



CREATIVE SECTOR TAX RELIEFS:

CULTURAL TESTS FOR ANIMATION, HIGH END TV AND VIDEO GAMES

RESPONSE FROM THE BRITISH SCREEN ADVISORY COUNCIL (BSAC)

29 October 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.¹ 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. We have been active in relation to tax policy for the audiovisual sector for a number of years, convening 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, BSAC responded to the Treasury consultation on the design of the Creative Sector Tax Reliefs in September 2012.

Overview

We welcome the opportunity to comment on the draft Cultural Tests for animation, high end TV and video games as part of the current DCMS consultation. We agree that basing the new Tests on the current Cultural Test for film, which has been extremely successful in promoting film production in the UK, is the correct approach.

We welcome the inclusion of criteria in sections A and D of each of the Tests awarding points for the European nature of works. Broadening the Tests in this manner is likely to drive up inward investment production in the UK as European works will be able to claim relief on qualifying expenditure. It will also create a level playing field for the UK in relation

¹ See <http://www.bsac.uk.com/membership-list.html> for a list of our Members

to Cultural Tests employed by other European countries which award points for European content. It may be desirable to bring the FTR Cultural Test into line with the new reliefs at a sensible point in the future.

We would recommend that following the current consultation, the DCMS undertake a process of modelling the proposed Cultural Tests to gain a clearer picture of the number and type of productions which will qualify. This will help to ensure that the Tests will be effective in achieving the objectives of encouraging production, promoting the sustainability of the sectors and maintaining a critical mass of UK infrastructure and creative and technical expertise, as well as to help to address the necessity of balancing the need to allow for flexibility and artistic freedom against the risk of abuse of the scheme. This will, in turn, provide certainty for future applicants about whether their applications are likely to meet the criteria. It will also be helpful for the BFI in assessing how many applications to expect, and therefore, how much resource will be needed in administering the Tests.

We welcome the DCMS' suggestion that the BFI be responsible for administering the certification process for the new tax reliefs. Setting up new bodies for this purpose would have a significant cost attached, and therefore be unrealistic in the current economic climate. The BFI seems the natural place to undertake certification for animation, as under the FTR the BFI certifies animated films, and for high end TV as the BFI already has some experience of certifying TV productions through official co-production treaties. However, given the increased workload there is a need for the BFI to hire individuals with sector specific expertise in order to undertake certification for each of the reliefs. In particular, there is concern that the BFI does not currently possess the necessary expertise and experienced personnel to undertake certification for video games and without this would not have the confidence of the video games sector in carrying out this function for them. We support certification of video games by the BFI subject to the demonstration of expertise in this area including in relation to the various business models and development/production processes within the industry. In order for this to be achieved, it will be necessary for further resource to be ascribed to this function. Given the limited funds with which the BFI is tasked to carry out its range of functions, we would suggest that Government make additional resources available for new personnel. We think the modelling exercise we have recommended will also help establish exactly what resource will be needed here. It should also be borne in mind that there will be additional requirements placed on the BFI within the first year of the introduction of the reliefs in terms of advocacy and support to help the relevant sectors understand the certification process. This was the case when the FTR was introduced in 2007. We would also recommend that there be clear delineation within the BFI in the certification process for the different sectors.

Answers to consultation questions:

Animation

Section A: Cultural Content

Q1. Are A1 and A2 points sufficiently defined to enable the promotion of British or European culture?

Yes.

Q2. Is the list of artistic costs of A4 representative of the cultural contribution of the animation?

Yes.

Section B: Cultural Contribution

Q3. Is Section B of the cultural test for film an appropriate model for animation production?

Yes.

Q4. How might points for cultural content and contribution (Section A and B) otherwise be configured?

The Government could consider making points available under section A2 for lead characters who are European citizens or residents as well as British in line with the proposed high end TV Test.

Section C: Cultural Hubs

Q5. Is the formulation of points available for the use of cultural hubs appropriate for the animation industry?

Yes. However, we would suggest that DCMS work with industry to ensure that the correct terminology is used in this section of the Test. For example, the term ‘animation shooting’ would not seem to encompass CGI.

Section D: Cultural Practitioners

Q6. Would points for a majority of British/European cast and crew facilitate this and how would this be monitored and assessed particularly where there exists unknown elements at the beginning of an application?

Yes, and we think this can be monitored by an interim certification followed by a final one once the production is complete.

