

Bill 5

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PART 1

FILM PRODUCTION

CHAPTER 1

OVERVIEW AND INTERPRETATION

Overview

1 Overview of Part [j4films1]

- (1) This Part is about film production.

Origin: Drafting.

- (2) Sections 2 to 8 contain definitions and other provisions about interpretation that apply for the purposes of this Part.

See, in particular, section 3 which explains how a company comes to be treated as the film production company in relation to a film.

Origin: Drafting.

- (3) Chapter 2 is about the taxation of the activities of a film production company and includes –

- (a) provision for the company’s activities in relation to its film to be treated as a separate trade, and
- (b) provision about the calculation of the profits and losses of that trade.

Origin: Drafting.

- (4) Chapter 3 is about relief (called “film tax relief”) which can be given to a film production 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 (called “a film tax credit”) to be made on the company’s surrender of losses from that trade.

Origin: Drafting.

- (5) Chapter 4 is about the relief which can be given for losses made by a film production company in its separate trade including provision for certain such losses to be transferred to other separate trades.

Origin: Drafting.

- (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- (b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

Origin: Drafting.

*Interpretation***2 Meaning of “film” etc [j4films2]**

- (1) This section applies for the purposes of this Part.

Origin: Drafting.

- (2) “Film” includes any record, however made, of a sequence of visual images that is capable of being used as a means of showing that sequence as a moving picture.

Origin: FA 2006 s.31(1).

- (3) Each part of a series of films is treated as a separate film, unless—
- (a) the films form a series with not more than 26 parts,
 - (b) the combined playing time is not more than 26 hours, and
 - (c) the series constitutes a self-contained work or is a series of documentaries with a common theme,
- in which case the films are treated as a single film.

Origin: FA 2006 s.31(2).

- (4) References to a film include the film soundtrack.

Origin: FA 2006 s.31(3).

- (5) A film 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 distributed for presentation to the general public.

Origin: FA 2006 s.31(4).

3 Meaning of “film production company” [j4films3]

- (1) For the purposes of this Part “film production company” is to be read in accordance with this section.

Origin: FA 2006 s.32(1).

- (2) There cannot be more than one film production company in relation to a film.

Origin: FA 2006 s.32(2).

- (3) A company that (otherwise than in partnership) –
- (a) is responsible –
 - (i) for pre-production, principal photography and post production of the film, and
 - (ii) for delivery of the completed film,
 - (b) is actively engaged in production planning and decision-making during pre-production, principal photography and post production, and
 - (c) directly negotiates, contracts and pays for rights, goods and services in relation to the film,

is the film production company in relation to the film.

Origin: FA 2006 s.32(3).

- (4) In relation to a qualifying co-production, a company that (otherwise than in partnership) –
- (a) is a co-producer, and
 - (b) makes an effective creative, technical and artistic contribution to the film,
- is the film production company in relation to the film.

Origin: FA 2006 s.32(4).

- (5) If there is more than one company meeting the description in subsection (3) or (4), the company that is most directly engaged in the activities referred to in that subsection is the film production company in relation to the film.

Origin: FA 2006 s.32(5).

- (6) If there is no company meeting the description in subsection (3) or (4), there is no film production company in relation to the film.

Origin: FA 2006 s.32(6).

- (7) A company may elect to be regarded as a company which does not meet the description in subsection (3) or (4).

Origin: FA 2006 s.32(7).

- (8) 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.

Origin: FA 2006 s.32(8).

- (9) The election has effect in relation to films which commence principal photography in that or any subsequent accounting period.

Origin: FA 2006 s.32(9).

4 Meaning of “film-making activities” etc [j4films4]

- (1) In this Part “film-making activities”, in relation to a film, means the activities involved in development, pre-production, principal photography and post production of the film.

Origin: FA 2006 s.33(1).

- (2) If all or any of the images in a film are generated by computer, references in this Part to principal photography are to be read as references to, or as including, the generation of those images.

Origin: FA 2006 s.33(2).

- (3) The Treasury may by regulations –
- (a) amend subsections (1) and (2),
 - (b) provide that specified activities are or are not to be regarded as film-making activities or as film-making activities of a particular description, and

- (c) provide that, in relation to a specified description of film, references to film-making activities of a particular description are to be read as references to such activities as may be specified.

“Specified” means specified in the regulations.

Origin: FA 2006 s.33(3).

- (4) No regulations may be made under subsection (3) unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Origin: FA 2006 s.33(4).

5 Meaning of “production expenditure” etc [j4films5]

- (1) In this Part, in relation to a film –
 “production expenditure” means expenditure on film-making activities in connection with the film, and
 “core expenditure” means production expenditure on pre-production, principal photography and post production.

Origin: FA 2006 s.34(1).

- (2) For the purposes of this Part a “limited-budget film” is a film whose core expenditure is £20 million or less.

Origin: FA 2006 s.34(2).

