This draft supersedes that laid on 22nd February 2007.
Draft Regulations laid before the House of Commons under section 52 of the Finance Act 2006 for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2007 No.

CORPORATION TAX

The Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007

Made - - - - **

Coming into force in accordance with regulation 1

The Treasury in exercise of the powers conferred upon them by section 52 of the Finance Act 2006(**1**) make the following Regulations.

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with section 52(4) of the Finance Act 2006.

Preliminary

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007 and shall come into force on the day after the day on which they are made.

(2) The provisions of Chapter 3 of Part 3 of the Finance Act 2006 (films and sound recordings) applied by these Regulations shall have effect as if they had been in force at all material times.

Interpretation

2. In these Regulations a reference to a "Chapter", "Part", "section" or "Schedule" without more is a reference to a Chapter, Part, section or Schedule of the Finance Act 2006, unless the context otherwise requires.

(**1**) 2006 c. 25; section 52 was amended by S.I. 2006/3265.

Application of enactments

3. The provisions of Chapter 3 of Part 3, the enactments amended by that Chapter and the Corporation Tax Acts apply with the modifications provided in regulations 4 to 12 in relation to films that commenced principal photography before 1st January 2007 but are not completed before that date.

Modifications to the Finance Act 2006

Modification of section 32 (meaning of "film production company")

4. In section 32 (meaning of "film production company"), in subsection (3), in relation to a film that commenced principal photography before 1st April 2006, omit "pre-production," in both places.

Modification of section 40 (conditions of relief: British film)

5. In section 40 (conditions of relief: British film) at the end insert "for the purposes of film tax relief".

Modification of section 46 (films: withdrawal of existing reliefs (corporation tax))

6.—(1) Modify section 46 (films: withdrawal of existing reliefs (corporation tax))(**2**) as follows.

(2) In the provisions listed below for the words "commences principal photography on or after 1st January 2007" substitute "is certified by the Secretary of State under Schedule 1 to the Films Act 1985(**3**) as a British film for the purposes of film tax relief and is intended for theatrical release at the time the film commences principal photography".

The provisions are—

subsection (1)(a);

subsection (1)(b)(i);

subsection (3)(a); and

subsection (3)(b)(i).

(3) In subsections (1)(b)(ii) and (3)(b)(ii) for "1st October 2007" substitute "31st March 2008".

Modification of section 47 (films: withdrawal of existing reliefs (income tax))

7.—(1) Modify section 47 (films: withdrawal of existing reliefs (income tax))(**4**)as follows.

(2) In the provisions listed below for the words "commences principal photography on or after 1st January 2007" substitute "is certified by the Secretary of State under Schedule 1 to the Films Act 1985 as a British film for the purposes of film tax relief and is intended for theatrical release at the time the film commences principal photography".

The provisions are—

subsection (1)(a);

subsection (1)(b)(i);

subsection (3)(a); and

(**2**) Section 46 was amended by S.I. 2006/3265.

(**3**) 1985 c. 21; Schedule 1 was amended by section 578 of, and paragraph 9(1) and (2) of Schedule 2 to, the Capital Allowances Act 2001 (c. 2), sections 882 and 883 of, and paragraphs 397 and 399 of Part 2 of Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5), S.I. 1999/2386, S.I. 2000/756, S.I. 2006/643, S.I. 2006/3430.

(**4**) Section 47 was amended by S.I. 2006/3265.

subsection (3)(b)(i).

(3) In subsections (1)(b)(ii) and (3)(b)(ii) for "1st October 2007" substitute "31st March 2008".

Modification of section 51 (supplementary provisions)

8.—(1) In the substitution made by section 51(1) (supplementary provisions) for paragraph 80 (exclusion of films and sound recordings) of Schedule 29 to the Finance Act 2002 (corporation tax: gains and losses from intangible fixed assets)(**5**) modify substituted paragraph 80A(2)(**6**) as follows.

(2) In paragraphs (a) and (b) for the words "that commenced principal photography before 1st January 2007" substitute "to which Schedule 4 of the Finance Act 2006 does not apply".

(3) In paragraph (b) for "1st October 2007" substitute "31st March 2008".

Modification of Schedule 4 (taxation of activities of film production company)

9. In Schedule 4 (taxation of activities of film production company), in paragraph 1 (films to which this Schedule applies)(**7**) for the words "commence principal photography on or after 1st January 2007" substitute "are certified by the Secretary of State under Schedule 1 to the Films Act 1985 as British films for the purposes of film tax relief and are intended for theatrical release at the time principal photography commences".

