

FINANCE ACT 2013

EXPLANATORY NOTES

INTRODUCTION

Section 36, Schedules 16, 17, 18: Relief for Television Production and Video Games Development

Summary

1. [Section 36](#) and Schedules 16, 17 and 18 introduce three new reliefs from corporation tax for animation and high-end television production and for video games development.

Details of the Section

2. [Section 36](#) bring in three Schedules which in turn;
 - introduce two new reliefs for animation and high-end television production;
 - introduce a new relief for video game development; and,
 - provide for the consequential amendments to other parts of the Taxes Acts as a result of the new reliefs.

Details of the Schedules

Schedule 16

3. [Schedule 16](#) introduces two new tax reliefs for high-end television and animation television production.
4. There are two parts to the Schedule. Part 1 introduces amendments to the Corporation Taxes Act (CTA) 2009, whereas part 2 contains the commencement provisions.

Part 1: Amendments of CTA 2009

5. Paragraph 1 introduces a new part 15A to CTA 2009 concerning the new reliefs for animation and high-end television production. It also explains that there are 5 chapters in part 1 covering the introduction to the two reliefs, how activities are taxed, British programmes, certification, qualifying expenditure, losses and entitlement to the relief.

Chapter 1: Introduction

6. New sections 1216A (1) to 1216A (6) set out the scope and basic concepts of the legislation contained within each Chapter.
7. New section 1216AA (2) defines the meaning of ‘television programme’ for the purposes of the Chapter.
8. New section 1216AA (3) clarifies that the section includes the internet.
9. New section 1216AA (4) provides that where qualifying programmes are commissioned as an individual series or serial that series or serial is treated as a single

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television programme. A single qualifying programme commissioned separately (for example a pilot programme) is treated as a single programme.

10. New section 1216AA(5) provides that a programme is treated as being complete when it is first in a form in which it can be reasonably regarded as ready for broadcast to the general public.
11. New section 1216AB (2) provides that a 'relevant programme' for the purposes of the legislation is one which meets certain conditions of A and B, and C and D.
12. New section 1216AB (3) sets out condition A which is that the programme is: a drama, a documentary, or animation. These terms are further defined at new section 1216AC.
13. New section 1216AB (4) sets out condition B which is that the programme is not an excluded programme as defined in section 1216AD.
14. New section 1216AB (5) sets out condition C, which is that a programme slot length must be greater than 30 minutes.
15. New sections 1216AB (6) sets out condition D which is that the average core expenditure, as defined by new section 1216AG, per hour of slot length, as defined by 1216AB (8), is not less than £1 million (one million pounds sterling).
16. New section 1216AB (7) defines 'slot length' for the purposes of new section 1216AB (6).
17. New section 1216AC (2) provides that for the purposes of new section 1216AB(3) a programme is a 'drama' if it consists:
 - Wholly or mainly of a depiction of events
 - The events are depicted (wholly or mainly) by one or more persons performing; and,
 - The whole or major proportion of what is done by the person or persons performing, whether by way of speech, acting, singing, or dancing, involves the playing of a role.

For the purposes of new section 1216AC (2) 'drama' also includes comedy.

18. New section 1216AC (3) provides that a relevant programme is to be treated as animation if at least 51% of total core expenditure is on animation.
19. New section 1216AD (1) provides that a television programme is an excluded programme (i.e. it is not within the scope of the reliefs) if it falls within any of the Heads set out in new sub sections 1216AD (2) to 1216AD (7).
20. New section 1216AD (2) provides that any advertisement or other promotional programme is an excluded programme.
21. New section 1216AD (3) provides that any news, current affairs or discussion programme is an excluded programme.
22. New section 1216AD (4) provides that quiz shows, game shows, panel shows, variety shows, chat shows or similar entertainment are excluded programmes.
23. New section 1216AD (5) provides that any programme consisting of or including a competition or contest, or the results of a competition or contest is an excluded programme.
24. New section 1216AD (6) provides that any broadcast of a live event or of a theatrical or artistic performance given otherwise than for the purpose of being filmed is an excluded programme.

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25. New section 1216AD (7) provides that any programmes produced for training purposes is an excluded programme.
26. New section 1216AE (2) provides that there can only be one television production company in relation to a relevant programme.
27. New section 1216AE (3) sets out the general rule that governs whether a company is a television production company in relation to a relevant programme. The company must be responsible for pre-production, principal photography and post production of the relevant programme, as well as for delivery of the completed programme. The company must be actively engaged in planning and decision taking during those stages of a programme's production; and it must directly negotiate, contract and pay for rights, goods and services.
28. New section 1216AE (4) sets out a special rule for qualifying co-productions as defined in new section 1216AI. A company, which is a co-producer, in relation to a relevant programme must make an effective creative, technical and artistic contribution to the programme (so long as it does not do this in partnership). Co-producers who only provide finance are excluded.
29. New section 1216AE(5) recognises that there may be more than one company meeting the conditions of 1216AE(3) and (4) and provides that where this is the case, the company most directly engaged in the activities referred to is the television production company in relation to the relevant programme.
30. New sections 1216AE (6) makes it clear that it is possible that there may be no television production company in relation to the relevant programme.
31. New sections 1216AE (7) to (9) allows for a company to be regarded as a company not meeting the description in 1216AE (3) and (4) provided it makes an election in its company tax return for an accounting period. That election has effect in relation to relevant programmes which commence principal photography in that or any subsequent accounting period.
32. New sections 1216AF (1) provides that 'television production activities' includes work on development, pre-production, principal photography and post production of the programme.
33. New section 1216AF (2) provides that where any of the programme is computer generated, references to principal photography include computer generation of the images.
34. New section 1216AF (3) provides that HM Treasury may, by regulations amend subsections 1216AF (1) and (2) and in particular provide that certain activities are not television production activities.
35. New sections 1216AG (2) to (3) define what is meant by 'production expenditure' and 'core expenditure' in relation to the relevant programme.
36. New sections 1216AH (1) to (2) provide that for the purposes of the legislation "UK expenditure" means expenditure on goods or services that are used or consumed in the United Kingdom. The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies. The 'used or consumed' test does not focus on the supplier of goods and services, but instead concentrates on the recipient or customer as the means of determining UK qualifying expenditure. Any apportionment between non-UK expenditure and UK expenditure is made on a just and reasonable basis.
37. New section 1216AI defines 'qualifying co-producer' and 'co-producer' for the purposes of new section 1216AE (4).