- (3) In determining if a film is a limited-budget film, any core expenditure that –
 (a) is incurred by a person under or as a result of a transaction entered into directly or indirectly between that person and a connected person, and
 (b) might have been expected to have been of a greater amount (“the arm’s length amount”) if the transaction had been between independent persons dealing at arm’s length,
 is treated as having been of an amount equal to the arm’s length amount.

Origin: FA 2006 s.34(3).

6 Meaning of “UK expenditure” etc [j4films6]

- (1) In this Part “UK expenditure”, in relation to a film, means expenditure on goods or services that are used or consumed in the United Kingdom.

Origin: FA 2006 s.35(1).

- (2) Any apportionment of expenditure as between UK expenditure and non-UK expenditure for the purposes of this Part is to be made on a just and reasonable basis.

Origin: FA 2006 s.35(2); Annex 1, Change jc218.

- (3) The Treasury may by regulations amend subsection (1).

Origin: FA 2006 s.35(3).

- (4) No regulations may be made under subsection (3) unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Origin: FA 2006 s.35(4).

7 Meaning of “qualifying co-production” and “co-producer” [j4films7]

In this Part –

- (a) “qualifying co-production” means a film that falls to be treated as a national film in the United Kingdom as a result of an agreement between Her Majesty’s Government in the United Kingdom and any other government, international organisation or authority, and
- (b) “co-producer” means a person who is a co-producer for the purposes of the agreement mentioned in paragraph (a).

Origin: FA 2006 s.36.

8 Meaning of “company tax return” [j4films7A]

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

Origin: FA 2006 s.32(10); drafting.

CHAPTER 2

TAXATION OF ACTIVITIES OF FILM PRODUCTION COMPANY

Separate film trade

9 Activities of film production company treated as a separate trade [j4films8]

- (1) This Chapter applies for corporation tax purposes to a company that is the film production company in relation to a film.

Origin: FA 2006 s.37, Sch.4 para.2.

- (2) The company’s activities in relation to the film are treated as a trade separate from any other activities of the company (including any activities in relation to any other film).

Origin: FA 2006 Sch.4 para.2.

- (3) In this Chapter the separate trade is called “the separate film trade”.

Origin: Drafting.

- (4) The company is treated as beginning to carry on the separate film trade –
 - (a) when pre-production begins, or
 - (b) if earlier, when any income from the film is received by the company.

Origin: FA 2006 Sch.4 para.3.

10 Calculation of profits or losses of separate film trade [j4films9]

- (1) This section applies for the purpose of calculating the profits or losses of the separate film trade.

Origin: Drafting.

- (2) For the first period of account the following are brought into account –

- (a) as a debit, the costs of the film incurred (and represented in work done) to date, and
- (b) as a credit, the proportion of the estimated total income from the film treated as earned at the end of that period.

Origin: FA 2006 Sch.4 para.7(1).

- (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 film 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 film treated as earned at the end of that period and the corresponding amount for the previous period.

Origin: FA 2006 Sch.4 para.7(2).

- (4) The proportion of the estimated total income treated as earned at the end of a period of account is given by –

$$\frac{C}{T} \times I$$

where –

- C is the total to date of costs incurred (and represented in work done),
- T is the estimated total cost of the film, and
- I is the estimated total income from the film.

Origin: FA 2006 Sch.4 para.7(3).

Supplementary

11 Income from the film [j4films12A]

- (1) References in this Chapter to income from the film are to any receipts by the company in connection with the making or exploitation of the film.

Origin: FA 2006 Sch.4 para.6(1).

- (2) This includes –
 - (a) receipts from the sale of the film or rights in it,
 - (b) royalties or other payments for use of the film 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.

Origin: FA 2006 Sch.4 para.6(2).

- (3) Receipts that (apart from this subsection) would be regarded as of a capital nature are treated as being of a revenue nature.

Origin: FA 2006 Sch.4 para.6(3).

12 Costs of the film [j4films10]

- (1) References in this Chapter to the costs of the film are to expenditure incurred by the company on –

- (a) film-making activities in connection with the film, or
- (b) activities with a view to exploiting the film.

Origin: FA 2006 Sch.4 para.5(1).

- (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.

Origin: FA 2006 Sch.4 para.5(2).

- (3) Expenditure that (apart from this subsection) would be regarded as of a capital nature only because it is incurred on the creation of an asset (the film) is treated as being of a revenue nature.

Origin: FA 2006 Sch.4 para.5(3).

13 When costs are taken to be incurred [j4films11]

- (1) For the purposes of this Chapter costs are incurred when they are represented in the state of completion of the work in progress.

Origin: FA 2006 Sch.4 para.9(1).

- (2) Accordingly –
 - (a) payments in advance of 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.

Origin: FA 2006 Sch.4 para.9(2).

- (3) The costs incurred on the film are taken to include an amount that has not been paid only if it is the subject of an unconditional obligation to pay.

Origin: FA 2006 Sch.4 para.9(3).

- (4) If an obligation is linked to income being earned from the film, 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.

Origin: FA 2006 Sch.4 para.9(4).

14 Pre-trading expenditure [j4films12]

- (1) This section applies if, before the company began to carry on the separate film trade, it incurred expenditure on development of the film.

