HM TREASURY

Consultation on creative sector tax reliefs

June 2012

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ISBN 978-1-84532-979-2
PU1322

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Foreword

At Budget 2012 the Government announced that it will introduce targeted tax reliefs for the animation, high-end television and video games industries as part of its ambition to make the UK the technology centre of Europe. These tax reliefs will help support technological innovation and ensure that companies working in these highly creative industries continue to contribute to UK economic growth and to British culture.

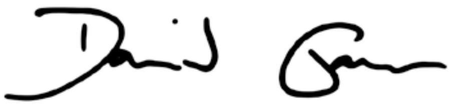
The UK is a world leader at producing animated programmes, high-end television and video games and the Government is keen to provide the necessary support to maintain this status. Without Government support for these industries there is a risk that underinvestment will lead to valuable productions moving overseas or not being made at all.

The film tax relief shows how targeted support for innovative, highly skilled and mobile industries can make a real difference not only in terms of promoting economic growth, but also in terms of promoting British culture and the way the UK is viewed internationally. The scheme has been highly successful since its introduction in 2007, supporting £5 billion of investment into almost 600 British films.

Like the film tax relief, the aim of the reliefs for animation, high-end television and video games is to provide tax reliefs that encourage investment into production in a way that ensures the sustainability of these industries and provides value for money for the British taxpayer.

This consultation seeks views on the Government's proposed design of these reliefs. It presents an opportunity for interested parties from across these three sectors to feed in their views to ensure that the reliefs work simply and effectively to achieve their objectives.

I am pleased to publish this consultation document and hope that production companies, investors, representative bodies and others interested in the success of these tax reliefs will play a full part in the consultation process.



David Gauke

Exchequer Secretary

June 2012

1 Introduction

Background

1.1 The Chancellor announced at Budget 2012 that, following consultation on design, the Government will introduce corporation tax reliefs for the animation, high-end television[1] and video games industries from April 2013, subject to State aid approval. These new reliefs aim to be among the most generous available in the world and will provide the necessary support for these sectors to grow.

Aim of the consultation

1.2 This document sets out proposals on separate, targeted corporation tax reliefs for the animation, high-end television and video games industries. Views on the proposed design options for these reliefs are invited from a wide range of sources including individuals, companies, and representative and professional bodies. The Government especially invites comments from production companies and those working directly in the production of animation, high-end television and video games. The Government will take all responses into account before deciding on the final policy design and publishing draft legislation for consultation in the autumn.

1.3 Discussions will be held with industry focused working groups (see paragraph 7.4) and the European Commission over the summer, following which a separate consultation on the design of suitable cultural tests for these reliefs will take place in the autumn. These tests will identify culturally British works that are to be considered eligible for the new tax reliefs in line with the European Commission's rules on State aid.

Policy context

1.4 The Plan for Growth[2] identifies the creative industries as having the potential to drive significant growth in the UK. In line with this, the Government has set an ambition to make the UK the technology centre of Europe. The Government is introducing corporate tax reliefs for the video games, animation and high-end television sectors as part of a package of measures to support technological innovation and to help the digital, creative and other high technology industries grow.

1.5 The Corporate Tax Road Map[3] recognises that the corporate tax system can support a limited number of special allowances and reliefs, for example where there are market failures. The Government believes that without intervention there is a risk of underinvestment into these sectors, which, over time, would be damaging for the UK both culturally and economically.

1.6 The Government wants to build on the success of the film tax relief, which promotes the production of British films, and on the experience of other countries offering similar targeted tax

[1] For the purposes of this consultation the term 'high-end television' broadly means high quality television drama costing £1m or more per hour of programme running time. For further details on the proposed definition refer to paragraphs 4.10 to 4.16.
[2] Plan for Growth, March 2011, HM Treasury and BIS (http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf).
[3] Corporate Tax Road Map, November 2011, HM Treasury (http://www.hm-treasury.gov.uk/d/corporate_tax_reform_complete_document.pdf).

reliefs. In 2010-11 the film tax relief provided £200 million of support to the British film industry, supporting over £1 billion of investment into 190 films. Like the film tax relief, the Government intends to design and implement these reliefs in a way that is consistent with fiscal sustainability, simplicity and ease of administration within the tax system.

Policy aims

1.7 Operating within the Government's wider growth and tax agendas, and building on the successful film tax relief model, the policy aims of these new reliefs are:

- To promote the sustainable production of culturally relevant productions in the UK through a tax relief that provides support directly to producers;
- To incentivise investment into UK productions that would otherwise take place outside the UK or that would not be economical without relief; and
- To create the necessary critical mass of infrastructure and skills to enable and support production in the UK both today and in the longer term.

Structure of the document

1.8 The remainder of the document is set out as follows:

- Chapter 2 explains the criteria that the Government proposes to use in evaluating proposals for the creative industries reliefs;
- Chapters 3 to 5 set out the proposed approaches for each of the animation, high-end television and video games tax reliefs in turn;
- Chapter 6 includes details on other issues that are relevant;
- Chapter 7 explains the consultation process and invites nominations to the industry focused working groups; and
- Annex A sets out how the current film tax relief model works as it is proposed that the new reliefs adopt a similar approach. Annex B provides impact assessments for each of the reliefs. It also requests supporting evidence from external stakeholders to more fully understand the impacts and to support the State aid applications that will be made to the European Commission. Annex C summarises the consultation questions posed in this document. Annex D sets out the planned timeline for implementation. Annex E sets out the general code of practice for consultation.

Stage of consultation

1.9 The proposals in this document are at stage 1 (setting out objectives and identifying options) and stage 2 (determining the best option and developing a framework for implementation including detailed policy design) of the Government's tax consultation framework.

How to respond

1.10 Please send comments by 10 September 2012 to: Creative Sector Tax Reliefs Consultation, Enterprise and Excise Tax Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. Email: creativesectortaxreliefsconsultation@hmtreasury.gsi.gov.uk. Phone: 020 7270 5332.

2 Criteria for the creative sector reliefs

2.1 The Government is introducing tax reliefs for animation, high-end television and video games with the combined aim of promoting production of cultural products and encouraging investment in the UK. The Government wants to ensure that these reliefs deliver real additional investment without unnecessarily distorting behaviour or adding undue complexity to the tax system.

2.2 The criteria that the Government proposes to use in evaluating proposals for the creative industries tax reliefs are included in the box below. When deciding on the final policy design it will be necessary to consider and balance these, sometimes competing, factors.

Box 2.A: Criteria for the creative sector tax reliefs

- **Effectiveness.** The reliefs must be effective at delivering cultural and economic benefits. The changes should support the animation, high-end television, and video games producers in the UK. Evidence from responses will be used to ensure that the proposals achieve the policy aims and deliver a positive economic and cultural impact;
- **Affordability.** The changes must be affordable, in line with the Government's objective for long term sustainability in the public finances, and represent value for money to the taxpayer. The animation and video games reliefs were initially costed at Budget 2012[1]; these costings will be subject to change following decisions taken on final design and further evidence collated;
- **Simple and straightforward to administer.** The Government is committed to simplifying the tax system. The new reliefs should not result in unnecessary administrative burdens for businesses or those administering the reliefs;
- **Sustainable and not open to abuse**. These reliefs should be designed to be effective for the longer term by reflecting, as far as is possible, the business models of the animation, high-end television, and video games sectors both now and in the future. The reliefs should not create substantial additional avoidance opportunities; and
- **Compliance with EU State aid rules**. The new reliefs will need to gain State aid approval from the European Commission in line with the guidelines in this area. As part of the State aid application, evidence requested in Annex B will be needed.

Question 1: Do you agree with the proposed criteria for assessing the animation, high-end television and video games tax reliefs? Please provide any comments as appropriate.

[1] Budget 2012 Policy Costings document (http://cdn.hm-treasury.gov.uk/budget2012_policy_costings.pdf).

3 Animation

Background

3.1 The UK has a long history of producing animated programmes with a global reach. Nevertheless, despite the pool of creative talent that still exists in the UK, there is evidence that animated productions are moving abroad, causing the UK to lose out both economically and culturally as productions that would otherwise have been made in the UK move overseas or do not take place at all.

3.2 The Government announced at Budget that a corporation tax relief for the animation sector will be introduced from April 2013, subject to State aid approval. This will offer a payable credit of similar generosity to the film tax relief (see paragraph 6.2). The target of the animation tax relief is producers of animated programmes for television broadcast, which the Government understands remains the dominant platform for showing animated content.

3.3 It is the Government's intention to introduce a relief that meets the criteria in Chapter 2, so that it is simple to use and promotes investment into the production of animation in the UK that might otherwise not take place. It is a necessary requirement that the design of this relief takes account of costs to the Exchequer to ensure a proposal is both affordable, easy to administer and represents value for money for the taxpayer.

What an animation tax relief might look like

Proposed model

3.4 The Government proposes that the new animation tax relief adopts a similar model to the film tax relief (FTR), a model that meets the criteria outlined in Chapter 2.

3.5 Annex A provides a more detailed explanation of how the current FTR works. Briefly, by applying this model, an animation tax relief would give an additional deduction for qualifying 'core expenditure' (see paragraph 3.16 for proposed definition). This additional deduction, together with the tax deductible animation expenditure, is deducted from the income arising from the animation. Any resultant loss may be surrendered for a payable tax credit.

3.6 To calculate the actual relief given, the additional tax deduction is based on 'enhanceable expenditure' which is defined as the lower of (a) UK core expenditure; or (b) 80 per cent of total core expenditure. The levels of additional deduction and payable tax credit available will be a decision for Ministers, but the aim is to introduce a relief of similar generosity to the FTR. Box 3.A sets out an illustrative example of how this would work; further examples are provided in Annex A.

> **Question 2**: Would adopting a similar model to the film tax relief be an effective way of meeting the Government's objective to support animation production?
>
> **Question 3**: What alternative models for an animation tax relief could the Government consider? Please describe and explain how this would better meet the criteria in Chapter 2.

Box 3.A: Illustrative example of how the proposed model would apply to animation

The following is a simple worked example to illustrate how a tax credit could be calculated for an animation production company. For the purposes of this example the rates used are the current FTR rates for larger productions (see paragraph 6.2).

