of sections 1217DA and 1217DB

- (1) Sections 1217DA and 1217DB apply to a company that is the video games development company in relation to a video game.
- (2) In those sections—
  - “the completion period” means the accounting period of the company—
    - (a) in which the video game is completed, or
    - (b) if the company does not complete the video game, in which it abandons video game development activities in relation to the video game,
  - “loss relief” includes any means by which a loss might be used to reduce the amount in respect of which the company, or any other person, is chargeable to tax,
  - “pre-completion period” means an accounting period of the company before the completion period, and
  - “the separate video game trade” means the company's separate trade in relation to the video game (see section 1217B).

#### 1217DA Restriction on use of losses while video game in development

- (1) This section applies if in a pre-completion period a loss is made in the separate video game trade.
- (2) The loss is not available for loss relief except to the extent that it may be carried forward under section 45 of CTA 2010 to be set against profits of the separate video game trade in a subsequent period.

### Modifications etc. (not altering text)

- C3** S. 1217DA modified by [2010 c. 4, s. 357TF](#) (as inserted (with effect in accordance with s. 5 of the amending Act) by [Corporation Tax \(Northern Ireland\) Act 2015 \(c. 21\), s. 1](#))

#### 1217DB Use of losses in later periods

- (1) This section applies to the following accounting periods of the company (“relevant later periods”)—
  - (a) the completion period, and
  - (b) any subsequent accounting period during which the separate video game trade continues.

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- (2) Subsection (3) applies if a loss made in the separate video game trade is carried forward under section 45 of CTA 2010 from a pre-completion period to a relevant later period.
- (3) So much (if any) of the loss as is not attributable to video games tax relief (see subsection (6)) may be treated for the purposes of loss relief as if it were a loss made in the period to which it is carried forward.
- (4) Subsection (5) applies if in a relevant later period a loss is made in the separate video game trade.
- (5) The amount of the loss that may be—
  - (a) deducted from total profits of the same or an earlier period under section 37 of CTA 2010, or
  - (b) surrendered as group relief under Part 5 of that Act,
 is restricted to the amount (if any) that is not attributable to video games tax relief (see subsection (6)).
- (6) The amount of a loss in any period that is attributable to video games tax relief is calculated by deducting from the total amount of the loss the amount there would have been if there had been no additional deduction under Chapter 3 in that or any earlier period.
- (7) This section does not apply to a loss to the extent that it is carried forward or surrendered under section 1217DC.

**Modifications etc. (not altering text)**

**C4** S. 1217DB modified by 2010 c. 4, s. 357TG (as inserted (with effect in accordance with s. 5 of the amending Act) by [Corporation Tax \(Northern Ireland\) Act 2015 \(c. 21\), s. 1](#))

**1217DC Terminal losses**

- (1) This section applies if—
  - (a) a company (“company A”) is the video games development company in relation to a qualifying video game,
  - (b) company A ceases to carry on its separate trade in relation to that video game (“trade X”) (see section 1217B), and
  - (c) if company A had not ceased to carry on trade X, it could have carried forward an amount under section 45 of CTA 2010 to be set against profits of trade X in a later period (“the terminal loss”).
- (2) If on cessation of trade X company A—
  - (a) is the video games development company in relation to another qualifying video game, and
  - (b) is carrying on its separate trade in relation to that video game (“trade Y”),
 it may (on making a claim) make an election under subsection (3).
- (3) The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 45 of CTA 2010 to be set against the profits of trade Y in the first accounting period beginning after the cessation and so on.
- (4) Subsection (5) applies if on cessation of trade X—



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- (a) there is another company (“company B”) that is the video games development company in relation to a qualifying video game,
  - (b) company B is carrying on its separate trade in relation to that video game (“trade Z”), and
  - (c) company B is in the same group as company A for the purposes of Part 5 of CTA 2010 (group relief).
- (5) Company A may surrender the terminal loss (or a part of it) to company B.
- (6) On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 45 of CTA 2010 to be set against the profits of trade Z of the first accounting period of that company beginning after the cessation and so on.
- (7) The Treasury may, in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6), make provision by regulations corresponding, subject to such adaptations or other modifications as appear to them to be appropriate, to that made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).
- (8) “Qualifying video game” means a video game in relation to which the conditions for video games tax relief are met (see 1217C(2)).

