

2013 No. 1831

CORPORATION TAX

The Cultural Test (Television Programmes) Regulations 2013

Made - - - - - *18th July 2013*

Laid before Parliament *22nd July 2013*

Coming into force - - - *13th August 2013*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1216CB and 1216CC(7) of the Corporation Tax Act 2009(a).

Regulations 3 to 5 of, and Schedule 1 to, these Regulations are made with the approval of the Treasury in accordance with section 1216CB(2) of that Act.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Cultural Test (Television Programmes) Regulations 2013.

(2) These Regulations come into force on 13th August 2013.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Corporation Tax Act 2009;

“cast” means the actors and performers in a drama or animation, but not any extras;

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

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

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

“programme” means a drama(b), a documentary or an animation which is a relevant programme(c);

(a) 2009 c.4. Part 15A of the Act, which contain sections 1216CB and 1216CC(7), was inserted by Schedule 16 to the Finance Act 2013 (c.29).

(b) “Drama” is defined in section 1216AC(2) of the Act.

(c) “Relevant programme” is defined in section 1216AB of the Act.

“qualifying person” means a national of, or a person ordinarily resident in, an EEA state;
“recognised regional or minority language” means Welsh, Scottish-Gaelic, Irish, Scots, Ulster Scots, Cornish or British Sign Language;
“special effects” means artificial techniques or processes, which are not visual effects, used to create an illusion in a programme; and
“visual effects” means digital alterations to a programme’s images.

(2) “Heads of department” means—

- (a) in relation to a drama, lead cinematographer, lead production designer, lead costume designer, lead editor, lead sound designer, lead visual effects supervisor and lead hair and makeup supervisor;
- (b) in relation to a documentary, lead camera operator, lead sound recordist, lead editor and lead researcher;
- (c) in relation to an animation, lead layout supervisor, lead production designer, lead character designer, lead editor, lead sound designer, lead visual effects supervisor and lead modelling supervisor.

PART 2

The Cultural Tests

Cultural test: dramas and documentaries

3.—(1) A drama or documentary will be certified by the Secretary of State as a British programme under section 1216CB(1) of the Act only if it passes the following cultural test.

(2) A drama or documentary passes the cultural test if it meets either of the following conditions—

- (a) subject to paragraph (3), it is awarded at least 16 points in total under paragraphs (4) to (7); or
- (b) it is a qualifying co-production^(a) made in accordance with an international agreement specified in Schedule 1.

(3) A drama or documentary that is awarded all the points available under paragraphs (4)(d) (language), (6) (where work carried out) and (7) (personnel) will not pass the cultural test unless it is awarded—

- (a) at least 2 points under paragraph (4)(a) (setting);
- (b) at least 2 points under paragraph (4)(b) (characters); or
- (c) 4 points under paragraph (4)(c) (story).

(4) Up to 16 points will be awarded in respect of the content of the drama or documentary as follows—

- (a) up to 4 points depending on the percentage of the drama or documentary that is set in the United Kingdom or another EEA state 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 drama or documentary that are from the United Kingdom or another EEA state as follows—

(a) “Qualifying co-production” is defined in section 1216AI(a) of the Act.

- (i) if there are more than three characters depicted in the drama or documentary—
 - (aa) if two or three of the three lead characters are from the United Kingdom or another EEA state, 4 points;
 - (bb) if only one of the three lead characters is from the United Kingdom or another EEA state, 2 points if that character is the first or second lead, or 1 point if that character is the third lead;
- (ii) if there are only three characters depicted in the drama or documentary—
 - (aa) if two or three of the characters are from the United Kingdom or another EEA state, 4 points;
 - (bb) if only one of the characters is from the United Kingdom or another EEA state, 2 points if that character is the first or second lead, or 1 point if that character is the third lead;
- (iii) if there are only two characters depicted in the drama or documentary—
 - (aa) if both of the characters are from the United Kingdom or another EEA state, 4 points;
 - (bb) if one of the characters is from the United Kingdom or another EEA state, 2 points;
- (iv) if there is only one character depicted in the drama or documentary, 4 points if that character is from the United Kingdom or another EEA state;
- (c) 4 points if the drama or documentary depicts a British story or a story which relates to another EEA state;
- (d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or 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%.

(5) Up to 4 points will be awarded in respect of the contribution of the drama or documentary to the promotion, development and enhancement of British culture.