A company produces an animated series commissioned to be broadcast on television. Income received from the commissioning broadcaster totals £3.5m. The total expenditure incurred is £4.5m of which £4m is core expenditure on the commissioned series.

Total income	£3.5m	
Total expenditure	(£4.5m)	
Pre-tax relief profit/ (loss)		**(£1m)**
Enhanceable expenditure (qualifying expenditure of £4m x 80 per cent)	£3.2m	
Additional deduction on enhanceable expenditure (80 per cent rate of enhancement x £3.2m)		(£2.5m)
Post-tax relief profit/ (loss)		**(£3.5m)**

The surrenderable loss is the lesser of:

- The post-tax relief trading loss of £3.5m; and
- The enhanceable expenditure of £3.2m.

The animation production company can surrender any amount up to £3.2m of losses. The amount of credit due based on a payable credit rate of 20 per cent[1] multiplied by the loss surrendered (assuming the maximum of £3.2m is surrendered) is: 20 per cent x £3.2m = £0.64m

Qualifying conditions

3.7 To qualify for the relief an incorporated company must be engaged in the production of animation. In addition, it is proposed that all four of the following criteria must be met:

1. There must be an 'animated' programme being produced (as defined in paragraphs 3.9 to 3.15);
2. The programme must be intended for broadcast;
3. The programme must be certified as a cultural product by satisfying a cultural test (see paragraphs 3.21 to 3.22); and
4. At least 25 per cent of the core expenditure incurred on the animation by the production company relates to expenditure on goods or services that are used or consumed in the UK.

3.8 To help design suitable criteria and a workable scheme for the animation relief, the specific issues on which the Government is consulting are: definition of animation; mixed content programmes; eligible productions; qualifying 'core expenditure'; and separate trades. These are discussed in the remainder of this chapter.

[1] These are the current rates used for larger films with a core expenditure of more than £20 million (see paragraph 6.2). Applying the 20 per cent rate to an additional deduction of 80 per cent of qualifying core expenditure gives an effective payable credit rate of 16 per cent.

Definition of animation

3.9 Relief under the new animation tax relief will be available for the costs of producing animated programmes. To create an effective scheme, the Government will need a definition that is workable in legislation, is also recognised in the animation industry and which is in line with State aid guidelines. The Government is therefore seeking views on how to define animation.

3.10 The proposed option is to define animation as a sequence of images in 2 or 3 dimensions created by recording still images or objects, one frame at a time with incremental changes in position, form or appearance between frames to create the impression of movement.

3.11 The Government is targeting animation 'intended for broadcast' and the scope of the relief will exclude specified categories to ensure the relief is targeted appropriately. For example animation produced for advertising purposes, news or weather, or for game shows will be excluded. The Government also intends to exclude animation programmes which are pornographic in content.

Question 4: Would adopting a definition of animation on this basis exclude any content that might reasonably be included?

Question 5: Is there an alternative definition of animation that would more accurately reflect the nature of the content being produced? If so, please provide one.

Question 6: What would be an appropriate way of removing animated programmes which are pornographic in content? For example, is there an appropriate classification used in the industry that could be adopted?

Mixed content programmes

3.12 The Government is aware that some productions may not be made up of animated content alone. It is therefore proposed that relief is limited to productions where expenditure on animation make up the vast majority (75 per cent or more) of the production costs. Any production meeting this requirement will be classified as an animated programme for the purposes of the relief. The Government believes that it will be relatively straightforward for businesses to establish if they have met this criterion and will provide business with certainty regarding qualification for this relief.

3.13 The Government has also considered alternative options for determining how a mixed content production should qualify for relief. These include requiring a minimum number of minutes of animated content and/or that the main character is animated. However, it was felt that these options would impose too high an administrative burden on both business and Government departments and create unnecessary uncertainty for business about which programmes could qualify.

Question 7: Are there alternative approaches to determine whether a mixed content production should be treated as an animated production for the purposes of this relief that the Government should consider? Please describe and explain how this would better meet the criteria in Chapter 2.

Eligible productions

3.14 Only incorporated companies directly involved in the production of animated programmes will be able to qualify for relief. An incorporated company means that the production company must be registered as a company in the UK at Companies House[2]. Directly involved means that the company is responsible for actually producing the content of the programme and is actively engaged in the decision making process to deliver the programme.

3.15 The Government is aware that there may be situations where co-productions take place and wants to explore this issue during consultation. Co-productions for this purpose refer to two different companies both producing animated content for the programme, not co-financing where two companies jointly finance the programme.

> **Question 8**: Please provide examples and relevant details of co-productions that currently take place to produce animated programmes.

Qualifying 'core expenditure'

3.16 The Government expects that the types of expenditure allowable will be broadly similar to a definition of 'core expenditure' for the FTR, i.e. expenditure directly incurred in the production of the animated programme but excluding, for example, the costs of financing, advertising etc. Grants and other public subsidies will also be netted off against these expenses. The qualifying 'core expenditure' is proposed to include all production costs that are integral to the production process itself, including relevant pre and post production.

> **Question 9**: Which costs are integral to the production process itself and should therefore be eligible for relief? Please explain your choices.
>
> **Question 10**: Are the core production costs in animation similar to those in film? If not, please explain how the animation industry differs.

3.17 The Government is aware that a significant proportion of the costs of producing an animated programme may be early stage, reflecting the long lead-in times to production. Whilst the Government does not wish to exclude these early stage costs from the scope of the scheme, as with the FTR, it will be necessary to include a rule to separate speculative expenditure that does not result in an end product from early stage expenditure on a project with an identifiable end product.

3.18 For example, one approach would be for early stage costs associated with a specific project to become eligible for relief once the programme has been formally commissioned by a broadcaster. Alternatively, only costs incurred in producing programmes with the potential to be broadcast as a finished product would be eligible for relief.

> **Question 11**: Are one or both of the proposed rules for separating speculative expenditure from early stage expenditure on a project with an identifiable end product workable?
>
> **Question 12**: Is there an alternative rule that would be simpler or more effective to ensure that speculative expenditure does not qualify for relief?

[2] Further details can be found on the companies house website (http://www.companieshouse.gov.uk/).

Separate trades

3.19 The current FTR model uses the concept of a separate trade for each film. This means that profits and losses for each film are calculated individually. This facilitates the procedure for claiming tax credits. Film Production companies claim credits based upon accounting periods. There is no requirement that the film be complete for a claim to be made. It is not necessary for businesses to set up subsidiary companies or special purpose vehicles for each of those trades. Businesses are free to organise their own affairs as they prefer to meet commercial needs as long as separate trades are maintained. Annex A provides further explanation of how separate trades work for film production companies.

3.20 The Government proposes that a similar approach is adopted for the animation tax relief. From our initial discussions with industry it is believed that the sector already tracks a production budget and costs as if it were a separate trade.

Question 13: Does the requirement that each production operates as a separate trade within the production company – with a separate, identifiable production budget – create any issues?

Question 14: Are there any other specific design points which need to be addressed?

State aid and cultural test

3.21 Like the FTR, the new animation tax relief will need State aid approval from the European Commission on cultural grounds. As the relief is classified as a State aid, it must satisfy the principle that such aid does not affect competition and trading conditions to an extent contrary to the common interest in Europe. It is a requirement of any scheme that the content of the aided production is cultural according to verifiable national criteria.

3.22 To qualify for the animation tax relief, it is therefore expected that a production will need to qualify via a cultural test. It is not the Government's intention to dictate the content or style of the production and the test will be designed to award points against the many different elements that contribute to the overall cultural value of the production. It is the Government's intention to consult separately on the design and administration of the cultural test. It is expected that some animated productions may not meet the requirements of the cultural test as not all animations will be culturally British

Other issues

3.23 Chapter 6 provides details of other issues that are relevant for all three creative sector reliefs; including proposals on commencement; rates of relief; how to claim the tax relief; interactions of these new reliefs with other tax reliefs; treatment of expenditure incurred but unpaid; and openness to abuse. This chapter should be read in conjunction with Chapter 3 to complete the proposals that the Government is consulting on for the new animation tax relief.

3.24 Annex B requests supporting evidence from external stakeholders to inform the Government's understanding of impacts and to support the State aid application process with the European Commission. The Government would appreciate interested parties engaging with this evidence gathering process and providing answers to the proposed areas where possible.

4 High-end television

Background

4.1 The UK is respected throughout the world for the quality of its television production and its writing, directing and acting talent are in constant demand. Over the last decade there has been rapid growth in the global market for television that is being made on a scale only matched by the film industry. The UK has had some notable success in producing high-end drama, but there is growing evidence that a number of UK high-end television productions are being made overseas or, in the case of marginally commercially unviable productions, not being made at all despite their potential to contribute significantly to the UK in terms of cultural and economic growth.

4.2 The Government announced at Budget that a corporation tax relief for the high-end television sector will be introduced from April 2013, subject to State aid approval. This will offer a payable credit of similar generosity to the film tax relief (see paragraph 6.2).

4.3 The target of this relief is producers of high-end television programmes. It is the Government's intention to introduce a relief that promotes investment into the production of high-end television in the UK that might otherwise not take place. It is therefore not intended to subsidise existing television production activity taking place within the UK, but to attract new investment and the creation of cultural products that would not otherwise be made in the UK.

4.4 It is the Government's intention to introduce a relief that meets the criteria in Chapter 2. The design of this scheme must take account of costs to the Exchequer to ensure a proposal is both affordable and represents value for money for the taxpayer, particularly in the area of high-end television where there is significant uncertainty about the likely cost of the relief. Based on the evidence collated, if the cost was to become disproportionate it could become necessary to consider design options to limit the impact on the Exchequer.

What a high-end television tax relief might look like

Proposed model

4.5 The Government proposes that the new high-end television tax relief adopts a similar model to the film tax relief (FTR), a model that meets the criteria outlined in Chapter 2.