Origin: FA 2006 Sch.4 para.4(1).

- (2) The expenditure may be treated as expenditure of the separate film trade and as if incurred immediately after the company began to carry on that trade.

Origin: FA 2006 Sch.4 para.4(1).

- (3) If expenditure so treated has previously been taken into account for other tax purposes, the company must amend any relevant company tax return accordingly.

Origin: FA 2006 Sch.4 para.4(2).

- (4) Any amendment or assessment necessary to give effect to subsection (3) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

Origin: FA 2006 Sch.4 para.4(3).

15 Estimates [\[j4films12B\]](#)

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.

Origin: FA 2006 Sch.4 para.8; Annex 1, Change jc218.

CHAPTER 3

FILM TAX RELIEF

Overview

16 Availability and overview of film tax relief [\[j4films13\]](#)

- (1) This Chapter applies for corporation tax purposes to a company that is the film production company in relation to a film.

Origin: Drafting.

- (2) Relief under this Chapter (“film tax relief”) is available to the company if the conditions specified in the following sections are met in relation to the film –
- section 17 (intended theatrical release),
 - section 18 (British film), and
 - section 19 (UK expenditure).

Origin: FA 2006 s.38, Sch.5 para.1(1).

- (3) Film tax relief is given by way of –
- additional deductions (see sections 20 and 21), and
 - film tax credits (see sections 22 to 24).

Origin: Drafting.

- (4) Sections 25 to 28 contain provision about unpaid costs, artificially inflated claims and confidentiality of information.

Origin: Drafting.

- (5) In this Chapter “the separate film trade” means the company’s separate trade in relation to the film (see section 9).

Origin: FA 2006 Sch.5 para.1(2).

- (6) See Schedule 18 to FA 1998 (in particular, Part 9D) for information about the procedure for making claims for film tax relief.

Origin: Drafting.

Conditions of relief

17 Intended theatrical release [j4films14]

- (1) The film must be intended for theatrical release.

Origin: FA 2006 s.39(1).

- (2) For this purpose –

- (a) “theatrical release” means exhibition to the paying public at the commercial cinema, and
(b) a film is not regarded as intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained by such exhibition.

Origin: FA 2006 s.39(2).

- (3) Whether this condition is met is determined for each accounting period of the company during which film-making activities are carried on in relation to the film, in accordance with the following rules.

Origin: FA 2006 s.39(3).

- (4) If at the end of an accounting period the film is intended for theatrical release, the condition is treated as having been met throughout that period (subject to subsection (5)(b)).

Origin: FA 2006 s.39(4).

- (5) If at the end of an accounting period the film is not intended for theatrical release, the condition –

- (a) is treated as having been not met throughout that period, and
(b) cannot be met in any subsequent accounting period.

This does not affect any entitlement of the company to relief in an earlier accounting period for which the condition was met.

Origin: FA 2006 s.39(5).

18 British film [j4films15]

The film must be certified by the Secretary of State as a British film under Schedule 1 to the Films Act 1985 (c. 21).

Origin: FA 2006 s.40.

19 UK expenditure [j4films16]

- (1) Not less than 25% of the core expenditure on the film incurred –

- (a) in the case of a British film other than a qualifying co-production, by the company, and
(b) in the case of a qualifying co-production, by the co-producers, must be UK expenditure.

Origin: FA 2006 s.41(1).

- (2) The Treasury may by regulations amend the percentage specified in subsection (1).

Origin: FA 2006 s.41(2).

- (3) No regulations may be made under subsection (2) unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Origin: FA 2006 s.41(3).

Additional deductions

20 Additional deductions for qualifying expenditure [j4films17]

- (1) If film tax relief is available to the company, it may (on making a claim) make an additional deduction in respect of qualifying expenditure on the film.

Origin: FA 2006 Sch.5 paras.1, 2.

- (2) The deduction is made in calculating the profit or loss of the separate film trade.

Origin: FA 2006 Sch.5 para.2.

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

Origin: FA 2006 Sch.5 para.3(1).

- (4) The Treasury may by regulations –
 (a) amend subsection (3), and
 (b) provide that expenditure of a specified description is or is not to be regarded as qualifying expenditure.

Origin: FA 2006 Sch.5 para.3(2).

- (5) No regulations may be made under subsection (4) unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Origin: FA 2006 Sch.5 para.3(3).

21 Amount of additional deduction [j4films18]

- (1) For the first period of account during which the separate film trade is carried on, the amount of the additional deduction is given by –

$$E \times R$$

where –

E is –

- (a) so much of the qualifying expenditure as is UK expenditure, or
 (b) if less, 80% of the total amount of qualifying expenditure, and
 R is the rate of enhancement (see subsection (3)).

Origin: FA 2006 Sch.5 para.4(1).

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

$$(E \times R) - P$$

where –

E is –

- (a) so much of the qualifying expenditure incurred to date as is UK expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure incurred to date,

R is the rate of enhancement (see subsection (3)), and

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

Origin: FA 2006 Sch.5 para.4(2).