Chapter 2: Taxation of Activities of Television Production Company.

38. New section 1216B(2) to (3) provides that the activities of a television production company in relation to each programme will be treated as a separate trade, (“the separate programme trade”) so that where a television production company makes more than one programme it will have more than one trade unless new section 1216AA(3) applies.
39. New section 1216B (4) sets out that a trade is treated as starting when pre-production begins or when any income is received from the relevant programme, whichever is earlier.
40. New section 1216BA (1) provides the basic rules for the computation of amounts to be brought into account for the purposes of determining a profit or a loss.
41. New section 1216BA (2) explains how this works for the first period of account. It brings in as a debit the cost incurred and as a credit the proportion of the income determined by the formula set out in sub paragraph (4).
42. New section 1216BA (3) explains how this works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the corresponding amount for the previous period and, as a credit, the difference between the proportion of total estimated income treated as earned at the end of the period and the corresponding amount for the previous period.
43. New section 1216BA (4) sets out the formula for calculating the proportion of total estimated income treated as earned at the end of the period of account.
44. New section 1216BB (1) to (3) set out that income from a relevant programme constitutes any receipts in connection with its making or from its exploitation. This includes:
 - Receipts from the sale of the programme or rights in it;
 - Royalties or other payments for use of the programme or aspects of it (for example characters or music);
 - Payments for rights to produce games or other merchandise;
 - Receipts received by the company by way of a profit share agreement; and,
 - Income from relevant programmes held as capital assets (the income will be treated as revenue in nature).
45. New sections 1216BC (1) to (2) provide the basic rules for when costs on the relevant programme are taken to be incurred. However, expenditure that is prohibited or limited by the Corporation Taxes Acts is excluded.
46. New section 1216BC Section (3) addresses the situation where a company is making a relevant programme that is treated as a capital asset in its hands and such expenditure would be capital and naturally fall to be prohibited. (3) ensures that such expenditure will instead be treated as being of a revenue nature.
47. New section 1216BD (1) sets out the primary rule that costs are incurred when they are represented in the state of completion of the work in progress.
48. New section 1216BD(2) elaborates on this to make clear that payments in advance are ignored until the work is done and deferred payments are recognised to the extent that work is represented in the stage of completion.
49. New section 1216BD (3) makes clear that only amounts for which there is an unconditional obligation to pay can be treated as incurred.

50. New section 1216BD (4) ensures that where this obligation is linked to income being earned, then the cost can only be included when an appropriate amount of income has been brought into account.
51. New section 1216BE (1) addresses the case where a company incurs expenditure on development of the relevant programme and this expenditure pre-dates the commencement.
52. New section 1216BE (2) treats such development expenditure as if it were expenditure incurred immediately after the company begins to carry on the trade.
53. New sections 1216BE(3) to (4) require the company to amend its tax return if it has previously taken such expenditure into account and allows any such amendment of a return to be made regardless of the normal time limits.
54. New section 1216BF provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must also take into consideration all relevant circumstances.

Chapter 3: Television Tax Relief

55. New sections 1216C(1) to (7) provide that for a relief to be available a relevant programme must satisfy a number of criteria and also set out how relief will be given and the procedure for making claims. The criteria include:
 - Being intended for broadcast;
 - Being a British programme as required by new section 1216CB; and,
 - Having the required level of core expenditure as required by new section 1216CE
56. New section 1216C (4) provides that where relief has already been given for R&D on the same expenditure then relief is not available for animation or high-end television. This is to prevent double claims on the same expenditure.
57. New section 1216CA (1) provides that a relevant programme must be intended for broadcast to the general public.
58. New section 1216CA (2) provides that the question of whether this condition is met is to be determined when the television production activities begin. And also provides for circumstances where a programme starts out being intended for broadcast even if subsequently the intention changes. However, where the original intention is not to broadcast the programme to the general public the condition will not be met.
59. New section 1216CB sets out the certification process for relevant programmes other than qualifying co-productions (see 1216AI for the meaning of 'qualifying co-production' and 'co-producer').
60. New sections 1216CB(1) provides that a television production company must apply to the Secretary of State for a relevant programme to be certified as British and that certain conditions must be met in a 'cultural test'.
61. New section 1216CB (2) to (5) provide further details on the operation of the regulations.
62. New section 1216CB (6) provides that further details on certification of programmes is contained at new sections 1216CC and 1216CD.
63. New sections 1216CC(1) to (2) provide that applications for certification of the relevant television programme as British are to be made to the Secretary of State and that the application may be for an interim or final certificate.