Modifications of Schedule 5 (film tax relief: further provisions)

10.—(1) Modify Schedule 5 (film tax relief: further provisions) as follows.

(2) In paragraph 1(1) omit the words from ", and" to the end.

(3) After paragraph 15 insert—

"**15A.** After section 6 of that Act insert—

"**6A.** Where the Secretary of State refuses an application for interim or final certification of a film as a British film for the purposes of film tax relief, Schedule 1A to this Act has effect with respect to the certification by the Secretary of State of a master negative, tape or disc of a film as a qualifying film, tape or disc for the purposes of section 40D of the Finance (No. 2) Act 1992(**8**) (election for sections 40A and 40B not to apply) or Chapter 9 of Part 2 of the Income Tax (Trading and Other Income) Act 2005(**9**) (election relating to tax treatment of films expenditure).".".

(4) In paragraph 17, in the substituted paragraph 1 of Schedule 1 to the Films Act 1985 after "Schedule" insert "and Schedule 1A" in each place.

(5) In paragraph 19, in the substituted paragraph 3 of Schedule 1 to the Films Act 1985, in subparagraph (4) after "otherwise" insert "and except in relation to sections 46 and 47 (films: withdrawal of existing reliefs) of, and paragraph 1 of Schedule 4 (taxation of activities of film production company) to, the Finance Act 2006".

(6) After paragraph 20 insert—

"**20A.** For paragraphs 4A to 4C of that Schedule(**10**) substitute—

(**5**) 2002 c.23.
(**6**) Substituted paragraph 80A(2) was amended by S.I. 2006/3265.
(**7**) Paragraph 1 was amended by S.I. 2006/3265.
(**8**) 1992 c. 48; section 40D was inserted by section 578 of, and paragraph 82 of Schedule 2 to, the Capital Allowances Act 2001 (c. 2).
(**9**) 2005 c. 5.
(**10**) Paragraphs 4A to 4C of Schedule 1 to the Films Act 1985 were inserted by S.I. 2006/643 and substituted by S.I. 2006/3430.

"**4A.**—(1) The cultural test for a film other than a documentary (see paragraph 4B) or an animation (see paragraph 4C) is as follows.

(2) Subject to sub-paragraph (7), a film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 16 points shall be awarded in respect of the content of the film as follows—

(a) up to 4 points depending on the percentage of the film that is set in the United Kingdom 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 film that are British as follows—

(i) if there are more than three characters depicted in the film, 4 points if two or three of the three lead characters are British or, if only one of the three lead characters is British, 2 points if he is the first or second lead, 1 point if he is the third lead;

(ii) if there are only three characters depicted in the film, 4 points if two or three of them are British or, if only one of them is British, 2 points if he is the first or second lead, 1 point if he is the third lead;

(iii) if there are only two characters depicted in the film, 4 points if both of them are British, 2 points if one of them is;

(iv) if there is only one character depicted in the film, 4 points if he is British;

(c) 4 points if the film depicts a British story;

(d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in 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%.

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

(5) Up to 3 points shall be awarded in respect of work carried out in the making of the film 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) principal photography;

(ii) visual effects;

(iii) 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 film;

(ii) audio post production;

(iii) picture post production.

(6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the film as follows—

(a) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;

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

(d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;

(e) 1 point if at least one of the actors (or, if there are more than three, 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.

(7) A film that is awarded all the points available under sub-paragraphs (3)(d) (language), (5) (where work carried out) and (6) (personnel) does not pass the cultural test unless—

(a) it is awarded at least 2 points under sub-paragraph (3)(a) (setting),

(b) it is awarded at least 2 points under sub-paragraph (3)(b) (characters), or

(c) it is awarded 4 points under sub-paragraph (3)(c) (story).

4B.—(1) The cultural test for a documentary is as follows.

(2) Subject to sub-paragraph (7), a film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 16 points shall be awarded in respect of the content of the film as follows—

(a) up to 4 points depending on the percentage of the film that is set in the United Kingdom 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 film that are British as follows—

(i) if there are more than three characters depicted in the film, 4 points if two or three of the three lead characters are British or, if only one of the three lead characters is British, 2 points if he is the first or second lead, 1 point if he is the third lead;