4.6 Annex A provides a more detailed explanation of how the current FTR works. Briefly, by applying this model, a high-end television tax relief would give an additional deduction for qualifying 'core expenditure' (see paragraphs 4.17 to 4.19). This additional deduction, together with the tax deductible programme expenditure, is deducted from the income arising from the television programme. Any resultant loss may be surrendered for a payable tax credit.

4.7 To calculate the actual relief given, the additional tax deduction is based on 'enhanceable expenditure' which is defined as the lower of (a) UK core expenditure; or (b) 80 per cent of total core expenditure. The levels of additional deduction and payable tax credit available will be a decision for Ministers, but the aim is to introduce a relief of similar generosity to the FTR. Box 4.A sets out an illustrative example of how this would work; further examples are provided in Annex A.

Question 15: Would adopting a similar model to the film tax relief be an effective way of meeting the Government's objective to support high-end television production?

Question 16: What alternative models for a high-end television tax relief could the Government consider? Please describe and explain how this would better meet the criteria in Chapter 2.

Box 4.A: Illustrative example of how the proposed model would apply to high-end television

The following is a simple worked example to illustrate how a tax credit could be calculated for a television production company. For the purposes of this example the rates used are the current FTR rates for larger productions (see paragraph 6.2).

A company produces a television drama series which is commissioned to be broadcast on commercial television. The series comprises 13 episodes with a total expenditure of £20m of which core expenditure is £19.5m. Therefore there is an average core expenditure spend of £1.50m per episode. Each episode has a running time of 45 minutes. The pro-rated core expenditure per hour is therefore £2m so it qualifies as high-end television (see paragraphs 4.10 to 4.14 for proposed definition). Income received from the commissioning broadcaster totals £18m.

Total income	£18m	
Total expenditure	(£20m)	
Pre-tax relief profit/ (loss)		**(£2m)**
Enhanceable expenditure (core expenditure of £19.5m x 80 per cent)	£15.6m	
Additional deduction (80 per cent rate of enhancement x £15.6m)		(£12.5m)
Post-tax relief profit/ (loss)		**(£14.5m)**

The surrenderable loss is the lesser of:

- The post-tax relief trading loss of £14.5m; and
- The enhanceable expenditure of £15.6m.

The television production company can surrender any amount up to £14.5m of losses. The amount of credit due based on a payable credit rate of 20 per cent[1] multiplied by the loss surrendered (assuming the maximum of £14.5m is surrendered) is 20 per cent x £14.5 m = £2.9m

Qualifying conditions

4.8 To qualify for the relief an incorporated company must be engaged in the production of high-end television programmes and all four of the following criteria must be met:

1. There must be a high-end television programme being produced (as defined in paragraphs 4.10 to 4.14);

[1] These are the current rates used for larger films with a core expenditure of more than £20 million (see paragraph 6.2). Applying the 20 per cent rate to an additional deduction of 80 per cent of qualifying core expenditure gives an effective payable credit rate of 16 per cent.

2 The programme must be intended for broadcast;

3 The programme must be certified as a cultural product by satisfying a cultural test (see paragraphs 4.22 to 4.23); and

4 At least 25 per cent of the core expenditure incurred on the high-end television programme by the production company must relate to expenditure on goods or services that are used or consumed in the UK.

4.9 To help design suitable criteria for the high-end television relief, the specific issues on which the Government is consulting are: definition of high-end television, including a proposed monetary threshold; eligible productions; further details on the qualifying 'core expenditure'; and separate trades. These are discussed in the remainder of this chapter.

Definition of high-end television

4.10 Relief under the new high-end television tax relief will be available for the costs of producing high-end televisions programmes. To create an effective scheme, the Government will need a definition that is workable in legislation, is also recognised in the high-end television industry and which is in line with State aid guidelines. The Government is therefore seeking views on how to define high-end television.

4.11 The Government is targeting high-end television 'intended for broadcast'. The relief is proposed to apply to drama productions and this would include comedy programmes. However, drama for these purposes does not include advertising, discussion programmes, news or current affairs programmes, quiz show, panel shows, variety shows, or similar entertainment.

4.12 The Government proposes to adopt a monetary threshold of £1 million per hour of programme running time. This aligns with how the industry operates and, provided that the definition is kept relatively simple, should not be too burdensome to administer. In order to safeguard against manipulation of costs, the Government proposes that the £1 million threshold refers only to direct production costs. This corresponds to the way the FTR threshold is calculated and avoids the potential risk with an 'all-in budget costs' definition which can include costs not directly related to the making of a programme. For example expenditure on raising and servicing of finance, advertising and marketing costs will be excluded as will income received by grants or other public subsidies.

4.13 This definition is in line with treatment in other jurisdictions offering similar relief. For example in the Canadian province of Quebec the 'all-in' spend corresponds generally to eligible salary costs and costs directly attributable to the completion of a qualifying production and specifically excludes expenditure on entertainment, copyright acquisition and financial expenses.

4.14 The Government is aware that a 'per programme hour' expenditure threshold may have a different meaning for different producers and broadcasters. For example, one organisation may refer to a programme hour as including time for advertising when the programme running time is only 45 minutes. The Government proposes that the £1 million 'production expenditure per hour of running time' is the running time excluding any commercial breaks. To ensure that the relief is appropriately targeted, the Government proposes to include a requirement that the programme has a running time of at least 30 minutes.

Box 4.B: Examples of how the proposed £1 million per hour definition would operate

Example 1: A drama is made for a one hour slot on commercial television with a running time of 45 minutes. If the drama cost £800,000 to make it will meet the definition because the average cost per hour of running time will be £1,06m (£800,000 / 0.75 hrs).

Example 2: A drama is made for a two hour slot on commercial television with a running time of 90 minutes. If the drama cost £1.25 million to make it will not meet the definition because the pro-rata cost per hour of running time will be £833,333 (£1,250,000 / 1.5 hrs).

Question 17: Does this definition of an average expenditure of £1 million per hour of running time create any issues in terms of monitoring and reporting?

Question 18: Do you agree that the production expenditure that qualifies towards the £1 million per hour threshold should only relate to direct production costs? If not, what types of expenditure should also qualify towards the £1 million threshold? Please justify your choices.

Eligible productions

4.15 Only incorporated companies directly involved in the production of a high-end television programme will be able to qualify for relief. An incorporated company means that the production company must be registered as a company in the UK at Companies House[2]. Directly involved means that the company is responsible for actually producing the content of the programme and is actively engaged in the decision making process to deliver the programme.

4.16 The Government is aware that there may be situations where co-productions take place and wants to explore this issue during consultation. Co-productions for this purpose refer to two different companies both producing the high-end television programme, not co-financing where two companies jointly finance the programme.

Question 19: Please provide examples and relevant details of co-productions that currently take place to produce high-end television programmes.

Qualifying 'core expenditure'

4.17 The Government expects that the types of expenditure allowable will be broadly similar to a definition of 'core expenditure' for the FTR, i.e. expenditure directly incurred in the production of the high-end television programme but excluding, for example, the costs of financing, advertising etc. Grants and other public subsidies will also be netted off against these expenses. The qualifying 'core expenditure' is proposed to include all production costs that are integral to the production process itself, including relevant pre and post production.

Question 20: Which costs are integral to the production process itself and should therefore be eligible for relief? Please explain your choices.

[2] Further details can be found on the companies house website (http://www.companieshouse.gov.uk/).

Question 21: Are the core production costs in high-end television similar to those in film? If not, please explain how the high-end television industry differs.

4.18 As with the FTR, there may be some early costs that relate to speculative expenditure that does not result in an end product. Whilst the Government does not wish to exclude these early stage costs from the scope of the scheme, it will be necessary to include a rule to separate speculative expenditure from early stage expenditure on a project with an identifiable end product.

4.19 For example, one approach would be for early stage production costs associated with a specific project to become eligible for relief once the programme has been formally commissioned by a broadcaster. Alternatively, only costs incurred in producing programmes with the potential to be broadcast as a finished product would be eligible for relief.

Question 22: Are one or both of the proposed rules for separating speculative expenditure from early stage expenditure on a project with an identifiable end product workable?

Question 23: Is there an alternative rule that would be simpler or more effective to ensure that speculative expenditure does not qualify for relief?

Separate trades

4.20 The current FTR model uses the concept of a separate trade for each film. This means that profits and losses for each film are calculated individually. This facilitates the procedure for claiming tax credits. Film production companies claim credits based upon accounting periods. There is no requirement that the film be complete for a claim to be made. It is not necessary for businesses to set up subsidiary companies or special purpose vehicles for each of those trades. Businesses are free to organise their own affairs as they prefer to meet commercial needs as long as separate trades are maintained. Annex A provides further explanation of how separate trades work for film production companies.

4.21 The Government understands that one-off high-end television shows, mini-series and separate series of the same high-end television show tend to be treated as separate trades. From our initial discussions with industry it is understood that this sector already tracks a production budget as if it were a separate trade or use special purpose vehicles for each production.

Question 24: Does the requirement that each production operates as a separate trade within the production company – with a separate, identifiable production budget – create any issues?

Question 25: Are there any other specific design points which need to be addressed?

State aid and cultural test

4.22 Like the FTR, the new high-end television tax relief will need State aid approval from the European Commission on cultural grounds. As the relief is classified as a State aid, it must satisfy the principle that such aid does not affect competition and trading conditions to an extent contrary to the common interest in Europe. It is a requirement of any scheme that the content of the aided production is cultural according to verifiable national criteria.

4.23 To qualify for the high-end television tax relief, it is therefore expected that a production will need to qualify as a British production via a cultural test. It is not the Government's intention to dictate the content or style of the production and the test will be designed to award points against the many different elements that contribute to the overall cultural value of the production. It is the Government's intention to consult separately on the design and administration of the cultural test. It is expected that some high-end television productions may not meet the requirements of the cultural test as not all high-end television will be culturally British.

Other issues

4.24 Chapter 6 provides details of other issues that are relevant for all three creative sector reliefs; including proposals on commencement; rates of relief; how to claim the tax relief; interactions of these new reliefs with other tax reliefs; treatment of expenditure incurred but unpaid; and openness to abuse. This chapter should be read in conjunction with Chapter 4 to complete the proposals that the Government is consulting on for the new high-end television tax relief.