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64. New sections 1216CC (3) and (4) define what is meant by an 'interim' certificate and a 'final' certificate'.
65. New sections 1216CC(5) to (6) provide that companies must provide the Secretary of State with all documents and information to determine an application and that the Secretary of State may require additional information provided for the purposes of the application and a declaration as to its truth.
66. New section 1216CC (7) to (9) provide that the Secretary of State may, by regulations, amend the application process, particulars required etc.
67. New section 1216CD (1) to (2) provide that the Secretary of State shall certify a relevant programme if he is satisfied that it meets the requirements for an interim or final certificate. However, if the Secretary of State is not so satisfied, he shall not certify the relevant programme.
68. New sections 1216CD (3) and (4) allows an interim certificate to be given subject to certain conditions, and provides that the certificate may, if the Secretary of State wishes, be given an expiry date. In any case an interim certificate expires when a corresponding final certificate is issued.
69. New sections 1216CD (5) and (6) provide that the Secretary of State shall revoke a certificate if it becomes clear that it should not have been issued. A revoked certificate is treated as never having been issued (unless the Secretary of State provides otherwise).
70. New sections 1216CE (1) to (2) impose another condition for relief; that not less than 25 per cent of the core production expenditure on the relevant programme must be UK expenditure. HM Treasury may vary this minimum percentage of UK expenditure by regulations.
71. New sections 1216CF(1) and (2) provide that the company may claim an additional deduction, based on its qualifying expenditure on the relevant programme to be taken into account in calculating its profit or loss from its separate programme trade. The additional deduction and the payable tax credit together make up the new tax relief.
72. New section 1216CF (3) defines 'qualifying expenditure' for this purpose.
73. New section 1216CF (4) allows HM Treasury, by regulation, to amend subsection (3) and to provide that particular sorts of expenditure are or are not qualifying expenditure.
74. New section 1216CG (1) applies for the first period of account in which the trade of producing the relevant programme is carried out. For this period, the additional deduction is given by E where E is the lesser of the amount of qualifying expenditure which is UK expenditure or 80 per cent of that amount.
75. New section 1216CG (2) applies in the subsequent periods of account. In such periods the additional deduction is $E - P$ where E is now either the lesser of the amount of qualifying expenditure to date (i.e. the sum for the current period and all subsequent periods) which is UK expenditure and 80 per cent of that amount. P is the total amount of additional deduction for all previous periods.
76. New section 1216CG (3) allows HM Treasury to amend section 1216CG by regulations.
77. New section 1216CH(1) provides that a television production company (as defined in new section 1216AE) may claim a television tax credit in an accounting period for which it has a surrenderable loss.
78. New section 1216CH (2) defines the surrenderable loss. This is the lesser of the trading loss and the available qualifying expenditure.
79. New section 1216CH (3) calculates the available loss for an accounting period as L plus RUL where L is the amount of the company's loss for the period and RUL is the amount of any relevant unused loss. RUL is defined further in new section 1216CH (4).

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80. New section 1216CH (4) defines “relevant unused loss” of a company as that part of a loss neither surrendered for tax credit nor carried forward under section 45 of the Corporation Tax Act 2010.
81. New section 1216CH (5) defines the available qualifying expenditure for the first period of account during which the trade is carried on as the amount E defined in 1216CG (1).
82. New section 1216CH(6) defines the available qualifying expenditure for subsequent periods as E minus S, where E is the amount defined in new section 1216CG(2) and S is the aggregate of the amounts surrendered for television tax credit in previous periods as defined by new section 1216CI(1).
83. New section 1216CH (7) provides for any necessary apportionments where a period of account of the separate programme trade does not coincide with an accounting period.
84. New section 1216CI (1) provides that a company may surrender all or part of its surrenderable loss for a period.
85. New section 1216CI (2) sets the payable tax credit rate as 25%.
86. New section 1216CI (3) provides that where part of the loss is surrendered a company’s available loss will be reduced by the surrendered amount.
87. New section 1216CJ(1) provides that where a company is entitled to a television tax credit for a period, and it claims that credit, the Commissioners for Her Majesty’s Revenue and Customs will pay the credit to the company.
88. New section 1216CJ(2) provides that an amount of credit that is payable, or an amount of interest payable under section 826 Income and Corporation Taxes Act 1988, may be set against any corporation tax that the company owes, and that if it is so set, the Commissioners’ obligation under new section 1216CJ(1) is met.
89. New section 1216CJ (3) overrules new section 1216CJ (1) when the company’s tax return is enquired into by HM Revenue and Customs, so that no payment need then be made to the company. HM Revenue and Customs may however make such provisional payments as it deems fit.
90. New section 1216CJ(4) overrules new section 1216CJ(1) so that when the company owes HM Revenue and Customs any amount of PAYE, Class 1 National Insurance contributions or any amount due, no payment need to be made to the company.
91. New section 1216CJ (5) provides that a payment of a television tax credit is not income for the company for any tax purpose.
92. New section 1216CK (1) provides that no amount is to be included in costs for a period if it is still unpaid four months after the period ends.
93. New section 1216CK (2) provides that new section 1216CK (1) does not override the normal operation of new section 1216BD (when costs are taken to be incurred).
94. New section 1216CL is a general anti avoidance provision, which denies television production tax relief to the extent that it arises from artificially inflated claims.
95. New section 1216CL(1) sets out that where a transaction is attributable to arrangements entered into (wholly or partly) for a disqualifying purpose, that transaction is disregarded in determining the amount of additional deduction or television tax credit due.
96. New section 1216CL (2) sets out when arrangements are entered into for a disqualifying purpose. This is when their main object, or one of their main objects, is to enable a company to obtain an additional deduction or a television tax credit that it would not otherwise be entitled to, or a larger deduction or greater amount of television tax credit than it would otherwise be entitled to.