**Modifications etc. (not altering text)**

- C5** S. 1217DC modified by 2010 c. 4, s. 357TH (as inserted (with effect in accordance with s. 5 of the amending Act) by Corporation Tax (Northern Ireland) Act 2015 (c. 21), s. 1)

## CHAPTER 5

### PROVISIONAL ENTITLEMENT TO RELIEF

#### 1217E Introduction

- (1) In this Chapter—
- “the company” means the video games development company in relation to a video game,
- “the completion period” means the accounting period of the company—
- (a) in which the video game is completed, or
  - (b) if the company does not complete the video game, in which it abandons video game development activities in relation to it,
- “interim accounting period” means any earlier accounting period of the company during which video game development activities are carried on in relation to the video game,
- “interim certificate” and “final certificate” have the meaning given by section 1217CC,
- “the separate video game trade” means the company's separate trade in relation to the video game (see section 1217B), and
- “special video games relief” means—
- (a) video games tax relief, or

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- (b) relief under section 1217DC (transfer of terminal losses from one video game to another).
- (2) The company's company tax return for the completion period must state that the video game has been completed or that the company has abandoned video game development activities in relation to it (as the case may be).

### **1217EA Certification as a British video game**

- (1) The company is not entitled to special video games relief for an interim accounting period unless its company tax return for the period is accompanied by an interim certificate.
- (2) If an interim certificate ceases to be in force (otherwise than on being superseded by a final certificate) or is revoked, the company—
  - (a) is not entitled to special video games relief for any period for which its entitlement depended on the certificate, and
  - (b) must amend accordingly its company tax return for any such period.
- (3) If the video game is completed by the company—
  - (a) its company tax return for the completion period must be accompanied by a final certificate,
  - (b) if that requirement is met, the final certificate has effect for the completion period and for any interim accounting period, and
  - (c) if that requirement is not met, the company—
    - (i) is not entitled to special video games relief for any period, and
    - (ii) must amend accordingly its company tax return for any period for which such relief was claimed.
- (4) If the company abandons video game development activities in relation to the video game—
  - (a) its company tax return for the completion period may be accompanied by an interim certificate, and
  - (b) the abandonment of video game development activities does not affect any entitlement to special video games relief in that or any previous accounting period.
- (5) If a final certificate is revoked, the company—
  - (a) is not entitled to special video games relief for any period, and
  - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

### **1217EB The [<sup>F19</sup>EEA expenditure] condition**

- (1) The company is not entitled to special video games relief for an interim accounting period unless—
  - (a) its company tax return for the period states the amount of planned core expenditure on the video game that is [<sup>F20</sup>EEA expenditure], and
  - (b) that amount is such as to indicate that the condition in section 1217CE (the [<sup>F20</sup>EEA expenditure] condition) will be met on completion of the video game.

If those requirements are met, the company is provisionally treated in relation to that period as if that condition was met.

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- (2) If such a statement is made but it subsequently appears that the condition will not be met on completion of the video game, the company—
  - (a) is not entitled to special video games relief for any period for which its entitlement depended on such a statement, and
  - (b) must amend accordingly its company tax return for any such period.
- (3) When the video game is completed or the company abandons video game development activities in relation to it (as the case may be), the company's company tax return for the completion period must be accompanied by a final statement of the amount of core expenditure on the video game that is [<sup>F21</sup>EEA expenditure].
- (4) If that statement shows that the condition in section 1217CE is not met, the company—
  - (a) is not entitled to special video games relief for any period, and
  - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

#### Textual Amendments

- F19** Words in s. 1217EB heading substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(6\)\(f\)](#)
- F20** Words in s. 1217EB(1)(a)(b) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(6\)\(g\)](#)
- F21** Words in s. 1217EB(3) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 34\(6\)\(g\)](#)

#### 1217EC Time limit for amendments and assessments

Any amendment or assessment necessary to give effect to the provisions of this Chapter may be made despite any limitation on the time within which an amendment or assessment may normally be made.]

**Status:**

Point in time view as at 26/03/2015.

**Changes to legislation:**

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