- (3) The rate of enhancement is –
- (a) for a limited-budget film, 100%, and
 - (b) for a film other than a limited-budget film, 80%.

Origin: FA 2006 Sch.5 para.5.

- (4) The Treasury may by regulations amend the percentage specified in subsection (1) or (2).

Origin: FA 2006 Sch.5 para.4(3).

- (5) No regulations may be made under subsection (4) unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Origin: FA 2006 Sch.5 para.4(4).

Film tax credits

22 Film tax credit may be claimed if company has surrenderable loss [\[j4films19\]](#)

- (1) If film tax relief is available to the company, it may claim a film tax credit for an accounting period in which it has a surrenderable loss.

Origin: FA 2006 Sch.5 para.6(1).

- (2) The company's surrenderable loss in any period is –
- (a) the company's loss for the period in the separate film trade, or
 - (b) if less, the available qualifying expenditure for the period.

Origin: FA 2006 Sch.5 para.6(2).

- (3) For the first period of account during which the separate film trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 21(1).

Origin: FA 2006 Sch.5 para.6(3).

- (4) 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 21(2), and
S is the total amount surrendered in previous periods under section 23(1).

Origin: FA 2006 Sch.5 para.6(4).

23 Surrendering of loss and amount of credit [j4films20]

- (1) The company may surrender the whole or part of its surrenderable loss in an accounting period.

Origin: FA 2006 Sch.5 para.7(1).

- (2) If the company surrenders the whole or part of that loss, the amount of the film tax credit to which it is entitled for the accounting period is given by –

$$L \times R$$

where –

L is the amount of the loss surrendered, and
R is the payable credit rate (see subsection (3)).

Origin: FA 2006 Sch.5 para.7(2).

- (3) The payable credit rate is –
(a) for a limited-budget film, 25%, and
(b) for a film other than a limited-budget film, 20%.

Origin: FA 2006 Sch.5 para.8.

- (4) The company's loss in the separate film trade for the accounting period is reduced by the amount surrendered.

Origin: FA 2006 Sch.5 para.11.

24 Payment in respect of film tax credit [j4films21]

- (1) If the company –
(a) is entitled to a film tax credit for an accounting 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.

Origin: FA 2006 Sch.5 paras.9(1), 14.

- (2) An amount payable in respect of –
(a) a film tax credit, or
(b) interest on a film tax credit under section 826 of ICTA,
may be applied in covering any liability of the company to pay corporation tax. To the extent that it is so applied the Commissioners' liability under subsection (1) is reduced.

Origin: FA 2006 Sch.5 para.9(2).

- (3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a film 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 think fit.

Origin: FA 2006 Sch.5 para.9(3).

- (4) No payment need be made in respect of a film 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 contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

Origin: FA 2006 Sch.5 paras.9(4), 14.

- (5) A payment in respect of a film tax credit is not income of the company for any tax purpose.

Origin: FA 2006 Sch.5 para.10.

Miscellaneous

25 No account to be taken of amount if unpaid [j4films22]

- (1) In determining for the purposes of this Chapter the amount of costs incurred on a film at the end of a period of account, ignore any amount that has not been paid four months after the end of that period.

Origin: FA 2006 Sch.5 para.12(1).

- (2) This is without prejudice to the operation of section 13.

Origin: FA 2006 Sch.5 para.12(2).

26 Artificially inflated claims for additional deduction or film tax credit [j4films23]

- (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 film tax credit to be given to a company.

Origin: FA 2006 Sch.5 para.13(1).

- (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 film tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.

Origin: FA 2006 Sch.5 para.13(2).

- (3) “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

Origin: FA 2006 Sch.5 para.13(3).

27 Confidentiality of information [j4films24]

- (1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (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 Schedule 1 to the Films Act 1985 (c. 21) (certification of films as British films for the purposes of film tax relief).

Origin: FA 2006 Sch.5 para.24(1).

- (2) Information so disclosed may be disclosed to the UK Film Council.

Origin: FA 2006 Sch.5 para.24(2).

- (3) A person to whom information is disclosed under subsection (1) or (2) may not otherwise disclose it except –
 - (a) for the purposes of the Secretary of State’s functions under Schedule 1 to the Films Act 1985,
 - (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 criminal or civil) connected with the operation of that Schedule or this Part,
 - (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.

Origin: FA 2006 Sch.5 para.24(3).

28 Wrongful disclosure [j4films25]

- (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 27(3) above.

Origin: FA 2006 Sch.5 para.25(1), (2).

- (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.

Origin: FA 2006 Sch.5 para.25(3).

- (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 twelve months or a fine not exceeding the statutory maximum or both.

Origin: FA 2006 Sch.5 para.25(4).

- (4) A prosecution for an offence under subsection (1) may be brought in England Wales only –
- (a) by the Director of Revenue and Customs Prosecutions, or
 - (b) with the consent of the Director of Public Prosecutions.

Origin: FA 2006 Sch.5 para.25(5).

- (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.

Origin: FA 2006 Sch.5 para.25(6).