(6) Up to 3 points will be awarded in respect of work carried out in the making of the drama or documentary 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) in relation to a drama—
 - (aa) principal photography;
 - (bb) visual effects;
 - (cc) special effects;
 - (ii) in relation to a documentary—
 - (aa) shooting;
 - (bb) visual effects;
 - (cc) research and development;
 - (dd) 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 drama or documentary;
 - (ii) audio post production;
 - (iii) picture post production.

(7) Up to 8 points will be awarded in respect of the personnel involved in the making of the drama or documentary as follows—

- (a) 1 point if a director (or, if there are more than three, one of the three lead directors) is a qualifying person;
- (b) 1 point if at least one of the scriptwriters (or, if there are more than three, 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, one of the three lead producers) is a qualifying person;
- (d) 1 point if a composer (or, if there are more than three, one of the three lead composers) is a qualifying person;
- (e) 1 point if at least one of the actors or participants (as the case may be) (or, if there are more than three, one of the three lead actors or participants) is a qualifying person;
- (f) 1 point if at least 50% of the cast or participants (as the case may be) 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.

Cultural test: animation

4.—(1) An animation will be certified by the Secretary of State as a British programme under section 1216CB(1) of the Act only if it passes the following cultural test.

(2) An animation passes the cultural test if it meets either of the following conditions—

- (a) subject to paragraph (3), it is awarded at least 16 points in total under paragraphs (4) to (7); or
- (b) it is a qualifying co-production^(a) made in accordance with an international agreement specified in Schedule 1.

(3) An animation that is awarded all the points available under paragraphs (4)(d) (language), (6) (where work carried out) and (7) (personnel) will not pass the cultural test unless it is awarded—

- (a) at least 2 points under paragraph (4)(a) (setting);
- (b) at least 2 points under paragraph (4)(b) (characters); or
- (c) 4 points under paragraph (4)(c) (story).

(4) Up to 16 points will be awarded in respect of the content of the animation as follows—

- (a) up to 4 points depending on the percentage of the animation that is set in the United Kingdom or another EEA state 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 animation that are from the United Kingdom or another EEA state as follows—
 - (i) if there are more than three characters depicted in the animation—
 - (aa) if two or three of the three lead characters are from the United Kingdom or another EEA state, 4 points;
 - (bb) if only one of the three lead characters is from the United Kingdom or another EEA state, 2 points if that character is the first or second lead, or 1 point if that character is the third lead;

(a) “Qualifying co-production” is defined in section 1216AI(a) of the Act.

- (ii) if there are only three characters depicted in the animation—
 - (aa) if two or three of the characters are from the United Kingdom or another EEA state, 4 points;
 - (bb) if only one of the characters is from the United Kingdom or another EEA state, 2 points if that character is the first or second lead, or 1 point if that character is the third lead;
- (iii) if there are only two characters depicted in the animation—
 - (aa) if both of the characters are from the United Kingdom or another EEA state, 4 points;
 - (bb) if one of the characters is from the United Kingdom or another EEA state, 2 points;
- (iv) if there is only one character depicted in the animation, 4 points if that character is from the United Kingdom or another EEA state;
- (c) 4 points if the animation depicts a British story or a story which relates to another EEA state;
- (d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or 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%.

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

(6) Up to 3 points will be awarded in respect of work carried out in the making of the animation 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 animation;
 - (ii) voice recording;
 - (iii) audio post production;
 - (iv) picture post production.

(7) Up to 8 points will be awarded in respect of the personnel involved in the making of the animation as follows—

- (a) 1 point if a director (or, if there are more than three, one of the three lead directors) is a qualifying person;
- (b) 1 point if at least one of the scriptwriters (or, if there are more than three, 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, one of the three lead producers) is a qualifying person;

- (d) 1 point if a composer (or, if there are more than three, one of the three lead composers) is a qualifying person;
- (e) 1 point if at least one of the actors (or, if there are more than three, one 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.

(8) An animation which is set in, or in which any character is from, an undetermined location is eligible to be awarded points under paragraphs (4)(a)(ii)-(iv) (setting) and (4)(b) (characters) as if that location were in the UK or another EEA state, provided it complies with the following condition.

- (9) The condition is that that animation is awarded at least one point under any of—
- (a) paragraph (4)(c) (story);
 - (b) paragraph (4)(d) (language); or
 - (c) paragraph (5) (culture).

Excluded programmes

5.—(1) A programme must not be certified as a British programme under these Regulations if parts of the programme whose playing time exceeds 10% of the total playing time are derived from a previous programme, unless—

- (a) the two programmes have the same television production company^(a) or producer; and
- (b) the previous programme has not been certified under these Regulations.

