



**CONSULTATION ON CREATIVE SECTOR TAX RELIEFS**  
**BRITISH SCREEN ADVISORY COUNCIL (BSAC) RESPONSE**

**5 September 2012**

**Introduction**

The British Screen Advisory Council (BSAC) is an independent, industry-funded umbrella group bringing together many of the most influential people in the audiovisual industry.<sup>1</sup> Audiovisual material includes broadcasts, films and video games. Stakeholders across the value chain for audiovisual material are represented by BSAC. BSAC has worked closely with policymakers in various government departments including HMRC, DCMS, BIS and IPO to provide an informed lead on emerging business trends and to provide advice on policy. BSAC convened the industry working group which worked closely over an extended period of time with HM Treasury in developing the Film Tax Relief (FTR). Most recently, we responded to a Treasury consultation on tax-advantaged venture capital schemes in September 2011.

We warmly welcomed the Chancellor's announcement at Budget 2012 that the Government intends to introduce corporation tax reliefs for the animation, high end television and video games industries. The proposed tax reliefs will make the UK a much more attractive location for the production of high end TV, animation and video games, and will significantly boost the global competitiveness of these sectors. We fully endorse the Government's view that introducing such reliefs will have as positive an economic effect as the introduction of the FTR has demonstrably had in relation to job creation and economic growth in the UK film industry and so will be a key element in the delivery of the Government's Plan for Growth. We also welcome the partnership between UK Trade & Investment and the British Film Commission (BFC), investing an additional £400,000 over two years in order to attract further inward investment into film and high end TV, following the introduction of the proposed tax relief in 2013. The focus on emerging markets as well as inward investment productions from the US should help to maximise the beneficial effects of the film and high end TV tax reliefs in the UK going forward. We are pleased to provide our views to Treasury in relation to the design of the creative sector tax reliefs and believe that BSAC is well-placed to make a valuable contribution to these discussions as a cross-sectoral industry body

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<sup>1</sup> See <http://www.bsac.uk.com/membership-list.html> for a list of our Members  
Creative Sector Tax Reliefs Consultation: BSAC Response  
5 September 2012

representing the audiovisual sector. We are keen that the reliefs are crafted in such a way as to encourage their responsible use over a prolonged period of time.

We welcome the Treasury's statement that the new tax reliefs are intended to offer an internationally competitive rate and to be similar in generosity to those available under the FTR. We would suggest that the rate of relief for animation, high end TV productions and video games should be 25% of qualifying expenditure (an effective rate of 20% as this would only be available on up to 80% of the budget).. There is currently great commercial pressure to export production of UK animation and high end TV overseas and the higher rate of relief is likely to be more effective in keeping such work in the UK. It is unheard of for a UK television animation production to exceed a budget of £20m which is the maximum threshold for lower budget films to receive a rate of 25% under the FTR. We understand that PACT will provide evidence in their submission to the consultation concerning UK animation productions forced to move to territories such as Ireland, France and Canada in order to claim reliefs. We would argue that for high-end TV a rate of 25% should also be introduced in order to put the UK on a more level playing field with other territories. Ireland offers a benefit of 28% of qualifying spend, while foreign producers can receive a 16% credit from the federal government in Canada combined with provincial credits, for example, in Ontario a tax credit can be claimed on 25% of eligible labour expenditure. We also note that the Abu Dhabi Film Commission is shortly to introduce a tax relief worth 30% on film and TV production. The production values and costs of high end TV drama are increasingly akin to those of low budget films. We believe the rationale for providing low budget films with a higher rate of relief under the FTR holds true for high end TV as the complex model for financing high end TV through a patchwork of pre-sales and licensing increasingly resembles independent film financing. It is important to keep in mind when comparing rates of relief to international competitors that a 25% rate in the UK only applies to 80% of qualifying expenditure, in line with EU state aid rules, and is therefore an effective rate of 20% of the core expenditure. It has been widely reported that the UK games industry has slipped from third to sixth place in the global development rankings as territories such as Canada, South Korea and France have grown their industries through the use of lucrative tax incentives. We would argue that the UK games industry should be subject to a 25% rate of relief on qualifying expenditure in order to be sufficient to compete with other territories. As an aside, we think it would be useful for Treasury to more clearly state the intention of the video games tax relief in order that its success can be assessed against objectives.