Q7. Are there other elements of animation production that make the current cultural test for film incompatible? If so, how might the cultural test for film be adapted to take this into account?

We do not believe there are other elements of animation production which make the current Cultural Test for film incompatible.

Administration of the Cultural Test

Q8. Are the proposed point allocations appropriate?

Yes.

Q9. What are your views on the assessment process for animation cultural test applications?

We agree that, broadly speaking, the assessment process for animation can follow that used for film, and that the BFI is best placed to deliver the certification process. We would expect that, as with the FTR, interim certificates would be issued in order to provide comfort for animation producers.

High end TV

Sections A: Cultural Content

Q1. Should points be awarded for British and European content in all sections of Section A or should this be limited to A1, A2 and A3?

As discussed above, awarding points for European as well as British content will have a positive impact on the level of production of high end TV in the UK. However, we do not recommend awarding points for content in European languages other than English, or the regional and minority languages of the UK, in A4. It will still be possible for foreign language productions to pass the Test but directly awarding points for films in other languages may be perceived to damage the public value to UK citizens of the relief.

Q2. What impact on UK talent and facilities would making points available to European as well as UK content have?

Making points available for European as well as UK content will significantly add value to the reliefs in terms of creating greater opportunities for the development of talent and facilities.

Section B: Cultural Contribution

Q3. Is Section B of the cultural test for film an appropriate model for high-end television production?

Yes.

Section C: Cultural Hubs

Q4. Is Section C of the cultural test for film an appropriate model for high-end television production?

Yes.

Section D: Cultural Practitioners

Q5. Would points for a majority of British/European cast and crew facilitate this, and how would this be monitored and assessed, particularly where unknown elements exist at the beginning of an application?

Q6. Unlike with film production, a television series may not go into production with a fixed direction for the storyline. How could this be taken into account when assessing the cultural test? We would welcome your views on whether there are other elements of high-end television production that should have a significant impact on this test.

As is noted in the consultation document, the creative process in high end TV productions differs from feature films in that scripts may be written, and decisions about directors and actors for later episodes may be made after principal photography of a series has already begun. It is therefore difficult for applicants to gain prior approval for their production based on the set of fixed criteria. However, we believe the current process of providing letters of comfort, as happens for films, could helpfully be adopted here by the BFI, as administrators of the system, to give guidance to producers as to the likelihood of their programmes qualifying for relief.

Given the above considerations, we support the introduction of a percentage for British or EEA cultural practitioners used across a series. Though to achieve this we note that many

companies feel the 50% threshold in sections D1-D4 would be too high when assessed across whole series but that if this were reduced to 33% it would make a material difference. This reduced test could apply to those series which have a longer number of episodes typical of overseas dramas such as more than 7 episodes.

Should the government be minded to widen the range of high end TV productions which attract tax relief to include drama documentaries and documentaries, then it would seem appropriate to adopt the same approach to such productions as is adopted under the FTR in relation to the allocation of points under section D. We would also recommend that the use of archive footage should be treated in the same way as under the FTR guidance.

Q7. In relation to assessing the cultural test application at pilot episode stage, what consideration should be given to circumstances where points awarded at pilot episode stage are no longer met once a series is commissioned?

As we previously argued in our response to the Treasury consultation on the reliefs², the costs incurred in producing a pilot which is capable of broadcast and produced with the intention that it forms part of a series if it is commissioned should be eligible for relief. Such pilots should qualify on a standalone basis regardless of whether a series is subsequently commissioned. If the pilot forms part of a subsequent series, the rest of the series can claim relief excluding the pilot and if the pilot does not form part of the series, then the entire series can apply for relief.

Q8. Are there other elements of high-end television production that make the current cultural test for film incompatible? If so, how might the cultural test for film be further adapted to take these into account?

We previously argued in our response to Treasury that given the fluid creative process by which high end TV productions operate, with decisions about storylines and characters being made after principal photography on earlier episodes has begun, it will be difficult to know at the outset which episodes of a series will qualify for relief. It is theoretically possible that some, but not all, episodes will qualify which could be addressed by sequential applications as the production goes along but we think this would be administratively burdensome on both producers and the BFI. We therefore recommended that relief for a series as a whole should apply if at least 75% of the episodes in that series met the Cultural Test criteria.