(2) The Secretary of State may direct that paragraph (1) does not apply in relation to a programme if in the opinion of the Secretary of State—

- (a) it is a documentary within the meaning of section 1216AB(3)(b) of the Act; and
- (b) its subject matter makes it appropriate for paragraph (1) not to be applied.

(3) For the purposes of this regulation—

- (a) no account may be taken of the programme soundtrack;
- (b) “producer” means the person by whom the arrangements necessary for the making of a programme are undertaken.

PART 3

Applications for Certification

Applications

6.—(1) An application under section 1216CC(1) for the certification of a relevant programme^(b) (other than a co-production) as a British programme must be made in writing to the Secretary of State.

(2) For the purposes of this regulation—

- (a) “in writing” includes text which is—
 - (i) transmitted by electronic means;
 - (ii) received in legible form; and

^(a) The meaning of “television production company” is set out in section 1216AE of the Act.

^(b) “Relevant programme” is defined in section 1216AB of the Act.

- (iii) capable of being used for subsequent reference;
- (b) “co-production” means a programme which passes the cultural test(a) by satisfying the condition in regulation 3(2)(b) or 4(2)(b).

Particulars

7. An application in relation to a programme must set out the particulars (where applicable) described in Schedule 2 for that programme.

Evidence

8.—(1) An application must be accompanied by a statutory declaration made by the applicant as to the truth of the particulars given in the application.

(2) A statutory declaration will be deemed to be properly made by the applicant if it has been made on behalf of the company by the secretary or one of the directors of the company or by any person duly authorised by the company to make the declaration on its behalf.

9.—(1) Where an application for final certification seeks to rely on any point that may be awarded under regulation 3(6) or (7), or 4(6) or (7), the application must be accompanied by a report prepared by a person referred to in paragraph (2) verifying (where applicable) the particulars in paragraphs 17 to 19 of Schedule 2.

(2) The person referred to in this paragraph is a person who is eligible for appointment as a statutory auditor under section 1212 of the Companies Act 2006(b) and is not and was not at any time while the programme was being made—

- (a) in partnership with the applicant or any officer or servant of the applicant;
- (b) in the employment of the applicant or any officer or servant of the applicant; or
- (c) an officer or servant of the applicant or, if the applicant is a member of a group of companies, of any other company in that group.

(3) In this regulation, “group of companies” means a company and all other companies which are its subsidiaries within the meaning of section 1159 of the Companies Act 2006.

PART 4

General

10. For the purposes of these Regulations—

- (a) a programme is set in the United Kingdom or another EEA state to the extent that it is set in a country which is now part of the United Kingdom or another EEA state;
- (b) a programme depicts a British story or a story which relates to another EEA state if the subject matter of the programme or the underlying material on which the programme is based is British or relates to another EEA state;
- (c) a person or a character in a programme is from the United Kingdom or another EEA state if the person or character is a national or resident of the United Kingdom or another EEA state (or was a national or resident of a country which is now part of the United Kingdom or another EEA state).

11. The amount of work that is carried out in the United Kingdom or elsewhere is determined—

- (a) for the purposes of regulation 3(6)(a)(i)(aa) (principal photography), by reference to the number of days spent on the work;

(a) The meaning of “cultural test” in relation to a programme is set out in section 1216CB(2) of the Act.

(b) 2006 c.46.

(b) for the purposes of the rest of regulation 3(6) and regulation 4(6) (where work carried out), by reference to the amount of expenditure on the work.

12. No points will be awarded under any provision of regulation 3(6) or 4(6) (where work carried out) 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 programme.

Address
17th July 2013

Ed Vaisey
Minister of State
Department for Culture, Media and Sport

We approve,

18th July 2013

Anne Milton
Mark Lancaster
Two Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1 Regulation 3(2)(b), 4(2)(b)

INTERNATIONAL AGREEMENTS

The international agreements specified in this Schedule for the purposes of regulations 3(2)(b) and 4(2)(b) are the agreements made between the UK Government and the Governments of the countries, or the international organisations or authorities, referred to in the first column of the Table on the dates in the second column of the Table and as referred to by the Command Paper numbers in the third column.