- (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 (c. 44), or
 - (b) in Scotland or Northern Ireland,
- the reference in subsection (3)(b) to twelve months is to be read as a reference to six months.

Origin: FA 2006 Sch.5 para.25(7).

CHAPTER 4

FILM LOSSES

29 Application of sections 30 and 31 [j4films26A]

- (1) Sections 30 and 31 apply to a company that is the film production company in relation to a film.

Origin: Drafting.

- (2) In those sections –
- “the completion period” means the accounting period of the company –
- (a) in which the film is completed, or
 - (b) if the company does not complete the film, in which it abandons film-making activities in relation to the film,

“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 film trade” means the company’s separate trade in relation to the film (see section 9).

Origin: FA 2006 s.43(3), s.44(5); drafting.

30 Restriction on use of losses while film in production [j4films26]

- (1) This section applies if in a pre-completion period a loss is made in the separate film trade.

Origin: FA 2006 s.43(1).

- (2) The loss is not available for loss relief except to the extent that it may be carried forward under section 393(1) of ICTA to be set against profits of the separate film trade in a subsequent period.

Origin: FA 2006 s.43(2).

31 Use of losses in later periods [j4films27]

- (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 film trade continues.

Origin: FA 2006 s.44(1).

- (2) Subsection (3) applies if a loss made in the separate film trade is carried forward under section 393(1) of ICTA from a pre-completion period to a relevant later period.

Origin: FA 2006 s.44(2).

- (3) So much (if any) of the loss as is not attributable to film 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.

Origin: FA 2006 s.44(2).

- (4) Subsection (5) applies if in a relevant later period a loss is made in the separate film trade.

Origin: FA 2006 s.44(3).

- (5) The amount of the loss that may –
 - (a) be set against other profits of the same or an earlier period under section 393A of ICTA, or
 - (b) be surrendered as group relief under section 403 of that Act,is restricted to the amount (if any) that is not attributable to film tax relief (see subsection (6)).

Origin: FA 2006 s.44(3).

- (6) The amount of a loss in any period that is attributable to film 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.

Origin: FA 2006 s.44(4).

- (7) This section does not apply to a loss to the extent that it is carried forward or surrendered under section 32.

Origin: FA 2006 s.44(6).

32 Terminal losses [j4films28]

- (1) This section applies if –
 - (a) a company (“company A”) is the film production company in relation to a qualifying film,
 - (b) company A ceases to carry on its separate trade in relation to that film (“trade X”) (see section 9), and
 - (c) if company A had not ceased to carry on trade X, it could have carried forward an amount under section 393(1) of ICTA to be set against profits of trade X in a later period (“the terminal loss”).

Origin: FA 2006 s.45(1), (6).

- (2) If on cessation of trade X company A –
 - (a) is the film production company in relation to another qualifying film, and
 - (b) is carrying on its separate trade in relation to that film (“trade Y”),it may (on making a claim) make an election under subsection (3).

Origin: FA 2006 s.45(2), (6).

- (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 393(1) of ICTA to be set against the profits of trade Y of the first accounting period beginning after the cessation and so on.

Origin: FA 2006 s.45(2); drafting.

- (4) Subsection (5) applies if on cessation of trade X –
 - (a) there is another company (“company B”) that is the film production company in relation to a qualifying film,
 - (b) company B is carrying on its separate trade in relation to that film (“trade Z”), and
 - (c) company B is in the same group as company A for the purposes of Chapter 4 of Part 10 of ICTA (group relief).

Origin: FA 2006 s.45(3), (6).

- (5) Company A may surrender the terminal loss (or a part of it) to company B.

Origin: FA 2006 s.45(3).

- (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 393(1) of ICTA to be set against the profits of trade Z of the first accounting period beginning after the cessation and so on.

Origin: FA 2006 s.45(4); drafting.

- (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).

Origin: FA 2006 s.45(5).

- (8) “Qualifying film” means a film in relation to which the conditions for film tax relief are met (see section 16(2)).

Origin: FA 2006 s.45(6).

CHAPTER 5

PROVISIONAL ENTITLEMENT TO RELIEF

33 Application of Chapter etc [j4films29]

- (1) This Chapter applies to a company that is the film production company in relation to a film.

Origin: Drafting.

- (2) In this Chapter –
- “the final accounting period” means the accounting period of the company in which –
 - (a) the film is completed, or
 - (b) if the company does not complete the film, it abandons film-making activities in relation to it,
 - “interim accounting period” means any earlier accounting period of the company during which film-making activities are carried on in relation to the film,
 - “interim certificate” and “final certificate” refer to certificates under Schedule 1 to the Films Act 1985 (c. 21) (certification of films as British films for purposes of film tax relief),
 - “the separate film trade” means the company’s separate trade in relation to the film (see section 9), and
 - “special film relief” means –
 - (a) film tax relief, or
 - (b) relief under section 32 (transfer of terminal losses from one qualifying film to another).

Origin: FA 2006 Sch.5 para.30(1); drafting.

- (3) The company’s company tax return for the final accounting period must state that the film has been completed or that the company has abandoned film-making activities in relation to it (as the case may be).