- 97. New section 1216CL (3) defines “arrangements”.
- 98. New sections 1216CM (1) to (4) allow HM Revenue and Customs to disclose information to the Secretary of State for the purposes of his functions and also allows for the same information to be disclosed to the British Film Institute.
- 99. New section 1216CM (5) imposes a duty of confidentiality on any person to whom the information is disclosed under new sections 1216CM (1) and (3).
- 100. New section 1216CN (1) provides that a person commits an offence if he discloses information about an identifiable person in contravention of new section 1216CM.
- 101. New section 1216CN (2) provides a defence for a person charged with such an offence that he believed the disclosure to be lawful, or the information had already lawfully been made public.
- 102. New sections 1216CN (3) and (6) sets out the penalties for a person convicted of wrongful disclosure.
- 103. New section 1216CN (4) provides that a prosecution may only be brought in England and Wales by the Director of Revenue and Customs Prosecution or with the consent of the Director of Public Prosecutions.
- 104. New section 1216CN(5) provides that a prosecution may only be brought in Northern Ireland by the Commissioners for HM Revenue and Customs or with the consent of the Director of Public Prosecutions for Northern Ireland.

Chapter 4: Programme losses

- 105. New section 1216D (2) sets out definitions used later in the section.
- 106. New sections 1216DA(1) to (2) provide for a restriction to losses arising while a programme is in production to the extent that they may only be carried forward to be set against profits of the separate programme trade in a subsequent period.
- 107. New section 1216DB (1) provides that the section applies to the accounting period during which a qualifying programme is completed or abandoned and to any subsequent accounting periods if the trade continues.
- 108. New section 1216DB(2) provides that any trading loss carried forward under section 45 Corporation Tax Act 2010 from a pre-completion accounting period to a later accounting period is to be treated as a loss for the purposes of loss relief of the accounting period into which it is carried forward. This is subject to the restriction in new section 1216DB (3).
- 109. New section 1216DB(3) restricts the amount of any loss available to set sideways against other profits of the same or an earlier period, and to be surrendered as group relief, to the amount that is not attributable to television tax relief (see subsection (6)).
- 110. New section 1216DB(4) to (5) explain how the amount of loss that may either be deducted from total profits or surrendered as group relief will be restricted to the amount not attributable to television tax relief.
- 111. New section 1216DB (6) explains how the loss for television tax relief is calculated. This loss is the amount of the total loss less the amount of loss that there would have been without the additional deduction under Chapter 3.
- 112. New section 1216DB (7) provides that 1216DB does not apply to losses carried forward or surrendered under new section 1216DC (terminal losses).
- 113. New section 1216DC(1) provides that this section applies when a television production company ceases to carry on a separate trade in relation to a relevant programme and has an amount of loss that remains to be carried forward (a terminal loss).

- 114. New sections 1216DC(2) and (3) provide that where a television production company with a terminal loss carries on another trade in relation to another qualifying programme it can, by election, treat such a loss as being a loss brought forward in the next accounting period following the cessation.
- 115. New sections 1216DC(4) to (6) provide for the situation where a company with a terminal loss is in a group relationship with another company at the time of the cessation and that other company is a television production company in relation to another qualifying programme. The company with the terminal loss may surrender this loss to another television production company within the same group provided that that company makes a claim for the loss.
- 116. New section 1216DC (7) provides that HM Treasury may, by regulations, make adaptations or such modifications as appear to be appropriate to this section.
- 117. New section 1216DC (8) defines a 'qualifying programme'.

Chapter 5: Provisional Entitlement to Relief

- 118. New section 1216E (1) defines certain expressions for the purposes of Chapter 5.
- 119. New section 1216E (2) sets out a requirement for reporting in a company's return whether a relevant programme has been completed or abandoned.
- 120. New section 1216EA (1) provides that a company is not entitled to relief in an interim accounting period unless an interim certificate accompanies its company tax return.
- 121. New section 1216EA (2) provides that if an interim certificate is revoked the company loses eligibility for any period in respect of which the interim certificate has been provided and must amend its return(s) accordingly.
- 122. New section 1216EA(3) provides that where a relevant programme is completed the company tax return must be accompanied by a final certificate, which then covers both the final period and any interim periods. If no such final certificate is provided the company loses eligibility for all periods and must amend its return(s) accordingly.
- 123. New section 1216EA (4) deals with the abandonment of a relevant programme. If the company abandons television production activities its tax return for the final accounting period may be accompanied by an interim certificate. The company does not lose entitlement to any earlier relief.
- 124. New section 1216EA (5) provides that if a final certificate is revoked, the company loses eligibility for all periods and must amend its return(s) accordingly.
- 125. New section 1216EB(1) provides that the company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for that period, a statement of the planned amount of UK expenditure on the relevant programme, and that amount indicates that the condition in new section 1216CE will be met on completion.
- 126. New section 1216EB(2) provides that where the condition in subparagraph (1) is met but it subsequently becomes apparent that the amount of UK expenditure on completion will be too low, the company loses eligibility for all periods and must amend its company tax return(s) accordingly.
- 127. New sections 1216EB (3) and (4) deal with the completion of the relevant programme. If the relevant programme is completed or abandoned, its company tax return for the final accounting period must be accompanied by a statement that it has been completed or abandoned, as the case may be, and by a final statement of UK core expenditure on the relevant programme. If the company tax return shows that the amount of UK core expenditure is too low and no such final statement is provided, the company loses eligibility for all periods(s) and must amend its company tax return(s) accordingly.