Building on the UK's strengths in terms of creative talent and technical skills will help to ensure our global competitiveness in these sectors. Therefore, a robust industry-led skills strategy for the animation, high end TV and video games sectors should be conceived and implemented in tandem with the new reliefs.

We look forward to the publication of the separate consultation on a Cultural Test for each relief in the autumn and to assisting the Treasury in designing suitable criteria which should meet the requirements of the European Commission in order to gain State aid approval. We

take this opportunity to highlight some issues Government should consider in relation to the design of the Cultural Tests. We recommend the inclusion of criteria relating to the use of subject matter or underlying material of European origin in order to widen the scope and creative ambition of productions that may qualify for relief. For high end TV and animation productions which are broadcast as series, it is possible that whilst one series may qualify under a Cultural Test, the development of the story over time may mean that a subsequent series of the same programme may not qualify. We recommend that individual series be treated separately in this regard. Similarly, it may be the case that particular episodes within a series would not qualify under a Cultural Test while others would do. In such circumstances we would not envisage that a series should qualify on an episode by episode basis but would expect the reliefs to apply if at least 75% of the episodes in a series meet the Cultural Test. Circumstances may arise where a foreign production may wish to shoot one or two episodes of a series in the UK where those episodes would meet the Cultural Test. In order to attract this additional and potentially significant investment, we believe that individual episodes should be eligible for relief as long as it is clear from inception whether relief is being sought for a whole series or for one or two particular episodes.

### **Answers to the consultation questions**

*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.*

We agree that the proposed criteria: effectiveness, affordability, simple and straightforward to administer, sustainable and not open to abuse, and compliant with EU State aid rules, are the correct criteria for assessing the animation, high end TV and video games tax reliefs. The success of the FTR in boosting indigenous and inward investment film production, in the UK and therefore, job creation and the contribution of film to UK GDP, is based on the fact that it satisfies these criteria. We believe this model should be used for the new proposed reliefs.

### **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?*

Yes. We believe that there are enough synergies between the way in which animation and films are produced that it would be appropriate to adopt a similar model to the FTR for animation.

*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.*

We do not propose any alternative models.

*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.*

We are broadly happy with the proposed definition of animation.<sup>2</sup> However, we would like to stress that it should not exclude visual effects such as CGI, which is a growth area in animation, and therefore likely to become even more prevalent in the future. We understand that the term ‘frame’ is currently used in relation to rendered images for CGI and we question whether CGI is a process of ‘recording *still* images’ which appears to be more akin to cell animation. We would suggest that the wording be changed to ‘a sequence of images created by recording or rendering images or objects’ as we believe this more accurately captures the production process. We also note that there is no reference in the definition of film in relation to the FTR to ‘images in 2 or 3 dimensions’ although both 3D and 2D films can claim relief. We assume that this reference is to clarify that 3D as well as 2D animations should be able to qualify for relief; however, we feel that the definition should be consistent with the FTR on this issue.

We welcome the statement that the animation relief will be targeted at programmes intended for broadcast, however, given the rapid pace of technological change impacting on the sector, it is necessary to think carefully about how ‘broadcast’ should be defined. Such a definition should be future-proofed so that as technology changes and consumer behaviour with it, the ability of companies to claim the relief is not affected. Ofcom has just reported that 5% of UK households now have an internet connected smart TV and the rise in popularity of such sets together with the imminent launch of the YouView box will enable households to access internet delivered TV on-demand services (including those of BT and other major organisations) seamlessly with more standard linear TV broadcasts on the same TV set. Whilst we believe much of this content will be likely to be broadcast, in the traditional sense, at some point in its exploitation cycle, it is quite possible that it may be initially commissioned by or acquired for initial exploitation by operators of on-demand distribution services. It should still be eligible for relief because the overall benefits to the UK economy and the animation industry will continue to flow from its being produced in the UK. Broadening the definition for eligible productions in this manner should also incentivise further investment from new online players and encourage a competitive marketplace. We believe the concept of "television-like" services as contained in the Audio Visual Media Services Directive as implemented in Section 368A of the Communications Act would serve as a useful precedent here. For convenience we shall continue to use the term 'broadcast' in this document but we intend it to be understood to cover this wider rather than narrower view of what broadcast means in this context.