4.25 Annex B requests supporting evidence from external stakeholders to inform the Government's understanding of impacts and to support the State aid application process with the European Commission. The Government would appreciate interested parties engaging with this evidence gathering process and providing answers to the proposed areas where possible.

5 Video games

Background

5.1 The UK has an excellent track record in high-quality video games design. Video games development is a high-tech, innovative and export-oriented industry. UK-made games can make a significant cultural contribution, entertain ever-growing audiences and produce spill-over benefits for the wider economy. For example, applications developed in the video games industry are used in education, medicine, defence, architecture, design and engineering. However, the European video games industry faces growing international competition, from Asia and North America in particular, at a time of technological change and increasing market opportunities.

5.2 The Government announced at Budget that a corporation tax relief for the video games sector will be introduced from April 2013, subject to State aid approval. This will offer a payable credit of similar generosity to the film tax relief (see paragraph 6.2). It is the Government's intention to introduce a relief that promotes investment into the production of video games in the UK that might otherwise not take place.

5.3 The Government proposes to introduce a relief that meets the criteria in Chapter 2. It is a necessary requirement that the design of this relief takes account of costs to the Exchequer to ensure a proposal is affordable, easy to administer and represents value for money for the taxpayer.

What a video games tax relief might look like

Business models

5.4 Through initial discussions with stakeholders, the Government understands that the video games sector does not operate according to a single business model. Instead there is a split between what may be termed 'traditional' or 'product-based' development models and newer, 'service-based' models, often more closely associated with the production of mobile applications and online games.

5.5 The Government understands that currently a significant proportion of the video games sector is based on a production process with games produced on a physical medium (e.g. using a disc) for playing on a console. This product-based model involves games developers either working on a small number of large projects with publishers or developers self-publishing games which are sold in retail outlets for personal computers and consoles. However, the Government understands that increasingly games are being created for digital distribution only. Recent years have seen growth in the service-based model where games are produced with lower development budgets for distribution using new mediums, such as online and mobile phones.

5.6 The Government is committed to supporting all parts of the video games development industry and therefore is keen to design a relief that works across all business models.

Proposed model for tax relief

5.7 The Government proposes that the new video games tax relief adopts a similar model to the film tax relief (FTR), a model that meets the criteria set out in Chapter 2.

5.8 Annex A provides a more detailed explanation of how the current FTR works. Briefly, by applying this model, a video games tax relief would give an additional deduction for qualifying 'core expenditure' (see paragraphs 5.19 to 5.23 for proposed definition). This additional deduction together with the tax deductible expenditure, is deducted from the income arising from the video game. Any resultant loss may be surrendered for a payable tax credit.

5.9 To calculate the actual relief given, the additional tax deduction is based on 'enhanceable expenditure' which is defined as the lower of (a) UK core expenditure; or (b) 80 per cent of total core expenditure. The levels of additional deduction and payable tax credit available will be a decision for Ministers, but the aim is to introduce a relief of similar generosity to the FTR. Box 5.A sets out an illustrative example of how this would work; further examples are provided in Annex A.

Question 26: Would adopting a similar model to the film tax relief be an effective way of meeting the Government's objective to support video games production?

Box 5.A: Illustrative example of how the proposed model would apply to video games

The following is a simple worked example to illustrate how a tax credit could be calculated for a video games production company. For the purposes of this example the rate used is the current 20 per cent FTR rate. For the purposes of this example the rates used are the current FTR rates for larger productions (see paragraph 6.2).

A company produces a video game which is commissioned and reaches the gold master stage (see paragraph 5.20). Income received from the commissioning publisher totals £4m. The total expenditure incurred is £5m of which £4m is core expenditure on the commissioned game.

Total income	£4m	
Total expenditure	(£5m)	
Pre-tax relief profit/ (loss)		**(£1m)**
Enhanceable expenditure (core expenditure of £4m x 80 per cent)	£3.2m	
Additional deduction (80 per cent rate of enhancement x £3.2m)		(£2.5m)
Post-tax relief profit/ (loss)		**(£3.5m)**

The surrenderable loss is the lesser of:

- The post-tax relief trading loss of £3.5m; and
- The enhanceable expenditure of £3.2m.

The video games production company can surrender any amount up to £3.2m of losses. The amount of credit due based on a payable credit rate of 20 per cent[1] multiplied by the loss surrendered (assuming the maximum of £3.2m is surrendered) is 20 per cent x £3.2m = £0.64m

Alternative models considered

5.10 The Government has considered two alternative models: a model structured like the UK's existing research and development (R&D) tax credit and the video games tax credit model available in France.

5.11 A tax relief similar to the R&D tax credit would operate by requiring companies to identify all relevant qualifying expenditure on all qualifying video games produced in a company. The model would not have required separate trades for each video game, but instead it would identify qualifying costs incurred by a company on a number of different games. However, there were a number of downsides to this model. Firstly companies would need to identify, track and keep separate expenditure for all qualifying and non-qualifying games, which would have created additional administrative burdens and complexity. Secondly, all income from qualifying games would be brought into the calculation of the relief, so for years where there is substantial income this may not result in a payable tax credit. This would create uncertainty for businesses who want to receive a payable tax credit.

5.12 The French model calculates the tax credit by directly applying a rate to the indentified eligible expenditure base, which is defined as 'expenditure on conception and creation'. The tax

[1] These are the current rates used for larger films with a core expenditure of more than £20 million (see paragraph 6.2). Applying the 20 per cent rate to an additional deduction of 80 per cent of qualifying core expenditure gives an effective payable credit rate of 16 per cent.

credit is then set off against the corporation tax payable or, where there is a loss, is repaid. The proposed model for the UK video games tax relief instead entitles the production company to an additional deduction in computing its profits or losses as explained above. The Government considers that the proposed model is, on balance, likely to benefit a wider range of companies in the UK.

Question 27: Would adopting one of these models be more appropriate than the proposed model to design a video games tax relief? Please describe and explain how this would better meet the criteria in Chapter 2.

Question 28: What alternative models for a video games tax relief could the Government consider? Please describe and explain how this would better meet the criteria in Chapter 2.

Qualifying conditions for proposed model

5.13 To qualify for the relief under the proposed model, a UK incorporated company must be engaged in the production of video games and meet all of the following four criteria:

1. There must be a 'video game' being produced (as defined in paragraphs 5.15 to 5.18);
2. The video game must be intended for commercial release;
3. The video game must be certified as a cultural product by satisfying a cultural test (see paragraphs 5.29 to 5.30);
4. At least 25 per cent of the core expenditure incurred on the video game by the production company must relate to expenditure on goods or services that are used or consumed in the UK.

5.14 To help design a suitable model with appropriate criteria for the video games relief, the specific issues on which the Government is consulting are: definition of a video game; eligible productions; further details on the qualifying 'core expenditure' including consideration of costs relating to debugging type activity and the continuing development of a game after the initial release; a possible threshold to entry; and separate trades. These are discussed in the remainder of this chapter.

Definition of video game

5.15 Relief under the new video games tax relief will be available for the costs of producing a video game. To create an effective model, the Government will need a definition that is workable in legislation, is also recognised in the video games industry and which is in line with State aid guidelines. The Government is therefore seeking views on how to define a video game.

5.16 A number of legislative definitions are used in other jurisdictions. For example, the French tax relief defines a video game as: 'leisure software made available to the public on a physical medium or online and incorporating elements of artistic and technological creation; the latter cover not only PC and console video games but also mobile games, on-line games for one or more players, educational or edutainment software and, provided that they incorporate sufficient interactivity and creativity, cultural CD-ROMs'. The Government proposes to adopt a similar definition.

Question 29: Would adopting a similar definition of a video game exclude any content that might reasonably be included?

Question 30: Is there an alternative definition of a video game that would more accurately reflect the nature of the content being produced? If so, please provide one.

5.17 The Government does not intend to offer relief for video games whose primary purpose is gambling or advertising products. The Government intends to exclude games which are pornographic or contain material that would be refused an age rating certificate if reviewed against the UK's video games classification regime. The Government welcomes suggestions on how to administer this criterion.

Question 31: Would a workable solution be to require games to be classified in order to qualify for the tax relief and for BBFC R18[2] games to be specifically excluded from the scheme? If not, what other solutions would you propose to exclude pornographic products from relief?

Eligible productions

5.18 Only incorporated companies directly involved in the production of a video game will be able to qualify for relief as they are the target of the relief, rather than investors. An incorporated company means that the production company must be registered as a company in the UK at Companies House[3]. Directly involved means that the company is responsible for actually producing the content of the video game and is actively engaged in the decision making process to deliver the video game.

Qualifying 'core expenditure'

5.19 The Government expects that the types of expenditure allowable will be broadly similar to a definition of 'core expenditure' for the FTR i.e. expenditure directly incurred in the production of the video game but excluding, for example, the costs of financing, advertising etc. Grants and other public subsidies will also be netted off against these expenses. The qualifying 'core expenditure' is proposed to include all production costs that are integral to the production process itself, including relevant pre- and post-production.

5.20 The Government understands that there is a defined production process and an end point when a game has 'gone gold' or a 'gold master' is produced. These terms are used in the sector and indicate a stage where a game is delivered for manufacturing and general release for retail.

Question 32: Does this proposed definition capture the appropriate integral costs of producing a video game? If not, please explain why.

Question 33: Are the core production costs in video games similar to those in film? If not, please explain how the video games industry differs.

5.21 The Government is aware that a significant proportion of the costs of producing a game may be early stage, reflecting the long lead-in times to production. Whilst the Government does not wish to exclude these early stage costs from the scope of the scheme, it will be necessary to

[2] BBFC R18 classifications are for products that can only be supplied in licensed sex shops.

[3] Further details can be found on the companies house website (http://www.companieshouse.gov.uk/).

include a rule to separate speculative expenditure from early stage expenditure on a project with an identifiable end product.

5.22 For example, one approach would be for early stage production costs associated with a specific project to become eligible for relief once the video game has been formally commissioned by a publisher. Alternatively, only costs incurred in producing a video game with the potential to be approved for commercial release could qualify.