128. New section 1216EC overrides the normal time limits for amendments of assessments as necessary in order to allow the provisions of Chapter 5 to have effect.

Part 2: Commencement

129. Paragraph 2 allows HM Treasury, by order to appoint a day when amendments in the Schedule shall come into force.
130. Paragraph 3 (1) provides that the amendments in the Schedule will have effect from 1 April 2013 (subject to State aid approval, which if later will be the date when the Schedule will have effect).
131. Paragraphs 3 (2) and (3) provides that where a company has an accounting period which straddles 1 April 2013 then periods before or after that date are, for the purposes of Part 15A, treated as separate accounting periods.

Schedule 17

132. **Schedule 17** introduces a new relief for video games development.
133. There are 2 parts to the Schedule. Part 1 introduces amendments to the Corporation Taxes Act (CTA) 2009, whereas part 2 contains the commencement provisions.

Part 1: Amendments of CTA 2009

134. Paragraph 1 introduces a new part 15B to CTA 2009 concerning the new relief for video games development. It also explains that there are 5 chapters in part 1 covering the introduction to the relief, how activities are taxed, British video games, certification, qualifying expenditure, losses and entitlement to the relief.

Chapter 1: Introduction

135. New sections 1217A (1) to (6) set out the scope and basic concepts of the legislation contained within each Chapter.
136. New section 1217AA (2) provides that ‘video game’ does not include anything produced for advertising or promotional purposes or gambling.
137. New section 1217AA (3) provides that references to a video games includes the game’s soundtrack.
138. New section 1217AA (4) provides that a video game is regarded as being completed when copies of it can be made and these are made available to the general public.
139. New section 1217AB(2) provides that there can only be one video games development company in relation to a video game.
140. New section 1217AB(3) sets out the general rule that governs whether a company is a video games development company in relation to a video game. The company must be responsible for developing the game and it must be actively engaged in planning and decision making during the design, production and testing of the game; and it must directly negotiate, contract and pay for rights, goods and services.
141. New section 1217AB(4) recognises that there may be more than one company meeting the conditions of 1217AB(3) and provides that where this is the case, the company most directly engaged in the activities referred to is the video games development company in relation to the relevant game.
142. New section 1217AB(5) makes it clear that it is possible that there may be no video games development company in relation to the relevant game.
143. New sections 1217AB (6) to (8) allow for a company not be regarded as a company not meeting the description in 1217AB (3) provided it makes an election in its company tax

return for an accounting period. That election has effect in relation to relevant games which begin to be produced in that or any subsequent accounting period.

144. New section 1217AC(1) provides that ‘video game development activities’ include work involved in designing, producing and testing the video game.
145. New section 1217AC (2) provides that HM Treasury may, by regulations, amend subsection (1) and provide that certain activities are or are not video game development activities.
146. New section 1217AD (1) defines what is meant by ‘core expenditure’ in relation to the video game.
147. New section 1217AD(2) provides that any expenditure incurred in designing the initial concept for the video game (e.g. setting out the business case for making a game) and on further debugging a completed video game or carrying out maintenance in connection with a video game is not regarded as core expenditure.
148. New sections 1217AE(1) to (2) provide that for the purposes of the legislation “UK expenditure” means expenditure on goods or services that are used or consumed in the United Kingdom. The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies. The ‘used or consumed’ test does not focus on the supplier of goods and services, but instead concentrates on the recipient or customer as the means of determining UK qualifying expenditure. Any apportionment between non-UK expenditure and UK expenditure is made on a just and reasonable basis.
149. New section 1217AE (3) provides that HM Treasury may, by regulations amend subsection (1).

Chapter 2: Taxation of Activities of Video Games development Company

150. New sections 1217B (2) to (3) provides that the activities of a video games development company in relation to each game will be treated as a separate trade, (“the separate video game trade”) so that where a video games development company makes more than one game it will have more than one trade.
151. New section 1217B(4) sets out when a company is treated as beginning a video game trade which is the earlier of when income is received or the design starts.
152. New section 1217BA (1) provides the basic rules for the computation of amounts to be brought into account for the purposes of determining a profit or a loss.
153. New section 1217BA (2) explains how this works for the first period of account. It brings in as a debit the cost incurred and as a credit the proportion of the income determined by the formula set out in sub paragraph (4).
154. New section 1217BA (3) explains how this works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the corresponding amount for the previous period and as a credit the difference between the proportion of total estimated income treated as earned at the end of the period and the corresponding amount for the previous period.
155. New section 1217BA (4) sets out the formula for calculating the proportion of total estimated income treated as earned at the end of the period of account.
156. New sections 1217BB(1) to (3) set out that income from a video game constitutes any receipts in connection with its making or from its exploitation. This includes:
 - Receipts from the sale of the video game or rights in it;
 - Royalties or other payments for use of the video game or aspects of it (for example characters or music);