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<sup>2</sup> HM Treasury ‘Consultation on Creative Sector Tax Reliefs’ para 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’.

*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?*

We believe that an equivalent of the British Board of Film Classification (BBFC) standards and criteria should be used. The BBFC defines sex works (i.e. pornography) as ‘works whose primary purpose is sexual arousal or stimulation’ and rates films containing pornography as either 18 or R18. If an animation programme has or would, if submitted, receive an R18 rating or an 18 rating because it contains pornographic content, it should not qualify for relief. This is consistent with the FTR where R18 and 18 films containing pornographic content very rarely qualify for relief as they are not intended for theatrical release. The BBFC is the expert body in this field and is already responsible for rating animation films. However, we would not recommend that all TV animation productions intending to access the tax relief should be rated by the BBFC as this would introduce a significant administrative and cost burden, which could be prohibitive for smaller productions. Rather, we would suggest a self-certification system linked to the Cultural Test whereby the production company would be asked to state whether their programme contains content that would be likely to receive an R18 or 18 rating if it were classified by the BBFC. There should of course be strict penalties for the breach of self-certification obligations in order to deter those wishing to claim relief on ineligible productions. Please also see our answer to question 31.

*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.*

BSAC is supportive of measures to ensure that the relief is available to mixed content programmes. We do not believe that setting a threshold of 75% of production costs on animation is the correct approach to incentivise mixed content productions, however. We support PACT’s position to be outlined in detail in their response to the consultation that setting a threshold of a minimum of 51% of production costs to be spent on animation in order to claim relief would be more appropriate. Programmes which contain both live action and animation make up a small but important genre, especially for children’s content and lowering the threshold to 51% would ensure that more content which is mostly animated but contains live action could be attracted to be produced in the UK. In order to ensure that the threshold is effective and transparent, we support PACT’s recommendation that Government publishes clear guidelines as to which costs should be included as animation when apportioning costs for the purpose of the qualifying threshold. For example, the cost of scripts and post-production could be split fairly between both animation and live action.

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

We are pleased that Government is willing to explore means of supporting co-productions through the proposed reliefs. A definition of what constitutes a 'co-financed' production, as opposed to a co-production, would be useful as animation is usually financed across a variety of sources and almost never from just a commissioning broadcaster. The distinction between say a pre-sale and a purely financial co-production can be a very fine one. Often the latter is just a concession on screen credits to secure a particularly material part of the overall financing even though it remains a fully UK production. As such we hope that the Government is not suggesting that a 'co-financed' co-production would be excluded from claiming relief on qualifying UK expenditure if the Cultural Test is met.

It is our hope that the Government's interest in other forms of co-production is to ascertain whether the tax reliefs may be applied to such productions even though of necessity they may involve a lower points threshold within the Cultural Test.

On a separate point, we observe that the consultation states in paragraph 3.14 that an eligible production must be made by a production company registered as a company in the UK. No such stipulation applies to production companies claiming the FTR. Although we have no objection to this per se, we would question whether the Government has satisfied itself that such a stipulation would be compliant with State aid rules.

*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.*

As stated in the consultation document, a significant proportion of the cost of producing an animated programme is in the early stage development and we comment on how this should be treated below.

While films are often made as stand-alone projects for which all facilities, staff and equipment is hired in specifically by the production entity just for that production, animation productions are more likely to be made by animation companies with a permanent office and staff, and do not always use special purpose vehicles in order to make productions. It is imperative that as is the case with the FTR, reasonable amounts of the overhead costs of animation companies which are actually attributable to the production of the programme are accounted for in the 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?*

We recommend that early stage development costs for animation productions, including the preparation of treatments, storylines, scripts, character designs and modelling, storyboards, test animation sequences, and the costs of producing a pilot, be eligible for relief once programmes intended for broadcast based on such work are produced.

*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?*

No. We believe it should be relatively straightforward to apply accounting practices used in the film industry to animation production.

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

No

### **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.*

We believe that the model for FTR should be directly applied to high end television.