> **Question 34:** Are one or both of the proposed rules for separating speculative expenditure from early stage expenditure on a project with an identifiable end product workable?
>
> **Question 35:** Is there an alternative rule that would be simpler or more effective to ensure that speculative expenditure does not qualify for relief?

Costs relating to debugging, maintenance etc.

5.23 The Government proposes that tax relief be provided for the costs of developing the game but not for the costs of code debugging or maintenance after the game has reached a certain developmental stage such as 'open beta'[4]. Maintenance of a game does not appear to be part of the development of the game and, since the tax relief is specifically aimed at supporting creation rather than ongoing maintenance, should not be eligible for relief. Where, however, there has been genuine further development, for example, building expansion packs and additional features tax relief may be available for those associated costs.

> **Question 36:** Does the proposed approach to debugging and maintenance costs ensure that the costs integral to the production of a video game can qualify for relief? Please explain your view.

Continuing development of a game

5.24 The FTR model works well with single projects which have an end point. It is also flexible enough to accommodate core expenditure incurred at a later stage on a film post theatrical release. For example, where there are 'residuals' to be paid such as further payments to actors and directors then, provided that this expenditure is 'core expenditure', it will attract further relief.

5.25 The definition of 'core expenditure' used in the FTR model has the capacity to be extended to cover further development of a game. For example, where add-on packs or new content is developed. However, as explained in paragraph 5.23, debugging and maintenance beyond a particular stage of development of the game would not be eligible.

> **Question 37:** Does the flexibility offered by the FTR model, that allows further relief for qualifying costs after the product has been completed, provide sufficient scope to accommodate costs that arise in both the video games' business models?

Separate trades

5.26 The current FTR model uses the concept of a separate trade for each film. This means that profits and losses for each film project are calculated individually. This facilitates the procedure

[4] The Government understands that 'open beta' refers to a stage in a game's development where the game has been released to the public and almost all the bugs and problems have been worked out in the earlier development stages such as 'alhpa' and 'closed beta'.

for claiming tax credits. The production companies claim credits based upon accounting periods. There is no requirement that the film be complete for a claim to be made. It is not necessary for businesses to set up subsidiary companies or special purpose vehicles for each of those trades. Businesses are free to organise their own affairs as they prefer to meet commercial needs as long as separate trades are maintained. Annex A provides further explanation of how separate trades work for film production companies.

5.27 The Government proposes that a similar approach is adopted for the new video games tax relief. From our initial discussions with industry it is believed that the sector already tracks a video games budget and costs as if it were a separate trade.

Question 38: Does the requirement that each video game operates as a separate trade within the production company – with a separate, identifiable production budget – create any issues?

Threshold to entry

5.28 The French video games tax credit has a threshold to entry of €150,000 of development costs. The rationale for this is to exclude games not intended for large scale marketing. During initial scoping work, some industry representatives suggested that a threshold to entry of £50,000 should be included in the video games relief. The Government wants to consider whether there is a case for a threshold in the UK regime given the aim to incentivise genuine commercial activity and growth in the UK.

Question 39: Should there be a minimum spend threshold and if so at what level?

Question 40: Are there any other specific design points which need to be addressed?

State aid and cultural test

5.29 Like the FTR, the new video games tax relief will need State aid approval from the European Commission on cultural grounds. As the relief is classified as a State aid, it must satisfy the principle that such aid does not affect competition and trading conditions to an extent contrary to the common interest in Europe. It is a requirement of any scheme that the content of the aided production is cultural according to verifiable national criteria.

5.30 To qualify for the video games tax relief, it is therefore expected that a production will need to qualify as a British video game via a cultural test. It is not the Government's intention to dictate the content or style of the production and the test will be designed to award points against the many different elements that contribute to the overall cultural value of the production. It is our intention to consult separately on the design and administration of the cultural test. It is expected that some video games productions may not meet the requirements of the cultural test.

Other issues

5.31 Chapter 6 provides details of other issues that are relevant for all three creative sector reliefs, including proposals on commencement, rates of relief, how to claim the tax relief, interactions of these new reliefs with other tax reliefs, treatment of expenditure incurred but unpaid, and openness to abuse. This chapter should be read in conjunction with Chapter 5 to complete the proposals that the Government is consulting on for the new video games tax relief.

5.32 Annex B requests supporting evidence from external stakeholders to inform the Government's understanding of impacts and to support the State aid application process with the European Commission. The Government would appreciate interested parties engaging with this evidence gathering process and providing answers to the proposed areas where possible.

6 Other issues

Commencement

6.1 Subject to receiving State aid approval, the new creative sector tax reliefs will have a commencement date of 1 April 2013. Qualifying expenditure forming the basis of any claim must be incurred on or after 1 April 2013. Where an accounting period straddles that date, expenditure arising in that period must be apportioned between the period on or before 31 March 2013 and the period on or after 1 April 2013.

Rates of relief

6.2 Detail on the exact rates of relief to apply to each of the new creative sector tax reliefs will be a decision for Ministers and will be announced at a later date. These new reliefs aim to offer an internationally competitive rate and to be similar in generosity to those available under the film tax relief (FTR).

6.3 For the FTR the current rates of relief apply:

- for films with a core expenditure of more than £20 million, the film production company can claim an additional deduction of 80 per cent and a payable cash rebate of up to 20 per cent of UK qualifying film production expenditure; and
- for films with a total core expenditure of £20 million or less, the film production company can claim an additional deduction of 100 per cent and a payable cash rebate of up to 25 per cent of UK qualifying film production expenditure.

Claiming tax relief and HMRC engagement with customers

6.4 As for the FTR, claims for these creative sector tax reliefs will need to be included in a company's tax return for an accounting period. Before a claim is made, it will be necessary to obtain confirmation that the production meets the relevant cultural test.

6.5 The proposed models are generally expected to provide business with enough certainty to be able to self-assess without the need for a formal clearance process. HMRC envisages that some companies may wish to seek advance agreement where there is tax uncertainty. Consistent with its current approach to significant business tax issues, HMRC will operate a non-statutory clearance system for these reliefs in response to applications from business.

> **Question 41:** Are there any issues for the animation, high-end television and video games industries in applying the same process to make claims under the new tax reliefs?

Cultural test

6.6 As with the FTR, the new creative sector tax reliefs will require State aid approval from the European Commission on cultural grounds. It is envisaged that like the FTR, any productions looking to qualify for relief under one of the new reliefs will need to pass a cultural test that is likely to be administered by the Department for Culture, Media and Sport. Further information on the design of the cultural test will be published for consultation in the autumn. Over the summer the Government will discuss the design of the cultural tests with the European Commission and will work with industry representatives to design suitable criteria.

6.7 If you would like further information on the cultural test, please refer to the British Film Industry website[1] as it administers the cultural test applied to films. Alternatively you can contact Tim Scott at the Department for Culture, Media and Sport via email (tim.scott@culture.gsi.gov.uk).

Interaction with other tax reliefs

6.8 Where a company claims tax relief under one creative sector relief, they will not be able to claim relief under another creative sector tax relief. For example, animated films intended for theatrical release that meet the qualifying criteria of the FTR will continue to be eligible for support under the FTR scheme, but will not be able to claim relief under the animation tax relief as well. It is a decision for the company which is the appropriate relief to claim.

6.9 It is understood that some companies that produce animation, high-end television and video games may also be claiming relief for research and development expenditure incurred. Companies will not be able to claim relief twice on the same research and development expenditure. It is a commercial decision for the company whether to claim R&D tax credits or a creative sector tax relief.

Expenditure incurred but unpaid

6.10 Any amount of costs incurred but unpaid within four months of the end of a period of account will not qualify for the tax relief.

> **Question 42**: Do respondents think that this is an acceptable time scale to exclude unpaid costs?

Openness to abuse

6.11 One of the key criteria for the design of the creative industry tax credits is that they should not be open to abuse. An effective strategy to prevent abuse at the outset is a key requirement to maintain the long term sustainability of these new tax reliefs to ensure that they remain effective and sufficiently targeted. The Government will, in particular, consider whether rules are required in the following areas to prevent:

- artificially inflated claims for tax credit.
- wrongful disclosure.

6.12 It is important for businesses as well as the Government to ensure that the new tax reliefs do not create substantial new avoidance risks otherwise this will create uncertainty for business as the regimes may be subject to change. In extreme situations where substantial avoidance risks are created, such as the old film tax scheme, the regime was entirely replaced.

> **Question 43**: Can respondents suggest ways to prevent abuse of the new tax reliefs to ensure that they remain effective? Are there specific areas in addition to those mentioned above?

[1] For further details please refer to the British Film Institute's website (http://industry.bfi.org.uk/culturaltest).

Skills

6.13 The Government believes that investment in UK skills and talent development is a critical element to sustaining UK production. In developing these measures, the Government would like to consider how the benefits from the tax reliefs can be utilised to invest in UK skills and talent development.

Question 44: What systems and measures could be developed or enhanced to ensure that the animation, high-end television, and video game industries have a world class skills and talent base capable of supporting the growth that the new measures will be designed to support?

7 Consultation process

Closing date and how to respond

7.1 The closing date for this consultation is 10 September 2012.

7.2 Responses to the consultation should be sent either by post to:

Creative Sectors Tax Reliefs Consultation
Enterprise and Excise Tax Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Or by email to: creativesectortaxreliefsconsultation@hmtreasury.gsi.gov.uk.

7.3 This document can be found on the HM Treasury website (www.hm-treasury.gov.uk). When responding, please state whether you are responding as an individual or as part of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents and, where applicable, how the members' views were assembled.

Working groups

7.4 The Government will establish three industry focused working groups for each of the animation, high-end television and video games industries. These working groups will operate at official level and meet when necessary to progress the policy design of these new tax reliefs. If you would like to be a working group member, please send nominations, identifying which group you would like to be a member of and your current position, by email to creativesectortaxreliefsconsultation@hmtreasury.gsi.gov.uk by Friday 22 June 2012.