- Payments for rights to produce games or other merchandise;
 - Receipts received by the company by way of a profit share agreement;
 - Income from games held as capital assets (the income will be treated as revenue in nature).
157. New section 1217BC (1) to (2) provide the basic rules for when costs on the video game are taken to be incurred. However, expenditure that is prohibited or limited by the Corporation Taxes Acts is excluded.
158. New section 1217BC (3) addresses the situation where a company is making a video game that is treated as a capital asset in its hands and such expenditure would be capital and naturally fall to be prohibited. Section (3) ensures that such expenditure will instead be treated as being of a revenue nature.
159. New section 1217BD (1) sets out the primary rule that costs are incurred when they are represented in the state of completion of the work in progress.
160. New section 1217BD(2) elaborates on this to make clear that payments in advance are ignored until the work is done and deferred payments are recognised to the extent that work is represented in the stage of completion.
161. New section 1217BD (3) makes clear that only amounts for which there is an unconditional obligation to pay can be treated as incurred.
162. New section 1217BD (4) ensures that where this obligation is linked to income being earned, then the cost can only be included when an appropriate amount of income has been brought into account.
163. New section 1217BE provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must also take into consideration all relevant circumstances.

Chapter 3: Video Games Tax Relief

164. New section 1217C(1) to (6) provide that for a relief to be available a video game must satisfy a number of criteria and also sets out how relief will be given and the procedure for making claims. The criteria include:
- Being intended for supply;
 - Being a British video game as required by new section 1217CB; and,
 - Having the required level of core expenditure as required by new section 1217CE.
165. New section 1217C (4) provides that where relief has already been given for R&D tax credits on the same expenditure then relief is not available for video games tax relief. This is to prevent double claims on the same expenditure.
166. New section 1217CA (1) provides that a video game must be intended for supply to the general public.
167. New section 1217CA (2) provides that the question of whether this condition is met is to be determined when the video game development activities begin. And also provides for circumstances where a game starts out being intended for supply even if subsequently the intention changes. However, where the original intention is not to supply the game to the general public the condition will not be met.
168. New sections 1217CB(1) to (6) provide that a video game development company must apply to the Secretary of State for a video game to be certified as British and that certain conditions must be met in a 'cultural test'.

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169. New sections 1217CC(1) to (2) provide that for applications for certification of the video game as British are to be made to the Secretary of State and that the application may be for an interim or final certificate.
170. New sections 1217CC (3) and (4) define what is meant by an 'interim' certificate and a 'final' certificate'.
171. New sections 1217CC(5) to (6) provide that companies must provide the Secretary of State with all documents and information to determine an application and that the Secretary of State may require additional information to be provided for the purposes of the application and a declaration as to its truth.
172. New sections 1217CC (7) to (9) provide that the Secretary of State may, by regulations, amend the application process, particulars required etc.
173. New section 1217CD(1) to (2) provide that the Secretary of State shall certify a video game if he is satisfied that it meets the requirements for an interim or final certificate. However, if the Secretary of State is not so satisfied, he shall not certify the video game.
174. New sections 1217CD(3) and (4) allows an interim certificate to be given subject to certain conditions, and provides that the certificate may, if the Secretary of State wishes, be given an expiry date. In any case an interim certificate expires when a corresponding final certificate is issued.
175. New sections 1217CD (5) and (6) provide that the Secretary of State shall revoke a certificate if it becomes clear that it should not have been issued. A revoked certificate is treated as never having been issued (unless the Secretary of State provides otherwise).
176. New sections 1217CE(1) and (2) impose another condition for relief; that not less than 25 per cent of the core expenditure on the video game must be UK expenditure. HM Treasury may vary this minimum percentage of UK expenditure by regulations.
177. New sections 1217CF(1) and (2) provide that the company may claim an additional deduction, based on its qualifying expenditure on the video game to be taken into account in calculating its profit or loss from its separate video game trade. The additional deduction and the payable tax credit together make up the new tax relief.
178. New section 1217CF (3) defines 'qualifying expenditure' for this purpose.
179. New section 1217CF (4) allows HM Treasury, by regulation, to amend subsection (3) and to provide that particular sorts of expenditure are or are not qualifying expenditure.
180. New section 1217CG (1) applies in the first period of account in which the separate video game trade is carried on. For this period, the additional deduction is given by E where E is the lesser of the amount of qualifying expenditure which is UK expenditure or 80 per cent of that amount.
181. New section 1217CG (2) applies in the subsequent periods of account. In such periods the, the additional deduction is $E - P$ where E is now either the lesser of the qualifying expenditure to date (i.e. the sum for the current period and all subsequent periods) which is UK expenditure or 80 per cent of that amount, which ever is less. P is the total amount of additional deduction for all previous periods.
182. New section 1217CG (3) allows HM Treasury to amend section 1216CG.
183. New section 1217CH(1) provides that a video games development company (as defined in new section 1217AB) may claim a video games tax credit in an accounting period for which it has a surrenderable loss.
184. New section 1217CH (2) defines the surrenderable loss. This is the lesser of the trading loss and the available qualifying expenditure.