*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?*

We recommend that a definition of 'high end TV' should be less prescriptive than that offered in the consultation document<sup>3</sup> and be based on what is excluded from the opportunity to access relief. For example, it is unclear whether some types of documentary programmes would fall within the 'drama programmes' genre such as drama-documentaries. We recommend a definition based around programmes that consist of scripted or narrated works with exclusions relating to news or current affairs, discussion or chat shows, quiz or panel

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<sup>3</sup> Ibid, para 4.11 '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 shows, panel shows, variety shows, or similar entertainment'.

shows, live events, sporting events, variety shows or shows that require audience voting or which provide prizes to contestants or to the general audience.

In reference to our answer to questions 4 and 5, as high end TV programmes must be intended for broadcast in order to qualify for relief, it is necessary to produce a definition of 'broadcast' which takes into account changing consumer behaviour in the future and is not restricted to one form of delivery as we mentioned earlier.

In relation to the running time requirement of a minimum of 30 minutes, we recommend that such a threshold be measured in 'slot' time, rather than running time. Requiring productions to have a minimum running time of 30 minutes would mean that high-end, high-value half-hour drama and comedy which would otherwise qualify would be barred from accessing the relief and we do not believe this to be Government's intention. Programmes shorter than one hour in length would of course be subject to the £1m per hour threshold on a prorated basis.

We note the Treasury's preference for a 'running time' definition of per programme hour and understand that Treasury is keen to future-proof the relief to ensure that it is available to potential new players who will not commission for or transmit in a 'slot time'. We understand that the TV Coalition will argue for a 'slot time' definition in their submission and refer Treasury to their arguments including on how the issue of future-proofing can be dealt with. We would stress that the key consideration in ensuring that the relief will be effective in incentivising further production of high end TV in the UK will be where the qualifying threshold is set rather than whether a 'running time' or a 'slot time' definition of 'per programme hour' should be used. If the definition of costs which qualify towards the £1m threshold is too restrictive, the effect of the relief could be dampened. Likewise, if it is too loose, there is a risk that the relief will be open to too wide a field of production and would therefore be prohibitively expensive. We recommend that the High end Television Tax Relief Working Group undertakes careful analysis of the potential impact of applying various approaches towards definitions of qualifying production expenditure as discussed below.

*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.*

We agree that costs such as expenditure on raising and servicing finance, advertising and marketing should be excluded. However, we disagree with the implied intention to exclude expenditure on copyright acquisition as qualifying expenditure as mentioned in paragraph 4.13 of the consultation document. Copyright acquisition is generally accepted as a *bona fide* production cost which should be included in production costs. In order to make an animation or television production based on a copyright work the production company must pay for the right to use such copyright. This should be included as a production cost in line with the rules relating to the FTR.

We believe that it is important that the production fee paid by the commissioning entity to the production company should qualify towards the calculation of the £1m threshold, as it represents a cost to the commissioning entity that will have the final say in where a production is made. Without this being taken into account we believe the resulting bar will be set too high to achieve the Government's objective of keeping production in the UK that could otherwise be made elsewhere. However, we are not suggesting that the production fee itself should attract relief. If the decision is made not to include production fees in the calculation of the £1m threshold, it will be necessary to lower the threshold accordingly. However, in contemplating the appropriate threshold level, consideration should also be given to the implications of including residual and profit payments as a direct production cost which would be consistent with the approach taken over the FTR. We recommend that these options be considered in detail by the Treasury and the High-end Television Tax Relief Working Group.

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

As BSAC is not a production entity, we do not have direct access to such information. However, such data will be provided by our Members including PACT in their responses to the consultation.

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

As with our views on relief for animation productions, we believe it is imperative that early stage costs qualify for relief. We are therefore pleased that the Treasury intends to include pre and post production costs in a definition of qualifying 'core expenditure'. We would recommend a definition of qualifying 'core expenditure' based on specific exceptions in line with that used for the FTR.

*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.*

Yes, the core production costs in high end television take a similar form to those in film, although the scale of the cost in film is generally greater than that in high end TV.

*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?*

There are two types of early stage development work; one where the outcome is a finished product such as a pilot which is capable of broadcast and produced with the intention that it forms part of a series if it is commissioned. We believe that the costs incurred in producing such a programme should qualify for relief, which would also be applied to its early stage costs, regardless of whether it has been formally commissioned by a broadcaster. We make this recommendation in relation to high end TV productions as it is reasonably common for transmittable pilots to be produced before a series has been commissioned but this is not common practice for animation productions. This rule is in line with criteria in the FTR in which a film qualifies for relief if it is intended for theatrical release. This approach is a greater incentive to high end TV production activity in the UK than requiring a formal commission by a broadcaster.