<i>Country/International Organisation/Authority</i>	<i>Date of Agreement</i>	<i>Command Paper</i>
Australia	12th June 1990	Cm 1758
Canada	12th September 1975	Cmnd 6380
	9th July 1985	Cmnd 9887
	5th July 1991	Cm 1807
Israel	3rd November 2010	Cm 7994
New Zealand	14th April 1993	Cm 2638
Palestine Liberation Organisation for the benefit of the Palestinian Authority	3rd November 2010	Cm 7995

SCHEDULE 2 Regulation 7

PARTICULARS

1. Title of the programme.
2. Whether the application relates to a drama, a documentary, or an animation.
3. Total playing time in minutes and seconds of the programme, including credits and titles.
4. Whether the application is for interim or final certification.
5. Whether the programme is intended for broadcast or supply to the general public (as the case may be).

- 6.** Name of the applicant.
- 7.** Address of the applicant’s principal place of business.
- 8.** Address of the applicant’s registered office.
- 9.** Registered number of the applicant.
- 10.** Date of registration of the applicant.
- 11.** In relation to a drama, the date of the first day of principal photography.
- 12.** Date on which the programme was completed for the purposes of section 1216AA(5) of the Act.
- 13.** A copy of the commissioning agreement.
- 14.** The reasons why it should be considered to be a drama, documentary or animation (as the case may be).
- 15.** The reasons why any point should be awarded under regulation 3(4) (drama or documentary) or 4(4) (animation) (as the case may be).
- 16.** The reasons why any point should be awarded under regulation 3(5) (drama or documentary) or 4(5) (animation) (as the case may be).
- 17.** If the applicant seeks to rely on regulation 3(6)(a)(i)(aa), the total number of days of principal photography and the number of days of principal photography carried out in the United Kingdom.
- 18.** If the applicant seeks to rely on any other part of regulation 3(6) or 4(6), the total expenditure on such other work and the expenditure on such work as was carried out in the United Kingdom.
- 19.** The nationality or ordinary residence of all the persons mentioned in regulation 3(7) or 4(7) in relation to whom the applicant is applying for a point to be awarded.
- 20.** Total core expenditure(**a**).
- 21.** Total UK expenditure(**b**).
- 22.** Total non-UK expenditure by each country the expenditure is carried out in.
- 23.** Other expenditure, meaning all the expenditure on the work carried out in the making of the programme which is not core expenditure.
- 24.** Shooting script in the English language.
- 25.** A complete synopsis or treatment of the screenplay in the English language.
- 26.** Shooting schedule.
- 27.** Production budget.
- 28.** Copy of the chain of title in the programme.
- 29.** The following particulars—
 - (a) if any part of the programme that is the subject of the application is derived from any previous programme, the playing time in minutes and seconds of that part (the “derived part”) and the combined playing time in minutes and seconds of all derived parts;
 - (b) the particulars in paragraph (a) are only required in relation to any derived parts which—

(a) “Core expenditure” is defined in section 1216AG(3) of the Act.

(b) “UK expenditure” is defined in section 1216AH of the Act.

- (i) do not have the same television production company or producer as the programme that is the subject of the application; or
- (ii) are derived from a previous programme that has been certified under these Regulations;
- (c) if the applicant seeks to rely on regulation 5(2), the reasons why the subject matter of the documentary makes it appropriate for the Secretary of State to direct that regulation 5(1) does not apply;
- (d) for the purposes of sub-paragraph (b)(i), “producer” has the same meaning as in regulation 5(3)(b).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce points-based “cultural tests” for television programmes (dramas, documentaries and animation). The purpose of the tests is to determine whether a programme may be certified as a “British programme” by the Secretary of State under Part 15A of the Corporation Tax Act 2009 (as inserted by the Finance Act 2013). Points under the tests are awarded on the basis of the setting, content, language and British cultural aspects of the programme, where certain work on the programme is carried out, and the residence or nationality of the personnel involved in the making of the programme. Certification as a British programme is a condition of eligibility for television tax relief under that Act.

These Regulations also prescribe the particulars and evidence that must be provided to the Secretary of State in support of an application for certification. They also make provision for the making of a statutory declaration on behalf of a company.

The impact on business, charities or voluntary bodies arising from this instrument has been included in the Tax Information and Impact Notes prepared for the Finance Act 2013 which was published alongside the budget on 20th March 2013. The Notes are available on the HMRC website at <http://www.hmrc.gov.uk/tiin/2012/tiin2390.htm> (in respect of dramas and documentaries) and <http://www.hmrc.gov.uk/tiin/2012/tiin2356.htm> (in respect of animation). The Notes remain an accurate summary of the impacts. No significant impact on the public sector is foreseen, and therefore no separate impact assessment has been prepared for this instrument.

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