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185. New section 1217CH(3) calculates the available loss for an accounting period as L plus RUL where L is the amount of the company's loss for the period and, RUL is the amount of any relevant unused loss. RUL is defined further in new section 1217CH (4).
186. New section 1217CH (4) defines "relevant unused loss" of a company as that part of a loss neither surrendered for tax credit under new section 1217CI (1) nor carried forward under section 45 of the Corporation Tax Act 2010.
187. New section 1217CH(5) defines the available qualifying expenditure for the first period of account during which the trade is carried on as the amount E defined in 1217CG (1).
188. New section 1217CH(6) defines the available qualifying expenditure for subsequent periods as E minus S, where E is the amount defined in new section 1217CG(2) and S is the aggregate of the amounts surrendered for video games tax credit in previous periods as defined by new section 1217CI(1).
189. New section 1217CH (7) provides for any necessary apportionments where a period of account of the separate video game trade does not coincide with an accounting period.
190. New section 1217CI (1) provides that a company may surrender all or part of its surrenderable loss for a period.
191. New section 1217CI (2) sets the payable tax credit rate as 25%.
192. New section 1217CI (3) provides that where part of the loss is surrendered a company's available loss will be reduced by the surrendered amount.
193. New section 1217CJ(1) provides that where a company is entitled to a video games tax credit for a period, and it claims that credit, the Commissioners for Her Majesty's Revenue and Customs will pay the credit to the company.
194. New section 1217CJ(2) provides that an amount of credit that is payable, or an amount of interest payable under section 826 Income and Corporation Taxes Act 1988, may be set against any corporation tax that the company owes, and that if it is so set. The Commissioners' obligation under new section 1217CJ (1) is met.
195. New section 1217CJ (3) overrules new section 1217CJ (1) when the company's tax return is enquired into by HM Revenue and Customs, so that no payment need then be made to the company. HM Revenue and Customs may however make such provisional payments as it deems fit.
196. New section 1217CJ(4) overrules new section 1217CJ(1) so that when the company owes HM Revenue and Customs any amount of PAYE, Class 1 National Insurance contributions or any amount due no payment need to be made to the company.
197. New section 1217CJ (5) provides that a payment of a video games tax credit is not income for the company for any tax purpose.
198. New section 1217CK (1) provides that no amount is to be included in costs for a period if it is still unpaid four months after the period ends.
199. New section 1217CK (2) provides that new section 1217CK (1) does not override the normal operation of new section 1217BD (when costs are taken to be incurred).
200. New section 1217CL is a general anti avoidance provision, which denies video games development tax relief to the extent that it arises from artificially inflated claims.
201. New section 1217CL(1) sets out that where a transaction is attributable to arrangements entered into (wholly or partly) for a disqualifying purpose, that transaction is disregarded in determining the amount of additional deduction or video games tax credit due.

- 202. New section 1217CL (2) sets out when arrangements are entered into for a disqualifying purpose. This is when their main object, or one of their main objects, is to enable a company to obtain an additional deduction or a video games tax credit that it would otherwise not be entitled to, or a larger deduction or greater amount of video games tax credit than it would otherwise be entitled to.
- 203. New section 1217CL (3) defines “arrangements”.
- 204. New section 1217CM (1) to (4) allow HM Revenue and Customs to disclose information to the Secretary of State for the purposes of his functions and also allows for the same information to be disclosed to the British Film Institute.
- 205. New section 1217CM (5) imposes a duty of confidentiality on any person to whom the information is disclosed under new sections 1217CM (1) and (3).
- 206. New section 1217CN (1) provides that a person commits an offence if he discloses information about an identifiable person in contravention of new section 1217CM.
- 207. New section 1217CN (2) provides a defence for a person charged with such an offence that he believed the disclosure to be lawful, or the information had already lawfully been made public.
- 208. New section 1217CN (3) and (6) sets out the penalties for a person convicted of wrongful disclosure.
- 209. New section 1217CN (4) provides that a prosecution may only be brought in England and Wales by the Director of Revenue and Customs Prosecution or with the consent of the Director of Public Prosecutions.
- 210. New section 1217CN(5) provides that a prosecution may only be brought in Northern Ireland by the Commissioners for HM Revenue and Customs or with the consent of the Director of Public Prosecutions for Northern Ireland.

Chapter 4: Video Game Losses

- 211. New section 1217D (2) sets out definitions used later in the section.
- 212. New section 1217DA(1) to (2) provide for a restriction to losses arising in while a video game is in development to the extent that they may only be carried forward to be set against profits of the separate video games trade in a subsequent period.
- 213. New section 1217DB (1) applies the section to the accounting period when a qualifying video game is completed or abandoned and to any subsequent accounting periods, if the trade continues.
- 214. New section 1217DB(2) provides that any trading loss carried forward under section 45 Corporation Tax Act 2010 from a pre-completion accounting period may be treated as a loss, for the purposes of loss relief, of the accounting period into which it is carried forward. This is subject to the restriction in new section 1217DB (3).
- 215. New section 1217DB(3) restricts the amount of any loss available to be set sideways against other profits of the same, or an earlier period, and to be surrendered as group relief to the amount that is not attributable to video games tax relief (see subsection (6)).
- 216. New section 1217DB(4) to (5) explain how the amount of loss that may either be deducted from total profits or surrendered as group relief will be restricted to the amount not attributable to video games tax relief.
- 217. New section 1217DB (6) explains how the loss for video games tax relief is calculated. This loss is the amount of the total loss less the amount of loss there would have been without the additional deduction under Chapter 3.