The costs incurred for early stage development work, such as script development, which does not in itself result in a finished product intended to be broadcast should be eligible for relief once programmes intended for broadcast based on such work are produced.

*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?*

No. As with the animation relief, we believe it should be relatively straightforward to apply accounting practices used in the film industry to high end TV production.

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

No.

## **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.*

The FTR model does not fit so comfortably with the practices and business models of video games production as it does with animation or high end TV. However, we believe that adopting a model similar to the FTR would be an effective way to support video games production, as the majority of games developers would be able to make use of it.

*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.*

We believe that the proposed definition of a video game may prove to be too restrictive, especially as technological change facilitates the creation of new business models and distribution platforms. A broader definition, in line with those for animation, high end TV and film, would be preferable as the Cultural Test would act as a safeguard to ensure that games which are not culturally British could not claim relief. We support the definition which has been put forward by TIGA in their response to the consultation that a video game for the purposes of accessing relief should be defined as ‘interactive entertainment software made available to the public in any medium (including on disk or by digital distribution) and on any type of device, whether single player or multiplayer and whether of finite duration or not, including software whose content is also educational in nature’.

We also note under the qualifying conditions for the proposed model that in order to qualify for relief a video game must be intended for ‘commercial release’. We would urge the Treasury to clarify ‘commercial release’ – and in particular confirm that this will not be limited to games that are paid for at the point of release. This could result in the exclusion of games operating with other business models – such as those that are made available free at the point of release but which may seek to make money through the sale of virtual products, for example. We would ask that the Government confirms that games that have been commissioned from a games developer by an external party for a fee – such as a broadcaster or publisher – and then made available for free are not excluded under this definition - as a commercial transaction has taken place between the external party and the developer. Rather than stipulating a ‘commercial release’ in order to qualify for relief, we would suggest that games intended for public release on a commercial basis for the developer should be eligible for relief.

*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 games to be specifically excluded from the scheme? If not, what other solutions would you propose to exclude pornographic products from relief?*

The BBFC is designated as the video works authority responsible for classifying pornographic boxed games for consoles and PCs, whilst the Games Rating Authority is responsible for classifying other physical games, with a few limited exceptions, under the PEGI system. We agree that games which would receive a BBFC R18 rating be excluded from the relief. However, if all games intending to apply for the tax relief were to be classified, this would involve extending the PEGI system, or introducing a new system, for

the classification of online games and gaming apps. Such a development would increase the administrative and cost burden for small games developers, especially those operating in the social games and ‘freemium’ space. The number of games which have been denied a BBFC or PEGI 18 rating is extremely small so we feel that imposing a statutory rating system for this purpose would be disproportionate. The legal implications of imposing such a rating system through tax legislation would also risk derailing the relief itself. As we have recommended in relation to animation, a self-certification system linked to the Cultural Test whereby developers would be asked to state whether their game has a PEGI, BBFC or app store rating and if not, whether it contains content that would be likely to receive such a rating if it were classified by any such body, would be more appropriate. As in relation to animation, penalties for breach of self-certification obligations should be clearly outlined to deter false claims.

We would also like to comment on the statement in paragraph 5.17 that the Government does not intend to offer relief to video games whose primary purpose is gambling or advertising products. Whilst we do not disagree with this broad intention, we would welcome clear guidance on how this rule will be applied, to ensure it is not unintentionally excluding legitimate forms of content. For example, many games make use of in-game advertising as part of the business model for financing the production of the game itself and we would argue that a rule against advertising products in this particular context could have the unintended consequence of restricting legitimate commercial business models. We urge Treasury to consider very carefully a definition of what constitutes a game ‘whose primary purpose is gambling or advertising products’ taking into account the pace of change in the sector.

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

Yes.

*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.*

There are a number of significant differences between the core production costs in video games as opposed to film. As mentioned above in relation to animation, whilst films are stand-alone projects, video games are more likely to be made by developers with permanent offices and staff. As with animation, it is important that reasonable amounts of the overhead costs of those companies which are actually attributable to the production of the game are accounted for in the relief, in line with the FTR.

