

**EXPLANATORY MEMORANDUM TO**  
**THE CULTURAL TEST (VIDEO GAMES) REGULATIONS 2014**

**2014 No. 1958**

**1.** This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the Instrument**

2.1 These Regulations introduce a points-based test for video games in connection with qualification for tax relief for video games development. The purpose of the test is to allow the Secretary of State to assess whether the attributes of a video game (such as its content, where it was made and the persons involved in its production or development) is sufficiently culturally British in order to qualify for the relief. These Regulations also set out the information and evidence that applicants must provide in relation to the cultural test.

**3. Matters of special interest to the Select Committee on Statutory Instruments**

3.1 These Regulations will be made, laid and enter into force during the summer Recess period. While the Department appreciates that it should avoid laying negative instruments in the summer recess, the ability for producers to claim tax relief can be a critical factor in securing other sources of finance and thus aiding cash flow. Consultations have been held on the Regulations as set out in section 8 below. The Regulations were also published alongside the Finance Bill 2013 and again in reference to the Finance Bill 2014. The draft Regulations were considered in debates in the House on these Bills<sup>1</sup>, during which it was made clear by the Government that the Regulations would be made immediately after the Finance Bill 2014 received Royal Assent<sup>2</sup>. Taking these very specific circumstances into account, the Department therefore considers that it is appropriate for the Regulations to be made during recess.

**4. Legislative Context**

4.1 A new tax relief for video games was introduced into the Corporation Tax Act 2009 by the Finance Act 2013 (see Part 15B of the 2009 Act) and subject to minor amendment by the Finance Act 2014 following state aid approval by the European Commission. One of the requirements that must be satisfied in order to qualify for the relief is that the video game must be certified by the Secretary of State as a “British video games” in accordance with conditions specified by the Secretary of State in regulations, with the approval of the Treasury. These Regulations set out the

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<sup>1</sup> House of Commons Public Bill Committee on the Finance (No.2) Bill 2013-14, 9th and 10th sittings, 4th June 2013, cols 290-311; House of Commons Public Bill Committee on the Finance (No. 2) Bill 2014, 5th sitting, 6th May 2014, cols 175 – 177.

<sup>2</sup> House of Commons Public Bill Committee on the Finance (No. 2) Bill 2014, 5th sitting, 6th May 2014, col 176.

conditions that must be satisfied in order that the Secretary of State may certify a video game as a British video game.

4.2 In addition, the provisions introduced into the Corporation Tax Act 2009 by the Finance Act 2013 allow the Secretary of State to make regulations setting out the information and the evidence required in connection with an application for certification as a British video game. These Regulations also include regulations made under these provisions.

4.3 As the tax relief for video games is a new relief, this is the first time that these regulation-making powers have been used.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 As with the existing corporation tax reliefs for film, high end tv and animation production (which are set out in Parts 15 and 15A of the Corporation Tax Act 2009 respectively) the tax relief for video games required State aid approval from the European Commission. Article 107 of the Treaty on the Functioning of the European Union prohibits Member States from providing aid, such as tax relief, to selected industries or businesses if such aid has the potential to distort competition and affect trade between Member States. There is an exemption, however, for aid to promote culture. The European Commission may approve such aid if such aid does not affect trading conditions and competition in the European Union to an extent that is contrary to the common interest.

7.2 The video games tax relief, including the cultural test, was notified to the European Commission under Article 107 of the Treaty on the Functioning of the European Union on 25<sup>th</sup> January 2013. On 16<sup>th</sup> April 2013 the European Commission initiated a formal investigation into the relief. This investigation included consideration of whether the proposed cultural test would ensure that the relief supported only video games with cultural content without leading to undue distortions of competition. In the light of comments invited from other member states and other interested parties and following submission of additional evidence and data from the UK Government, on 27<sup>th</sup> March 2014 the European Commission gave state aid approval for the video games tax relief. The approval required certain minor modifications to the basis on which the relief was calculated and granted, which have now been implemented in the Finance Act 2014. The Commission accepted that the cultural test as set out in these Regulations provides verifiable national criteria to identify culturally British video games.

7.3 The cultural tests award points in four sections: in relation to the British or European content of the video game; the cultural contribution of the video game; the extent to which the video game was developed in the United Kingdom; and the extent the video game was made by nationals or residents of the European Economic Area.

## **8. Consultation Outcomes**

8.1 The Department worked with stakeholders – through sector based working groups - to design the cultural test for video games in line with the European Commission’s rules on State aid. The Department subsequently issued an initial consultation paper on the proposed cultural test on 1 October 2012 and invited responses by 29 October 2012. The Department considers that this initial consultation period was sufficient because it has good reach into the industry and working relationships video games developers and publishers who are likely to be most affected by the policy. A total of 22 responses were received. All respondents were broadly supportive of the cultural tests, but adjustments were made post-consultation to some terminology used in the cultural test. A draft of the Regulations was published alongside the draft Finance Bill 2013 on 11 December 2012, with the consultation period on the draft legislation closing on 6 February 2013. As a result of this further consultation, further improvements were made to the terminology used. The Department also subsequently agreed to amendments sought by the European Commission in respect of a minimum level of cultural content to be achieved in Section A and an adjustment to how indeterminate locations and characters are treated in the cultural test. A further draft of the Regulations was published on 22 April 2013 to accompany the introduction of the Finance Bill 2013. The final draft of the Regulations was published on 30 April 2014 following the European Commission’s state aid approval of the tax relief and in advance of Parliament’s consideration of the Finance Bill 2014. That Bill introduced minor changes to the relief to make it compliant with the state aid approval and to clarify that only those games qualifying for relief need to be treated as separate trades.

## **9. Guidance**

9.1 The British Film Institute (BFI) Certification Unit will be responsible for assessing applications for the certification of British video games on behalf of the Secretary of State. The Department and the BFI have developed guidance on the cultural test (which is similar to the current guidance for British film certification) which is available at [http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-british-film-certification-cultural-test-for-video-games-guidance-notes-2014-04-01\\_1.pdf](http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-british-film-certification-cultural-test-for-video-games-guidance-notes-2014-04-01_1.pdf) The Department has deposited a copy of the guidance in the Library of the House of Commons.

## **10. Impact**

10.1 Businesses will have to complete a cultural test application for each video game in order to qualify for the relief, as well as making the claim for the relief through their tax returns. These regulations are necessary for the administration of the reliefs.

10.2 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 those impacts.

10.3 The impact on the public sector, chiefly the BFI and the Department, is beneath the financial threshold that would indicate that an Impact Assessment should be prepared.

10.4 An Impact Assessment has therefore not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business. The views of small businesses were taken into account before the consultation and during the consultation period. The cultural test is a mandatory requirement for any programme wishing to qualify for the tax relief.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to seek to minimise the particulars required to apply for tax relief. The Department is satisfied that the impact on small businesses is not disproportionate to that on other businesses.

11.3 The basis for the decision on what action to take to assist small business is that the cultural test will benefit the UK's creative content sector by encouraging the use of British content and practitioners.

## **12. Monitoring & review**

12.1 The UK is required to submit an annual report to the European Commission on the implementation of the cultural test measure to ensure it is consistent with the original State aid notification.

12.2 This cultural measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

## **13. Contact**

Lynne Kilpatrick at the Department for Culture, Media and Sport Tel: 020 7211 6142 or e-mail [lynne.kilpatrick@culture.gsi.gov.uk](mailto:lynne.kilpatrick@culture.gsi.gov.uk) can answer any queries regarding the instrument.