We also argued that circumstances may arise where a foreign production may wish to shoot one or two episodes of a series in the UK where those specific episodes would meet the Cultural Test criteria. In order to attract this additional and potentially significant investment, we recommended that individual episodes should be eligible for relief as long as it is clear

² BSAC Response to Treasury on Creative Sector Tax Relief, see <http://www.bsac.uk.com/2012.html>

from inception whether relief is being sought across a complete series or for just specific episodes.

In reference to our answer to question 6, if averaging is used to qualify a series under the Cultural Test, the stipulations contained in section D on cultural practitioners should still apply to 100% of episodes in the series, otherwise there would be the risk that the relief could be applied too broadly. This point of practical detail could be clarified in the guidance to be issued by the BFI.

Administration of the Cultural Test

Q9. Are the proposed point allocations appropriate?

Yes.

Q10. What are your views on the assessment process for high-end television cultural test applications?

As discussed above, we believe that the BFI is best placed to undertake certification of high end TV Cultural Test applications. It may also be appropriate for relevant organisations in the nations to work in partnership with the BFI. For example, where productions have a strong Scottish dimension, Creative Scotland could assist the BFI. We would expect that the assessment process would follow that used for the FTR, for example, that interim certificates would be issued in order to provide comfort for high end TV producers.

Detailed guidance will be very important for applicants and for the assessment body in order to ensure that the process runs smoothly and there is no uncertainty for applicants. We would note that the descriptions of roles of practitioners for feature film and high end TV differ somewhat and this should be taken account of in the guidance.

Video Games

Section A: Cultural Content

Q1. Does allowing points for “artistic costs” (A4) reflect the creative and cultural input to a video game?

Q2. What should be covered in these costs?

We are concerned that the term ‘artistic costs’ is ill-suited to the games industry as it suggests that only costs relating to artwork and animation, for example, are part of the creative process. The term ‘creative costs’ should be used to include costs associated with coding, which is fundamental to the creative process of game development.

Section B: Cultural Contribution

Q3. Is Section B of the cultural test an appropriate model for video games production?

We agree that section B is an appropriate model for video games production but stress the need for greater clarification and guidance on how the criteria will be assessed. For example, in relation to B2, a definition of 'technical or creative innovation' is needed as it is currently unclear where the bar will be set.

Section C: Cultural Hubs

Q4. Is the formulation of points available for the use of cultural hubs appropriate for the video games industry?

We refer to our answer in the animation section of our response to question 5 on cultural hubs. We recommend that the games industry provides guidance to the DCMS on the correct terminology to use in this section of the Test. For example, the term 'audio post-production' is not used in the games industry.

Section D: Cultural Practitioners

Q5. Does Section D of the cultural test (as set out in Annex A) identify the key roles involved in video games development?

We recommend that the games industry work with the DCMS on ensuring that the roles defined in section D accurately reflect the way in which industry works. We understand that development studios refer to the roles outlined in section D using a variety of different terms. It may be sensible to refer to the role being fulfilled in terms of game development rather than through a job title in order to provide clarity on this issue. Once the roles have been appropriately described, DCMS should work with industry to determine how points should be allocated where there is more than one practitioner in each category, and we would suggest using the FTR as a starting point for this.

We would also suggest that, in line with the Cultural Tests for animation and high end TV, there be a possible 8 points allocated for section D of the video games Test. This would mean that the overall pass mark of 16 points would be out of a possible 31 rather than a possible 30, which brings the video games Test into line with the Tests for film, animation and high end TV. It is not otherwise clear to us why there should be such a distinction between video games and the other sectors and we feel consistency of approach between sectors wherever possible is helpful.

Q6. Are there other elements of video games development that are relevant to the cultural test? If so, how might the cultural test for film be further adapted to take these into account?

No.

Administration of the cultural test

Q7. Are the proposed point allocations appropriate?

We refer to our answer to question 5 recommending that an extra point be made available under section D. We also note that there are some other inconsistencies between the video games Test and the Tests for animation and high end TV. As we argued under the animation section of our response in question 4, in order to be consistent with the high end TV Test, points could be made available under section A2 for lead characters who are European citizens or residents as well as British.

Q8. What are your views on the assessment process for video games cultural test applications?

As outlined in the introduction to this paper, we support the certification of video games by the BFI as long as the BFI has access to an appropriate level of sector specific expertise in carrying out this function. We also recommend that the games industry works closely with DCMS on guidance for the application of the Test.