*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?*

We would take issue with the stipulation that early stage costs become eligible once a game has been 'formally commissioned by a publisher' as many games of various budgets are self-published by the game developer. We refer to our answer to question 23. Costs incurred in the development of a game should be eligible for relief when it is produced for public release on a commercial basis whether or not it has been formally commissioned by a publisher. In tandem with the minimum spend threshold, this should ensure that the relief will be open to the growing number of self-published games but will reduce the risk of HMRC receiving an unexpectedly high number of applications.

*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.*

Debugging is a core cost of developing a game, the majority of which is incurred before a game is publicly released. We therefore welcome the Treasury's intention to include the cost of debugging in the development process but not as part of ongoing maintenance. We note that the costs of 'genuine further development' will be eligible for relief and would caution Treasury that the line between debugging and the creation of new content is indistinct. The cleaning-up of code is an integral part of feature and new content development. We support the recommendation UKIE will make in their response that the distinction should be drawn between product development costs, which should qualify for relief, and service maintenance costs, which should not.

*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?*

Yes.

*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?*

Whilst many games developers account in some way for games as separate trades, developers who do not currently use this system will incur extra costs, especially smaller developers who may be developing a number of low budget games at any one time. As stated above, we would urge the Treasury to commit to an early review of the model in order to ascertain whether such a requirement makes it too onerous for some sections of the industry to claim relief.

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

We agree that a minimum threshold for development costs of at least £50,000 will be useful but suggest that the exact level of the threshold be contingent on a market impact assessment demonstrating how many games would qualify for relief. BSAC has no data available to it currently to assess how many games per annum would be likely to qualify on the basis of a £50k threshold and it is not possible therefore to assess the likely administrative burden of the relief. Although there may be some games under this level which are commercially successful, for very low budget games, the cost of applying for relief will be prohibitive, and the cost to Treasury of processing a very large number of applications would be considerable.

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

We note in paragraph 6.9 of the consultation document that the Treasury intends to disqualify companies from claiming relief twice on the same research and development expenditure under the R&D tax credit and the proposed creative sector tax relief. We would argue that it should be possible for a games developer to claim both the R&D credit and the proposed video games tax credit on the same game but suggest that, in those cases where an R&D claim is available, the benefit arising from such a claim reduces the eligible spend on the proposed creative sector relief.

#### **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?*

No.

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

Yes, provided relief may be claimed later on such costs as and when they are actually paid (even if that happens outside this time limit) as is possible under the FTR.

*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?*

We believe that the FTR scheme has not resulted in abuse and we are optimistic that the factors that have worked effectively in the operation of the FTR scheme will equally apply here in most cases. However, as mentioned above, it will be necessary to use discretion to distinguish between games which are for the primary purpose of advertising products and innovative commercial games which are funded by advertisers/advertising. It will also be necessary to distinguish between genuine further development of games and ongoing maintenance as the two may be undertaken in tandem, as explained 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?*

Industry is aware that effective skills and training strategies for the animation, high end TV and video games sectors will be needed in order to extract the maximum benefit from the tax reliefs in relation to content production. Such strategies must be industry-led and involve vigilance in identifying future skills needs and capacity issues as well as investment in training. The audiovisual sector invests heavily in training, with public service and commercial broadcasters as well as content businesses investing in training programmes for staff internally, whilst the BBC also has a remit under the Charter Agreement to train the wider industry.

There are concerns in the television production and animation sectors that the size and strength of the existing skills base is insufficient to cope with the significant amount of additional production activity which is likely to be incentivised by the tax reliefs for these two sectors. It is important that comprehensive strategies are put in place to address these concerns to avoid the potential outcome of costs of production personnel rising significantly. As many people work between feature film and television there is also a danger that the film sector could be affected by this inflation. If this issue is not addressed, there is a risk that productions could migrate elsewhere, undermining one of the core drivers of the tax reliefs—to retain and attract production in the UK. BSAC supports the introduction of a voluntary levy for animation, high end TV and video games. These voluntary levies could be modelled on the Skills Investment Fund (SIF), administered by Creative Skillset, the creative industry sector skills council, which is a voluntary training levy on films produced in the UK, which has been very successful in supporting training for the next generation of film talent. The SIF has raised over £8m for training for the film industry since its introduction in 1999, and the majority of film productions in the UK choose to contribute to it.