- 218. New section 1217DB (7) provides that 1217DB does not apply to losses carried forward or surrendered under new section 1217DC (terminal losses).
- 219. New section 1217DC(1) provides that this section applies when a video games development company ceases to carry on a separate trade in relation to the video game and has an amount of loss that remains to be carried forward (a terminal loss).
- 220. New section 1217DC(2) and (3) provide that where a video games development company with a terminal loss carries on another trade in relation to another qualifying video game it can, by election, treat such a loss as being a loss brought forward in the next accounting period following the cessation.
- 221. New section 1217DC(4) to (6) provide for the situation where a company with a terminal loss is in a group relationship with another company at the time of the cessation and that other company is a video games development company in relation to another qualifying video game. The company with the terminal loss may surrender this loss to another video games development company within the same group provided that company makes a claim for the loss.
- 222. New section 1217DC (7) provides that HM Treasury may, by regulations make adaptations or such modifications as appear to be appropriate to this section.
- 223. New section 1217DC (8) defines a 'qualifying video game'.

Chapter 5: Provisional Entitlement to Relief

- 224. New section 1217E (1) defines certain expressions for the purposes of Chapter 5.
- 225. New section 1217E (2) sets out a requirement for reporting in a company's return whether a video game has been completed or abandoned.
- 226. New section 1217EA (1) provides that a company is not entitled to relief in an interim accounting period unless an interim certificate accompanies its company tax return.
- 227. New section 1217EA (2) provides that if an interim certificate is revoked the company loses eligibility for any period in respect of which a certificate has been provided must amend its return(s) accordingly.
- 228. New section 1217EA(3) provides that where a video game is completed the company tax return must be accompanied by a final certificate, which then covers both the final period and any interim periods. If no such final certificate is provided the company loses eligibility for all periods and must amend its return(s) accordingly.
- 229. New section 1217EA (4) deals with the abandonment of a video game. If the company abandons video game development activities its tax return for the final accounting period may be accompanied by an interim certificate. The company does not lose entitlement to any earlier relief.
- 230. New section 1217EA (5) provides that if a final certificate is revoked, the company loses eligibility for all periods and must amend its return(s) accordingly.
- 231. New section 1217EB(1) provides that the company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for that period, a statement of the planned amount of UK expenditure on the video game, and that amount indicates the condition in new section 1217CE will be met on completion.
- 232. New section 1217EB(2) provides that where the condition in subparagraph (1) is met but it subsequently becomes apparent that the amount of UK expenditure on completion will be too low, the company loses eligibility for all periods and must amend its company tax return(s) accordingly.
- 233. New section 1217EB (3) and (4) deal with the completion of the video game. If the video game is completed, or abandoned, its company tax return for the final accounting

period must be accompanied by a statement that it has been completed or abandoned, as the case may be, and by a final statement of UK core expenditure on the relevant video game. If the company tax return shows that the amount of UK core expenditure is too low and no such final statement is provided, the company loses eligibility for all periods(s) and must amend its company tax return(s) accordingly.

234. New section 1217EC overrides the normal time limits for amendments of assessments as necessary in order to allow the provisions of Chapter 5 to have effect.

Part 2: Commencement

235. Paragraph 2 allows HM Treasury, by order to appoint a day when amendments in the Schedule shall come into force.
236. Paragraph 3 (1) provides that the amendments in the Schedule will have effect in relation to accounting periods beginning on or after a day specified by HM Treasury ('the specified day').
237. Paragraph 3 (2) and (3) provides that where a company has an accounting period which straddles the specified day then periods before or after that date are for the purposes of Part 15B treated as separate accounting periods.
238. Paragraph 4 allows for any amendments to the design of the relief in order to be met, and in direct consequence of the requirements to meet, State aid approval. Consequential amendments for other parts of the Taxes Acts as specified in Schedule 18 are amended to take into account the effects of the amendments in Schedule 17.

Schedule 18

239. Paragraph 1 covers the necessary consequential amendments to ICTA 1988.
240. Paragraphs 2 to 5 cover the necessary consequential amendments to FA 1998
241. Paragraph 6 covers the consequential amendments to CAA 2001.
242. Paragraph 7 cover the necessary consequential amendments to FA 2007
243. Paragraphs 8 to 15 cover the necessary consequential amendments to CTA 2009
244. Paragraph 16 covers the necessary consequential amendments to FA 2009.
245. Paragraphs 17 to 20 covers the consequential amendments to Part 8A CTA 2010
246. Paragraph 21 provides for the consequential renumbering to CTA 2009.
247. Paragraphs 22 to 23 provide for commencement of the new reliefs.

Background

248. The new tax reliefs for animation and high-end television production will allow qualifying companies engaged in the production of animation and high-end television intended for release to the general public to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit. Similarly the new video games development relief will allow eligible companies engaged in the production of qualifying video games to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.
249. Both the additional deduction and the payable credit are calculated on the basis of UK core expenditure up to a maximum of 80% of the total core expenditure by the qualifying company. The additional deduction is 100% of qualifying core expenditure and the payable tax credit is 25% of losses surrendered.

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- 250. For all three new reliefs the credit is based on the company's qualifying expenditure on the production of a qualifying animation, high-end television programme or video game of which at least 25% of the qualifying expenditure must be on goods or services used or consumed in the UK.
- 251. The animation or high-end television programme or game must be certified as a culturally British product to qualify for the tax credit.
- 252. The three new tax reliefs are part of the Government's growth agenda (as detailed in the Plan for Growth document published in March 2011). The aim is to help support technological innovation and ensure that animation, high-end television and video game production companies continue to contribute to UK economic growth and to British culture.
- 253. In June 2012 a stage 2 consultation document: 'Consultation on creative sector tax reliefs' was published giving more detail on the design proposals.