Confidentiality and disclosure

7.5 All written responses may be made public on the Treasury's website unless the author specifically requests otherwise in writing.

7.6 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regime. These are primarily the Freedom of Information Act (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004.

7.7 If you would like the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as being confidential. If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

7.8 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

7.9 Subject to the previous two paragraphs, if you wish part (but not all) of your response to remain confidential, please supply two versions one for publication on the website with the confidential information deleted, and another confidential version for use by the Treasury.

7.10 Any FOIA queries should be sent by email to:

Public.enquiries@hmtreasury.gsi.gov.uk

Or by post to:

Correspondence and Enquiry Unit
Freedom of Information Section
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

The Government's Code of Practice on consultation

7.11 This consultation is being conducted in accordance with the Government's Code of Practice on consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex E.

Next steps

7.12 As stated above, this consultation began with the publication of this document and will last for a period of 12 weeks, closing on 10 September 2012. After the consultation period has closed, the Government will consider the responses to the consultation.

7.13 In line with the Code of Practice for written consultations the Government will publish a summary of responses to the consultation.

A The film tax relief model

Introduction

A.1 Film Tax Relief ('FTR') was introduced in Finance Act 2006 to encourage sustainable film production in the UK and to maintain the industry's creative and technical skills. A payable cash rebate of up to 20 per cent of UK qualifying film production expenditure can be claimed for films with core expenditure of more than £20 million. The payable cash rebate is up to 25 per cent for limited-budget films with core expenditure of £20 million or less. 'Core expenditure' means production expenditure on pre-production, principal photography and post-production. There is no cap on the amount which can be claimed, but it is only companies that are eligible 'film production companies' that can claim the FTR.

Defining a Film Production Company

A.2 Companies that meet the definition of a film production company ('FPC') are subject to special tax rules (at Part 15 of the Corporation Tax Act 2009). A FPC can qualify for FTR if certain conditions are met.

Film Production Company

A.3 A FPC is a company that is responsible for the pre-production, principal photography, and post-production of a film. It must also be engaged actively in production planning and decision-making during those stages as well as having responsibility for delivery of the completed film, negotiations, contracts and payments for rights, goods and services in relation to the film. The definition of a FPC is tightly drawn to ensure that only the actual producers of a film (rather than investors) fall within the special tax rules.

Separate film trade

A.4 For corporation tax purposes, the FPC's activities in relation to a film are treated as a trade separate from any other activities of the company, including any activities in relation to any other film. If a FPC makes more than one film, each film would be considered to be a separate trade, with profits and losses calculated separately for each film that the FPC produces. So the FPC would need to separately identify the income receivable and expenditure incurred on film-making activities in connection with each film. This would only be for tax purposes and would not affect the company's financial statements. There is no requirement to have an audited set of accounts for each separate film trade, but the FPC would have to meet audit requirements as for any other normal company.

A.5 A company can have more than one separate film trade, but for any one film there can only be one FPC (except in the case of 'qualifying co-productions'). If there is more than one company satisfying the FPC requirements, the FPC is the one more directly engaged in the activities. If there is no company satisfying the FPC requirements in respect of a film, there is no FPC for that film and therefore no relief may be claimed.

Qualifying co-productions

A.6 A 'qualifying co-production' is a film that is treated as a national film in the UK by virtue of an agreement between the Her Majesty's Government in the UK and any other government, international organisation or authority. A co-producer can be treated as a FPC if it makes an effective creative, technical and artistic contribution to the film. But a company that co-produces a film cannot be a FPC if it only makes a financial contribution.

Conditions for claiming FTR

A.7 The FPC may be eligible for Film Tax Relief (FTR) if all four of the following conditions are met:

- There must be a 'film'. A 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. References to a film include the film soundtrack. Where there is a series, each part of a series of films is treated as a separate film trade. But the whole series is treated as a single film if the parts form a series of 26 parts or less and the combined playing time is 26 hours or less and the series constitute a self-contained work or is a series of documentaries with a common theme.
- The film must be intended for 'theatrical release'. This means exhibition to the paying public at the commercial cinema, and it is intended that a significant proportion of the earnings from the film should be obtained by such exhibition.
- The film must be certified as a 'British film' by the Secretary of State for Culture, Media and Sport. There are three ways in which a film can qualify as British. It may:

  a satisfy the 'cultural test'[1];

  b meet the terms of one of the UK's bilateral co-production treaties; or

  c meet the terms of the European Convention on Cinematic Co-Production.
- At least 25 per cent of the 'core expenditure' on the film incurred by the FPC must be 'UK expenditure'. 'Core expenditure' means production expenditure on pre-production, principal photography and post-production. 'Production expenditure' means expenditure on film-making activities in connection with the film. 'UK expenditure' means expenditure on goods or services that are used or consumed in the UK.

A.8 There is no requirement for the FPC to hold any intellectual property rights in connection with the film, or for any rights to be held in the UK[2].

Calculating the FTR

A.9 To arrive at the amount of profits that are subject to corporation tax, a company deducts certain allowable expenditure from its taxable income. The FTR increases the amount of expenditure that is allowable as a deduction for corporation tax purposes which is called an 'additional deduction'. The additional deduction reduces the taxable profits of a FPC, or turns a taxable profit situation into a loss situation or increases the losses of a FPC.

A.10 The additional deduction is based on enhanceable expenditure. Enhanceable expenditure is the lower of:

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[1] Inserted into Schedule 1 to the Films Act 1985 by SI2006/3430 (the Films (Definition of a British Film) (No. 2) Order 2006).

2 Usually the FPC must hold the copyright to the script or book in order to make the film, but there is no requirement under the tax legislation to hold these rights or the rights to the film at any time.

- UK core expenditure;
- 80 per cent of total core expenditure (see paragraph A.7 for definition of core expenditure).

A.11 Where the additional deduction creates a loss, the FPC can surrender the loss for a payable tax credit. A payable tax credit means that the FPC will receive a cash payment from HMRC. The levels of the additional deduction and payable tax credit are dependent on the size of the film's budget. For a limited-budget film (one whose core expenditure is £20m or less) the additional deduction is 100 per cent of enhanceable expenditure and the payable tax credit is 25 per cent of losses surrendered. For other films, the rates are 80 per cent and 20 per cent, respectively.

Table A.1 Example treatment for a limited-budget film

A FPC produces a film with total expenditure of £11m, £10m of which is core expenditure and it is all UK expenditure. The film was commissioned by an unrelated distributor, which pays £9m for it.

Total income[3]	£9m	
Total expenditure	(£11m)	
Pre-FTR profit/ (loss)		**(£2m)**
Enhanceable expenditure (core expenditure of £10m x 80 per cent)	£8m	
Additional deduction (100 per cent rate of enhancement)		(£8m)
Post-FTR profit/ (loss)		**(£10m)**

The surrenderable loss is the lesser of:

- The post-FTR trading loss of £10m; and
- The enhanceable expenditure of £8m.

The FPC can surrender any amount up to £8m (out of £10m) of losses.

The amount of credit due is the payable credit rate for a limited-budget film of 25 per cent multiplied by the loss surrendered. So assuming the maximum of £8m is surrendered:

25 per cent x £8m = £2m

So the FPC can claim a payment of £2m from HMRC. This is equal to 20 per cent of the core expenditure and covers the £2m gap between total income and total expenditure (£9m less £11m). The other £2m loss (£10m less £8m) can be group relieved or carried forward against subsequent profits of the same film trade.

If the FPC does not surrender the £8m of losses for a payable credit, these are 'losses attributable to film tax relief' and can only be offset against profits of the same film trade of a future accounting period. These losses cannot be relieved sideways (against profits of a different trade), group relieved or carried back.

3 Income from the film is any receipts by the FPC in connection with making or exploiting the film including: receipts from the sale of the film or rights in it; royalties or other payments for use of the film or characters or music or other aspects of the film; payments for rights to produce games or other merchandise; and receipts by way of a profit share agreement.

Table A.2 Example treatment for a large budget film

A FPC produces a film with total core expenditure of £100m, all of which is UK expenditure. The film was commissioned by an unrelated distributor, which pays £85m for it.

Total income	£85m	
Total expenditure	(£100m)	
Pre-FTR profit/ (loss)		**(£15m)**
Enhanceable expenditure (core expenditure of £100m x 80 per cent)	£80m	
Additional deduction (80 per cent rate of enhancement x £80m)		(£64m)
Post-FTR profit/ (loss)		**(£79m)**

The surrenderable loss is the lesser of:

- The post-FTR trading loss of £79m; and
- The enhanceable expenditure of £80m.

The FPC can surrender any amount up to £79m of losses.

The amount of credit due is the payable credit rate for a large budget film of 20 per cent multiplied by the loss surrendered. So assuming the maximum of £79m is surrendered:

20 per cent x £79m = £15.8m

So the FPC can claim a payment of £15.8m from HMRC. This is equal to 15.8 per cent of total core expenditure. This more than covers the £15m gap between the total income and total expenditure. The FPC can use the additional £800,000 for any legal purpose[4].

Again, instead of the FPC surrendering £79m of losses for a payable tax credit, the FPC can carry forward the loss to offset against profits of the same film trade of a future accounting period. These losses cannot be relieved against profits of a different trade.

How to claim the FTR

A.12 A claim for FTR must be included in a company tax return for an accounting period. It can be made in respect of any accounting period that the FPC continues the film trade. Normally a claim is made for the accounting period in which the film is completed or abandoned. A claim can also be made in a subsequent accounting period after the film is completed if in that period the FPC has trading activity. For example if the FPC has to make additional payments to the director and actors due to the success of the film.

A.13 Before an application is made, the film must be certified by the Secretary of State that the film is a British film. An interim certificate as well as a final certificate can be obtained. Interim claims are made on the assumption that the required conditions have been met. If any of the conditions are not actually met on completion of the film, the position is adjusted to reflect the outcome, including if appropriate repayment of the film tax credit to HMRC with interest. Interim claims cannot be made outside of the corporation tax company return process.

Further information

A.14 For further information please see HMRC's Film Production Company Manual. The legislation is at Part 15 of the Corporation Tax Act 2009.