Origin: FA 2006 Sch.5 para.30(2).

34 Certification as a British film [j4films30]

- (1) The company is not entitled to special film relief for an interim accounting period unless its company tax return for the period is accompanied by an interim certificate.

Origin: FA 2006 Sch.5 para.31(1).

- (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 film 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.

Origin: FA 2006 Sch.5 para.31(2).

- (3) If the film is completed by the company –
 - (a) its company tax return for the final accounting period must be accompanied by a final certificate,
 - (b) if that requirement is met, the final certificate has effect for the final accounting period and for any interim accounting period, and
 - (c) if that requirement is not met, the company –
 - (i) is not entitled to special film relief for any period, and
 - (ii) must amend accordingly its company tax return for any period for which such relief was claimed.

Origin: FA 2006 Sch.5 para.31(3).

- (4) If the company abandons film-making activities in relation to the film –
 - (a) its company tax return for the final accounting period may be accompanied by an interim certificate, and
 - (b) the abandonment of film-making activities does not affect any entitlement to special film relief in that or any previous accounting period.

Origin: FA 2006 Sch.5 para.31(4).

- (5) If a final certificate is revoked, the company –
 - (a) is not entitled to special film relief for any period, and
 - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

Origin: FA 2006 Sch.5 para.31(5).

35 The UK expenditure condition [j4films31]

- (1) The company is not entitled to special film relief for an interim accounting period unless –
 - (a) its company tax return for the period states the amount of planned core expenditure on the film that is UK expenditure, and
 - (b) that amount is such as to indicate that the condition in section 19 (the UK expenditure condition) will be met on completion of the film.

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

Origin: FA 2006 Sch.5 para.32(1).

- (2) If such a statement is made but it subsequently appears that the condition will not be met on completion of the film, the company –
- (a) is not entitled to special film 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.

Origin: FA 2006 Sch.5 para.32(2).

- (3) When the film is completed or the company abandons film-making activities in relation to it (as the case may be), the company's company tax return for the final accounting period must be accompanied by a final statement of the amount of the core expenditure on the film that is UK expenditure.

Origin: FA 2006 Sch.5 para.32(3).

- (4) If that statement shows that the condition in section 19 is not met, the company –
- (a) is not entitled to special film relief for any period, and
 - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

Origin: FA 2006 Sch.5 para.32(3).

36 Film tax relief on basis that film is limited-budget film [j4films32]

- (1) The company is not entitled to film tax relief for an interim accounting period on the basis that the film is a limited-budget film unless –
- (a) its company tax return for the period states the amount of planned core expenditure on the film, and
 - (b) that amount is such as to indicate that the condition in section 5(2) (definition of "limited-budget film") will be met on completion of the film.

In that case, the film is provisionally treated in relation to that period as if that condition was met.

Origin: FA 2006 Sch.5 para.33(1).

- (2) If it subsequently appears that the condition will not be met on completion of the film, the company –
- (a) is not entitled to film tax relief for any period on the basis that the film is a limited-budget film, and
 - (b) must amend accordingly its company tax return for any such period for which such relief has been claimed on that basis.

Origin: FA 2006 Sch.5 para.33(2).

- (3) When the film is completed or the company abandons film-making activities in relation to it (as the case may be), the company's company tax return for the final accounting period must be accompanied by a final statement of the core expenditure on the film.

Origin: FA 2006 Sch.5 para.33(3).

- (4) Subsection (5) applies if that statement shows –
- (a) that the film is not a limited-budget film, or (as the case may be)

- (b) that, having regard to the proportion of work on the film that was completed, the film would not have been a limited-budget film had it been completed.

Origin: FA 2006 Sch.5 para.33(3).

- (5) The company –
 - (a) is not entitled to film tax relief for any period on the basis that the film is a limited-budget film, and
 - (b) must amend accordingly its company tax return for any period for which such relief was claimed on that basis.

Origin: FA 2006 Sch.5 para.33(3).

37 Time limit for amendments and assessments [j4films33]

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.

Origin: FA 2006 Sch.5 para.34.

PART 2

TRADING INCOME

CHAPTER 1

TRADE PROFITS: OTHER SPECIFIC TRADES

Sound recordings

38 Revenue nature of expenditure [j4sounds1]

- (1) If a company carrying on a trade incurs expenditure on the production or acquisition of the original master version of a sound recording, the expenditure is treated for corporation tax purposes as expenditure of a revenue nature.

Origin: FA 2006 s.48(1).

- (2) If expenditure is treated under this section as revenue in nature, sums received by the company from the disposal of the original master version of the sound recording –
 - (a) are treated for corporation tax purposes as receipts of a revenue nature, and
 - (b) are brought into account in calculating the profits of the relevant period in which they are received.

Origin: FA 2006 s.48(2).

- (3) For this purpose sums received from the disposal of the original master version include –
 - (a) sums received from the disposal of any interest or right in or over the original master version (including an interest or right created by the disposal), and

- (b) insurance, compensation or similar money derived from the original master version.