The Next Gen report into the skills needs of the video games and VFX industries outlined the skills gaps impacting on the industry and made a series of recommendations for how the Government and industry could address them. The Next Gen Campaign has been successful in raising awareness within Government on the need to reform ICT teaching in schools and the adoption of computer science as a compulsory option on the curriculum, a skill which is increasingly vital for content production and distribution. The report also identified a potential need for Creative Skillset accredited courses and supporting those already in the workforce with further professional development. Creative Skillset is in discussion with UKIE about how the computer games industry better identify and articulate its actions and investment needed to deliver the Next Gen recommendations.

## APPENDIX

### Request for supporting evidence

#### Animation

##### 1. Existing production and behavioural effects

It is difficult to make an accurate assessment of the total direct expenditure on animation productions in the UK for a number of reasons: animated productions are often international co-productions, making cost allocation complicated and sensitive; animators tend to do a broad range of work (e.g. corporate work) and not just animated productions for TV and film; live action TV production companies such as Tiger Aspect will occasionally produce animated content but do not report this separately; many animation companies are very small (and therefore do not submit full accounts to Companies House); and some of the bigger animation companies receive much of their revenue from non-production sources such as merchandise. However, the Securing the Future of UK Animation report commissioned by Animation UK estimated that the UK animation industry generates revenues of around £300m per annum, with the total revenue of the four largest animation companies in 2009 HIT, Chapman, Aardman Animation and Chorion – accounting for £246m. The report also noted that the industry employed approximately 4,700 people at that time.

We understand that PACT has undertaken to gather evidence on direct production expenditure by animation companies and will submit this to the Treasury directly.

There are numerous anecdotal examples of UK animation productions being produced outside the UK in order to access an overseas tax relief. The Animation UK report references *The Octonauts* and *Olivia* produced by Chorion for CBeebies and Five respectively, which are both made in Ireland in order to access the section 481 tax relief which is worth up to 28% of costs incurred in Ireland. Lack of tax incentives in the UK coupled with cheaper production and labour costs abroad means that the current cost of production in the UK relative to some overseas territories is uneconomical. As a result, HIT Entertainment has moved production of four of their most successful programmes abroad. *Bob the Builder* is produced in LA, *Thomas the Tank Engine* in Vancouver, *Angelina Ballerina* also in LA, and *Fireman Sam* in China. Another new HIT animation production *Mike the Knight*, which was developed in the UK and takes inspiration from Britain's medieval heritage, is produced in Canada.

##### 2. Production case studies

As detailed above, we refer to evidence from PACT submitted directly to Treasury in relation to production case studies.

3. Administrative burden

As BSAC is not a production company, we are not able to answer this question.

**High-end television**

1. Existing production and behavioural effects

In terms of total spend on UK originated productions, around £4bn is invested by public service and commercial broadcasters each year.<sup>4</sup> The total number of hours of originated output in the UK last year was 256,350 across all channels.<sup>5</sup> We understand that certain broadcasters will submit evidence on expenditure on high-end TV per annum directly to the Treasury.

As detailed above in relation to animation productions, there are a number of anecdotal examples of UK high end TV productions being produced overseas in order to access tax incentives abroad. A report by RSM Tenon and Wiggin submitted to the DCMS cited recent examples of British stories that were filmed overseas to avoid the high cost of UK-based production including *Birdsong*, *The Tudors*, *Camelot*, *Parade's End* and *Titanic*. Kudos Entertainment, part of the Shine group, have also provided us with examples of programmes they decided to produce abroad in some cases in order to access overseas incentives. Please see below:

**[Confidential information has been submitted directly to Treasury]**

2. Production case studies

As BSAC is not directly involved in the production of high-end TV, we are unable to submit evidence in relation to production case studies.

3. Administrative burden

Please see our answer in relation to animation.

**Video games**

We understand that UKIE is gathering evidence from its members in relation to video games development and we refer Treasury to UKIE's submission.

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<sup>4</sup> Creative UK – The Audiovisual Sector & Economic Success – Comms Chamber report, April 2010

<sup>5</sup> Ofcom Communications Market Report 2012

Creative Sector Tax Reliefs Consultation: BSAC Response

5 September 2012