4 The commissioning producer may reduce the amount paid to the FPC or if the commissioning producer is the parent company of the FPC, the FPC could pay out a dividend to return the cash.

B Tax impact assessment and call for evidence

Tax impact assessment for animation tax relief

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	0	-5	-10	-15	-15
	These figures were set out in Table 2.1 of the Budget and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the Budget.[1]				
Economic impact	This measure is not expected to have significant economic impacts. The relief would need to be provided to support the development of animation with demonstrable cultural value. The introduction of this relief is likely to encourage investment and economic growth in this sector				
Impact on individuals and households	The relief would be available to incorporated developers of culturally British animation productions and so is not likely to impact on individuals and households.				
Equalities impacts	The incentive would not be likely to impact on equality measures as the relief would be available to companies developing culturally British animation.				
Impact on businesses including civil society organisations	The relief would benefit companies developing animation with culturally British content. There are approximately 600 animation companies in the UK. Businesses are likely to have to complete this cultural test for each production in order to qualify for the relief, as well as making the claim for the relief through their tax returns. This is an additional admin burden and opinions are requested on the impact this would have on businesses in the request for evidence (see paragraph B.2).				
Operational impact (£m) – HMRC and other government departments	Operational impact for HMRC has not been costed, but additional resource may be required to administer the relief. DCMS may also require additional resource to administer a cultural test for animated programmes. Additional resource would have to come out of existing departmental budgets, which would impact on resource allocation elsewhere. While we are not yet able to estimate the costs of implementing this measure, we will use information gathered through the consultation process to make an estimate as soon as possible.				
Other impacts	Introducing this tax relief would be of particular benefit to micro-businesses employing fewer than 10 staff as roughly two thirds of the UK's animation businesses are micro-businesses, employing less than 10 full-time equivalent staff each. Introducing this tax relief would be of particular benefit to small and medium sized businesses as 95 per cent of video games companies are SMEs. This				

[1] Budget 2012 Policy Costings document (http://cdn.hm-treasury.gov.uk/budget2012_policy_costings.pdf)

	relief is targeted at a specific sector. All companies in this sector are eligible, so introduction is unlikely to affect competition within the sector. There should not be any impact on competition with other business sectors.

Tax impact assessment for high-end television tax relief

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	-	-	-	-	-
	This measure is expected to decrease receipts through the tax relief. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at the next appropriate fiscal event.				
Economic impact	This measure is not expected to have significant economic impacts. The relief would need to be provided to support the development of high-end television with demonstrable cultural value.				
Impact on individuals and households	The relief would be available to companies producing high-end television programmes with a proposed minimum budget 'per programme hour' of £1 million or more and so is not likely to impact on individuals and households.				
Equalities impacts	The incentive would not be likely to impact on equality measures as the relief would be available to companies developing high-end television programmes				
Impact on businesses and third sector	The relief would benefit companies producing television programmes with a proposed minimum budget 'per programme hour' of £1 million or more who meet a cultural test. It is not known how many companies will benefit. Businesses are likely to have to complete a cultural test for each production in order to qualify for the relief, as well as making the claim for the relief through their tax returns. This is an additional admin burden and opinions are requested on the impact this would have on businesses in the request for evidence (see paragraph B.2).				
Operational impact (£m) – HMRC and DCMS	Operational impact for HMRC has not been costed, but additional resource may be required to administer the relief. DCMS may also require additional resource to administer a cultural test for high-end television. Additional resource would have to come out of existing departmental budgets, which would impact on resource allocation elsewhere. While we are not yet able to estimate the costs of implementing this measure, we will use information gathered through the consultation process to make an estimate as soon as possible.				
Other impacts	Introducing this tax relief is likely to be of particular benefit to larger television production companies with the necessary resources to reach the minimum spending level. Introducing this relief could affect competition, with investment diverted towards high-end television production. In addition, television production companies with smaller budgets will have to compete with subsidised production for larger budget production, potentially facing higher production costs as a result.				

Tax impact assessment for video games tax relief

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	0	-10	-25	-25	-25
	These figures were set out in Table 2.1 of the Budget and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the Budget.[2]				
Economic impact	This measure is not expected to have significant economic impacts. The relief would need to be provided to support the development of video games with demonstrable cultural value. The introduction of the relief is likely to encourage investment and economic growth in this sector.				
Impact on individuals and households	The relief would be available to incorporated developers of culturally British video games and so is not likely to impact on individuals and households.				
Equalities impacts	The incentive would not be likely to impact on equality measures as the relief would be available to companies developing video games.				
Impact on businesses including civil society organisations	The relief would benefit companies developing video games with culturally British content. There are approximately 300 to 500 video games developing companies in the UK. Businesses are likely to have to complete this cultural test for each game in order to qualify for the relief, as well as making the claim for the relief through their tax returns. This is an additional admin burden and opinions are requested on the impact this would have on businesses in the request for evidence (see paragraph B.2).				
Operational impact (£m) – HMRC and other government departments	Operational impact for HMRC has not been costed, but additional resource may be required to administer the relief. DCMS may also require additional resource to administer a cultural test for video games. Additional resource would have to come out of existing departmental budgets, which would impact on resource allocation elsewhere. While we are not yet able to estimate the costs of implementing this measure, we will use information gathered through the consultation process to make an estimate as soon as possible.				
Other impacts	Introducing this tax relief would be of particular benefit to small and medium sized businesses as 95 per cent of video games companies are SMEs. This relief is targeted at a specific sector. All companies in this sector are eligible, so introduction is unlikely to affect competition within the sector. There should not be any impact on competition with other business sectors.				

Evaluation and monitoring

B.1 The creative sector tax credits are new measures containing new rules and it is therefore possible that unforeseeable issues may emerge. These may not be apparent immediately and it is possible that there may be changes to the three new regimes over time. The policy will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

[2] Budget 2012 Policy Costings document (http://cdn.hm-treasury.gov.uk/budget2012_policy_costings.pdf).

Request for supporting evidence

B.2 It is important that the maximum of information is provided to support the State aid application made to the European Commission to support the expected impacts of these reliefs. Previous State aid applications have required a large amount of evidence to be provided to the Commission to gain approval.

B.3 The evidence requested will also be used to help design these schemes and provide more certainty about the likely Exchequer costs. For example, on high-end television the information requested will help design a workable definition of high-end television (see paragraphs 3.12 to 3.13).

B.4 The Government asks for interested parties to provide the evidence requested below where possible. This evidence will only be used for analytical purposes to assist in the design of the policy and to support the State aid application. This information will not be disclosed publically.

Animation tax relief

Supporting evidence request for the animation tax relief

1 **Existing production and behavioural effects**

Please provide information on:

- Any industry wide estimate for the total size of animation production in the UK (i.e. total direct expenditure on animated productions). This will help provide a better picture of the current size of the sector as well as how it may grow in response to the implementation of the animation relief.
- The direct production expenditure for animation companies each year for the last three years, broken down by individual UK animation productions.
- Any UK animation productions being made outside the UK or as part of a co-production in order to access an overseas tax incentive (including direct production expenditure and the value of any tax relief received).
- Any non-UK productions being made outside the UK that would have been made in the UK had a similar tax incentive been available (including direct production expenditure and, if any, the value of overseas tax relief received).

If possible, please submit evidence according to the following format:

	Prod'n started	Prod'n completed	UK, non-UK (country) or co-production (partner country)?	Total production expenditure	Total UK production expenditure	Received tax relief (country)?	If you received tax relief what was the value of the relief?	Would you have produced fully in the UK if relief available (reason not)?
Animation X	2009	2010	UK	£1m	£1m	N	n/a	n/a
Animation Y	2010	2010	Non-UK (Canada)	£300k	n/a	Y (Canada)	£800k	Yes
Animation Z	2010	2012	Co-production (UK/France)	£700k	£100k	N	n/a	No (due to plot)
AVERAGE COMPANY PRODUCTION EXPENDITURE (PER YEAR)							£500k	

2 **Production case studies**

Please provide individual case studies, including information on:

- Total direct production expenditure and running time of animation produced;

- Funding sources, including a breakdown and any input from co-production partners and details of any overseas tax incentives accessed;
- Timing of production expenditure showing when and how much expenditure takes place during the production process; and
- A breakdown of total direct production expenditure by type of production (e.g. costs of voice-over artists, animator costs etc.).

We would also be interested in seeing example project budgets (with commercially sensitive information redacted as necessary).

3 Administrative burdens

It is envisaged that the administrative burden of applying for these new reliefs will be similar to the burden of applying for film tax relief. If you have previously claimed the film tax relief, please estimate the administrative cost to your business of applying for the relief (including the cost of providing information in order to pass the cultural test).

The Government appreciates that the necessary detail may not be available for companies that have not previously applied for film tax relief to estimate the cost of administering the new tax relief.

High-end television tax relief

Supporting evidence request for high-end television tax relief

1 Existing production and behavioural effects

Please provide information on:

- Any industry wide estimate for the total size of television, and specifically high-end television, production in the UK (i.e. total direct expenditure on high-end television productions and number of hours of programming). This will help provide a better picture of the current size of the sector as well as how it may grow in response to the implementation of the high-end television tax relief.
- Current annual expenditure on UK television production by expenditure per hour of programme running time (both production currently taking place in the UK and productions made overseas by UK producers). UK production companies may wish to provide this information in an aggregated form. For example, by number of productions made each year with a per programme hour spend of £0 - £250k, £250K - £500k, £500 - £750K, £750 - £950k, £950 - £1m, £1m - 1.050m, £1,050m - £1.1m etc.
- Any UK high-end television productions being made outside the UK or as part of a co-production in order to access an overseas tax incentive (including direct production expenditure and the value of any tax relief received).
- Any non-UK productions being made outside the UK that would have been made in the UK had a similar tax incentive been available (including direct production expenditure and, if any, the value of overseas tax relief received).