Origin: FA 2006 s.48(3).

39 Allocation of expenditure [j4sounds2]

- (1) This section applies in calculating for corporation tax purposes the profits or losses of a company from a trade if—
 - (a) the trade consists of or includes the exploitation of original master versions of sound recordings, and
 - (b) the original master versions do not constitute trading stock of the trade as defined by [section 100(2) of ICTA].

Origin: FA 2006 s.49(1).

- (2) Expenditure that—
 - (a) is incurred on the production or acquisition of the original master version of a sound recording, and
 - (b) is of a revenue nature (whether as a result of section 38 or otherwise),must be allocated to relevant periods in accordance with this section.

Origin: FA 2006 s.49(2).

- (3) The company must allocate to a relevant period so much of the expenditure as is just and reasonable having regard to—
 - (a) the amount of the expenditure that remains unallocated at the beginning of the period,
 - (b) the proportion that the estimated value of the original master version of the sound recording that is realised in that period (whether by way of income or otherwise) bears to the total value so realised and the estimated remaining value of the original master version at the end of the period, and
 - (c) the need to bring the whole of the expenditure into account over the time during which the value of the original master version is expected to be realised.

Origin: FA 2006 s.49(3).

- (4) The company may also allocate to a relevant period a further amount, so long as the total amount allocated does not exceed the value of the original master version of the sound recording realised in that period (whether by way of income or otherwise).

Origin: FA 2006 s.49(4).

40 Interpretation of sections 38 and 39 [j4sounds3]

- (1) For the purposes of sections 38 and 39—
 - (a) “sound recording” does not include a film soundtrack,
 - (b) “original master version” means the master tape or master audio disc of the recording,
 - (c) references to the original master version of a sound recording include any rights in the original master version that are held or acquired with it, and

- (d) “relevant period” means –
- (i) a period for which accounts of the trade are made up, or
 - (ii) if no accounts of the trade are made up for a period, an accounting period of the company.

Origin: FA 2006 s.50.

- (2) In subsection (1)(a) “film” is to be read in accordance with section 2.

Origin: FA 2006 s.31.

SCHEDULES

SCHEDULE 1

Section {j999996}

CONSEQUENTIAL AMENDMENTS [j2]

PART 1

OTHER ENACTMENTS (FILM PRODUCTION)

Films Act 1985 (c. 21)

- 1 The Films Act 1985 is amended as follows.
- 2 In paragraph 1(1) of Schedule 1 (certification of British films for the purposes of film tax relief), in the definition of “film production company”, for the words from “Chapter 3” to the end substitute “Part [1] of [Bill 5] (see section 3 of that Act)”.

Finance Act 1998 (c. 36)

- 3 (1) The Finance Act 1998 is amended as follows.
- (2) In paragraph 10(5) of Schedule 18 (company tax returns etc) –
 - (a) for “section 32(7) of the Finance Act 2006” substitute “section 3(7) of [Bill 5]”, and
 - (b) for “section 32(8)(a)” substitute “section 3(8)(a)”.

Finance Act 2006 (c. 25)

- 4 The Finance Act 2006 is amended as follows.
- 5 In Chapter 3 of Part 3 (films and sound recordings) –
 - (a) omit sections 31 to 41,
 - (b) in section 42(2) omit –
 - (i) “Part 1 deals with entitlement to the relief”, and
 - (ii) “Part 4 is about provisional entitlement to relief”,
 - (c) omit sections 43 to 45,
 - (d) at the end of each of sections 46 and 47 insert –
 - “(6) The provisions of sections 2 to 8 of [Bill 5] apply for the purposes of this section as if this section were contained in Part [1] of that Act.”
 - (e) omit sections 48 to 50, 52 and 53(2),
 - (f) omit Schedule 4, and
 - (g) in Schedule 5 omit –
 - (i) Part 1,

- (ii) paragraphs 24 and 25, and
- (iii) Part 4.

SCHEDULE 2

Section {j999997}

TRANSITIONAL PROVISIONS [j3]

PART 1

FILM PRODUCTION

Interpretation

- 1 The provisions of sections 2 to 8 apply for the purposes of this Part of this Schedule as if this Part were contained in Part [1] of this Act.

Origin: Drafting.

Chapters 2 and 3 of Part [1] to apply only to films that commence principal photography on or after 1 January 2007

- 2 Chapters 2 and 3 of Part [1] apply only in relation to films that commence principal photography on or after 1 January 2007 (but see paragraphs 4 and 5).

Origin: FA 2006 Sch.4 para.1, Sch.5 para.1(1).

- 3 The references in section 27 to the functions of the Secretary of State under Schedule 1 to the Films Act 1985 (c. 21) are to those functions only so far as they are exercised in relation to films that commence principal photography on or after 1 January 2007 (but see paragraphs 4 and 5).

Origin: FA 2006 Sch.5 para.24(4).