If possible, please submit evidence according to the following format:

	Prod'n started	Prod'n completed	UK, non-UK (country) or co-production (partner country)?	Total production expenditure	Total UK production expenditure	Total programme hours	Received tax relief (country)?	If you received tax relief what was the value of the relief?	Would you have produced fully in the UK if a relief available (reason not)?	Genre
Series X	2009	2010	UK	£10m	£10m	20	N	n/a	n/a	Drama
One-off Y	2010	2010	Non-UK (Canada)	£4m	n/a	2	Y (Canada)	£800k	Yes	Comedy
Mini-series Z	2010	2012	Co-production (UK/France)	£6m	£4m	8	N	n/a	No (due to plot)	Docu-drama

2 Production case studies

Please provide individual case studies, including information on:

- Total direct production expenditure and running time of high-end television produced;
- Funding sources, including a breakdown and any input from co-production partners and details of any overseas tax incentives accessed;
- Timing of production expenditure showing when and how much expenditure takes place during the production process; and
- A breakdown of total direct production expenditure by type of production (e.g. costs of film crew, editing costs etc.).

We would also be interested in seeing example project budgets (with commercially sensitive information redacted as necessary).

3 Administrative burdens

It is envisaged that the administrative burden of applying for these new reliefs will be similar to the burden of applying for film tax relief. If you have previously claimed the film tax relief, please estimate the administrative cost to your business of applying for the relief (including the cost of providing information in order to pass the cultural test).

The Government appreciates that the necessary detail may not be available for companies that have not previously applied for film tax relief to estimate the cost of administering the new tax relief.

Video games tax relief

Supporting evidence request for video games tax relief

1 Existing production and behavioural effects

Please provide information on:

- Any industry wide estimate for the total size of video games development in the UK (i.e. total direct expenditure on developing video games). This will help provide a better picture of the current size of the sector as well as how it may grow in response to the implementation of the video games relief.
- The direct development expenditure for video games companies each year for the last three years, broken down by individual UK video games projects.

- Any UK video games productions being made outside the UK or as part of a co-production in order to access an overseas tax incentive (including direct development expenditure and the value of any tax relief received).
- Any non-UK productions being made outside the UK that would have been made in the UK had a similar tax incentive been available (including direct development expenditure and, if any, the value of overseas tax relief received).

If possible, please submit evidence according to the following format:

	Prod'n started	Prod'n completed	Where currently developed?	Total production expenditure	Total UK production expenditure	Received tax relief (country)?	If you received tax relief what was the value of the relief?(please specify how much UK R&D tax credit)	Would you have produced fully in the UK if relief available (reason not)?
Video game X	2009	2010	UK	£1m	£1m	N	N	n/a
Video game Y	2010	2010	Canada	£300k	n/a	Y (Canada)	Y £200k	Yes
Video game Z	2010	2012	Co-production (UK/France)	£700k	£100k	N	Y £35k (£5k UK R&D)	No (due to skill requirements)
AVERAGE COMPANY PRODUCTION EXPENDITURE (PER YEAR)							£500k	

2 Production case studies

Please provide individual case studies, including information on:

- Total direct production expenditure on developing the video game;
- Funding sources, including a breakdown and any input from co-production partners and details of any overseas tax incentives accessed;
- Timing of production expenditure showing when and how much expenditure takes place during the production process;
- A breakdown of total direct production expenditure by type of production (e.g. costs of voice-over artists, programmer costs etc.).

We would also be interested in seeing example project budgets (with commercially sensitive information redacted as necessary).

C Summary of consultation questions

Chapter 2: Criteria for the creative tax reliefs

Question 1: Do you agree with the proposed criteria for assessing the animation, high-end television and video games tax reliefs? Please provide any comments as appropriate.

Chapter 3: Animation

Question 2: Would adopting a similar model to the film tax relief be an effective way of meeting the Government's objective to support animation production?

Question 3: What alternative models for an animation tax relief could the Government consider? Please describe and explain how this would better meet the criteria in Chapter 2.

Question 4: Would adopting a definition of animation on this basis exclude any content that might reasonably be included?

Question 5: Is there an alternative definition of animation that would more accurately reflect the nature of the content being produced? If so, please provide one.

Question 6: What would be an appropriate way of removing animated programmes which are pornographic in content? For example, is there an appropriate classification used in the industry that could be adopted?

Question 7: Are there alternative approaches to determine whether a mixed content production should be treated as an animated production for the purposes of this relief that the Government should consider? Please describe and explain how this would better meet the criteria in Chapter 2.

Question 8: Please provide examples and relevant details of co-productions that currently take place to produce animated programmes.

Question 9: Which costs are integral to the production process itself and should therefore be eligible for relief? Please explain your choices.

Question 10: Are the core production costs in animation similar to those in film? If not, please explain how the animation industry differs.

Question 11: Are one or both of the proposed rules for separating speculative expenditure from early stage expenditure on a project with an identifiable end product workable?

Question 12: Is there an alternative rule that would be simpler or more effective to ensure that speculative expenditure does not qualify for relief?

Question 13: Does the requirement that each production operates as a separate trade within the production company – with a separate, identifiable production budget – create any issues?

Question 14: Are there any other specific design points which need to be addressed?

Chapter 4: High-end television

Question 15: Would adopting a similar model to the film tax relief be an effective way of meeting the Government's objective to support high-end television production?

Question 16: What alternative models for a high-end television tax relief could the Government consider? Please describe and explain how this would better meet the criteria in Chapter 2.

Question 17: Does this definition of an average expenditure of £1 million per hour of running time create any issues in terms of monitoring and reporting?

Question 18: Do you agree that the production expenditure that qualifies towards the £1 million per hour threshold should only relate to direct production costs? If not, what types of expenditure should also qualify towards the £1 million threshold. Please justify your choices.

Question 19: Please provide examples and relevant details of co-productions that currently take place to produce high-end television programmes.

Question 20: Which costs are integral to the production process itself and should therefore be eligible for relief? Please explain your choices.

Question 21: Are the core production costs in high-end television similar to those in film? If not, please explain how the high-end television industry differs.

Question 22: Are one or both of the proposed rules for separating speculative expenditure from early stage expenditure on a project with an identifiable end product workable?

Question 23: Is there an alternative rule that would be simpler or more effective to ensure that speculative expenditure does not qualify for relief?

Question 24: Does the requirement that each production operates as a separate trade within the production company – with a separate, identifiable production budget – create any issues?

Question 25: Are there any other specific design points which need to be addressed?

Chapter 5: Video games

Question 26: Would adopting a similar model to the film tax relief be an effective way of meeting the Government's objective to support video games production?

Question 27: Would adopting one of these models be more appropriate than the proposed model to design a video games tax relief? Please describe and explain how this would better meet the criteria in Chapter 2.

Question 28: What alternative models for a video games tax relief could the Government consider? Please describe and explain how this would better meet the criteria in Chapter 2.

Question 29: Would adopting a similar definition of a video game exclude any content that might reasonably be included?

Question 30: Is there an alternative definition of a video game that would more accurately reflect the nature of the content being produced? If so, please provide one.

Question 31: Would a workable solution be to require games to be classified in order to qualify for the tax relief and for BBFC R18[1] games to be specifically excluded from the scheme? If not, what other solutions would you propose to exclude pornographic products from relief?

Question 32: Does this proposed definition capture the appropriate integral costs of producing a video game? If not, please explain why.

Question 33: Are the core production costs in video games similar to those in film? If not, please explain how the video games industry differs.

[1] BBFC R18 classifications are for products that can only be supplied in licensed sex shops.

Question 34: Are one or both of the proposed rules for separating speculative expenditure from early stage expenditure on a project with an identifiable end product workable?

Question 35: Is there an alternative rule that would be simpler or more effective to ensure that speculative expenditure does not qualify for relief

Question 36: Does the proposed approach to debugging and maintenance costs ensure that the costs integral to the production of a video game can qualify for relief? Please explain your view.

Question 37: Does the flexibility offered by the FTR model, that allows further relief for qualifying costs after the product has been completed, provide sufficient scope to accommodate costs that arise in both the video games' business models?

Question 38: Does the requirement that each video game operates as a separate trade within the production company – with a separate, identifiable production budget – create any issues?

Question 39: Should there be a minimum spend threshold and if so at what level?

Question 40: Are there any other specific design points which need to be addressed?

Chapter 6: Other issues

Question 41: Are there any issues for the animation, high-end television and video games industries in applying the same process to make claims under the new tax reliefs?

Question 42: Do respondents think that this is an acceptable time scale to exclude unpaid costs?

Question 43: Can respondents suggest ways to prevent abuse of the new tax reliefs to ensure that they remain effective? Are there specific areas in addition to those mentioned above?

Question 44: What systems and measures could be developed or enhanced to ensure that the animation, high-end television, and video game industries have a world class skills and talent base capable of supporting the growth that the new measures will be designed to support?

D Planned timetable for implementation

Budget 2012	The Government announced the introduction of corporation tax reliefs for the video games, animation and high-end television sectors in Finance Bill 2013, to take effect from April 2013, subject to State aid approval.
Throughout 2012	Seeking State aid approval for the reforms from the European Commission.
June – September 2012	Publication of the consultation document, establish and work with sector focused working groups to develop these reliefs and actively consult with interested parties.
Autumn 2012	The Government will confirm the design of the three tax reliefs, consult on the cultural tests, and publish draft Finance Bill 2013 legislation.
Spring 2013	Subject to State aid approval, legislation will then be taken forward in Finance Bill 2013.
April 2013	Subject to State aid approval, the introduction of the video games, animation and high-end tax reliefs will take effect.
Summer 2013	Following royal assent of Finance Bill 2013, HMRC guidance will be published.

E The Code of Practice on consultation

E.1 This consultation is being conducted in line with the Code of Practice for written consultation, which sets down the following criteria:

- Formal consultation should take place at a stage when there is scope to influence the policy outcome;
- Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- Consultation document should be clear about the consultation process, what is being proposed, the scope of influence and the expected costs and benefits of the proposals;
- Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation; and
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

E.2 If you feel that this consultation does not fulfil these criteria, please contact:

Amy Burgess, Consultation Coordinator, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk.

HM Treasury contacts

This document can be found in full on our website: http://www.hm-treasury.gov.uk

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ISBN 978-1-84532-979-2

9 781845 329792