Application of Part [1] etc to films that commenced principal photography before 1 January 2007 but were not completed before that date

- 4 (1) The Treasury may make provision by regulations for the application of the provisions of—
 - (a) Part [1] or section {j062980a} of this Act, and
 - (b) Chapter 3 of Part 3 of FA 2006 and any enactment amended by that Chapter,in relation to films that commenced principal photography before 1 January 2007 but were not completed before that date.

Origin: FA 2006 s.52(1).

- (2) The regulations may provide for such adaptations and modifications of—
 - (a) the provisions mentioned in sub-paragraph (1), and
 - (b) any other provision of the Corporation Tax Acts,as appear to the Treasury appropriate for that purpose.

Origin: FA 2006 s.52(2).

- (3) The regulations may—

- (a) provide that the provisions of Part [1] or section {j062980a} of this Act or Chapter 3 of Part 3 of FA 2006 (or any specified provisions of that Part or section of this Act or that Chapter) have effect as if they had been in force at all material times,
- (b) require or authorise the making or amendment of returns, or the making of assessments, in relation to past accounting periods or tax years (whenever beginning), and
- (c) authorise the making of any such return, amendment or assessment despite any limitation on the time within which a return, amendment or assessment may normally be made.

Origin: FA 2006 s.52(3).

- (4) No regulations may be made under this paragraph unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Origin: FA 2006 s.52(4).

- 5 (1) In accordance with [Part 1 of this Schedule], the Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007 (S.I. 2007/1050) have effect as if made under paragraph 4 above.
- (2) For that purpose they are amended as follows.
- (3) In regulation 1(2) for “(films and sound recordings)” substitute “and Part [1] and section {j062980a} of [Bill 5] (film production)”.
- (4) Omit regulation 2.
- (5) In regulation 3 for “Chapter 3 of Part 3” substitute “Part [1] and section {j062980a} of [Bill 5], Chapter 3 of Part 3 of the Finance Act 2006”.
- (6) In regulation 4 for “section 32” substitute “section 3 of [Bill 5]” (and make a corresponding change in the heading for regulation 4).
- (7) In regulation 5 for “section 40” substitute “section 18 of [Bill 5]” (and make a corresponding change in the heading for regulation 5).
- (8) In regulation 6(1) after “section 46” insert “of the Finance Act 2006” (and make a corresponding change in the heading for regulation 6).
- (9) In regulation 7(1) after “section 47” insert “of the Finance Act 2006” (and make a corresponding change in the heading for regulation 7).
- (10) For regulation 8 substitute –

“8 Modification of section {j062980a} of [Bill 5] (intangible fixed assets: films)

In section {j062980a}(1) of [Bill 5] –

- (a) in paragraph (a) for “that began principal photography before 1st January 2007” substitute “to which Chapter 2 of Part [1] of [Bill 5] does not apply”, and
- (b) in paragraph (b) for “1st October 2007” substitute “31st March 2008”.

(11) For regulation 9 substitute—

“9 Modification of section 9 of [Bill 5] (taxation of activities of film production company)

In section 9(1) of [Bill 5] (taxation of activities of film production company) after “a film” insert “if the film—

- (a) 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
- (b) is intended for theatrical release at the time principal photography commences”.

(12) In regulation 10(1) after “Schedule 5” insert “to the Finance Act 2006” (and make a corresponding change in the heading for regulation 10).

(13) Omit regulation 10(2).

(14) In regulation 10(5) for the words after “sections 46 and 47” substitute “of the Finance Act 2006 (films: withdrawal of existing reliefs) and section 9(1) of [Bill 5] (taxation of activities of film production company)”.

(15) In regulation 13(1)—

- (a) for “Chapter 3 of Part 3” substitute “Part [1] or section {j062980a} of [Bill 5], of Chapter 3 of Part 3 of the Finance Act 2006”, and
- (b) for “whether before or after the commencement of that Chapter” substitute “whenever beginning”.

Prohibition on double counting

- 6 (1) Expenditure is not to be taken into account for the purposes of Chapter 2 of Part [1] of this Act if relief has been given in respect of it under any of the following—
- (a) section 40B, 41 or 42 of F(No.2)A 1992,
 - (b) section 48 of F(No.2)A 1997, or
 - (c) section 135, 136 to 138A or 139 to 142 of ITTOIA 2005.
- (2) For the purposes of paragraph 4 and any regulations made under that paragraph, sub-paragraph (1) of this paragraph is treated as if contained in Part [1] of this Act.

[Origin: FA 2006 Sch.4 para.10.](#)

SCHEDULE 3

Section {j999998}

REPEALS AND REVOCATIONS [j4]

PART 1

REPEALS (FILM PRODUCTION)

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Finance Act 2006 (c. 25)	Sections 31 to 41.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Finance Act 2006 (c. 25) – <i>cont.</i>	In section 42(2) – (a) “Part 1 deals with entitlement to the relief”, and (b) “Part 4 is about provisional entitlement to relief”. Sections 43 to 45, 48 to 50, 52 and 53(2). Schedule 4. In Schedule 5 – (a) Part 1, (b) paragraphs 24 and 25, and (c) Part 4.
Finance Act 2007 (c. 11)	Section 58(1).