



Draft Legislation on Creative Sector Tax Reliefs

[Schedules 1, 2 & 3 Finance Bill 2013]

Comments by the British Screen Advisory Council [BSAC]

The British Screen Advisory Council (BSAC) welcomes unreservedly the introduction in the 2013 Finance bill of three tax reliefs for the strategic UK audiovisual content sectors of animation, video games and high-end television programmes.

BSAC's membership encompasses all three of these important sectors. We are confident that these new tax reliefs will enable Britain's dynamic creative content industries to leverage their competitive advantage in creativity by attracting new investment in world class product. Based on our observation of the impact of previous reliefs for filmed entertainment, BSAC also anticipates wider positive effects on UK plc. as a whole. These will include increased volumes of production activity, with attendant virtuous impact on employment and turnover in related industries, from hospitality and tourism to technical services. Important work is already underway to identify and meet the resultant increase in demand for skills across the sector.

This short paper provides a concise check list of areas of the draft Schedule 1,2 and 3 of the Finance bill which BSAC believes would benefit from being modified – or simply clarified – in order to ensure the three proposed reliefs are fully efficient in delivering their intended impact.

BSAC's overriding concern is to support the implementation of the tax reliefs by the scheduled start date of 1st April 2013. Consequently, we wish to stress that the suggestions for possible amendments contained in this paper should be read as subordinate to the goal of preventing any unnecessary delay in the process of notification currently underway and avoid a loss of opportunities for productions currently being planned. We also suggest some of the issues raised by BSAC may be helpfully addressed in the guidance note, thus obviating the more difficult option of modifying the legislation itself.

I –Tax Relief for TV Production

1. 'Intended for broadcast' criteria

We observe that a growing number of qualifying programmes made to broadcast TV production values will no longer necessarily premiere on linear television anymore, and may in fact be commissioned by non-linear platform operators and content aggregators with video on demand as

their primary market, though they may also have the ability to license rights to traditional broadcasting and may arrange for a broadcast window after an initial online and on demand release. In this fast changing technology-driven market, it is important that the tax relief be relevant to emergent forms of exploitation which, though they may not constitute a ‘broadcast’ will in effect make the programmes available to the general public on an on demand basis. A recent example of this new approach is the release by the online operator Netflix of its fully-financed \$100m drama series *House of Cards*, starring Kevin Spacey. With production values comparable to a high-end HBO or flagship US network series, this programme is being released exclusively to Netflix subscribers instead of premiering on television networks.

Is the non-linear window to be treated as “broadcast” in the context of this tax relief? If it is restricted to programmes intended for traditional broadcasting, does the ‘intention’ to broadcast signify that the programme necessarily has to premiere on linear broadcast television in order to be eligible for the relief? BSAC believes it is important for Government to provide flexibility on these points in order to ensure that the relief is future proof, taking into account the technology shift under way in the consumption of filmed entertainment. BSAC had already raised this issue in our response to the initial Treasury consultation¹.

A related issue concerns the meaning of ‘intended’ (for broadcast): the production cycle of new TV content will often start with the commissioning of a ‘pilot’ programme. These are produced with the intention of testing the formula for the series and/or the market’s response to a concept and style and those responsible for commissioning may decide to broadcast the programme or not at the point of delivery, rarely at the outset. Once again, it is important for that flexibility to be retained in the Finance Bill in order to take this practice into account. A clarification to this effect within the HMRC guidance note would be welcome.

2. Cultural Test

BSAC understands the need for the cultural test as a key component of certification. We accept the need to encourage as much as possible a fit between British culture and artistic contribution and the content of the TV programmes whose production will be enabled by the tax relief. The test has proven a flexible tool in the practical application of the 2006 Film Tax Relief and its extension to the new reliefs is both logical and necessary. With respect to the new cultural test for high-end drama and documentaries, BSAC supports the decision to widen the ‘cultural content’ criteria to encompass the EEA.

It is intended that the cultural test would award up to 8 points in relation to “cultural practitioners” involved in the production of the film, including director, producer, scriptwriter and composer. Points are awarded individually for each qualifying programme. However, internationally mobile high-cost TV productions will often employ a range of creative and other contributors and may shoot different instalments in different countries depending on the nature of the story and available incentives. For such series employing more than one of the relevant cultural practitioners (e.g. series with multiple directors), the draft cultural test proposed that in order for a point to be awarded, “at least 50%” of the practitioners in a category (e.g. directors) have to be UK or EEA nationals in order for the entire series to garner a point. BSAC believes a lower

¹ “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 services”. In Consultation on Creative Sectors Tax Reliefs – BSAC Response, 5 September 2012

percentage would introduce greater flexibility and thus offer a more effective incentive for internationally mobile productions to locate in the UK. We would welcome clarification on this point in the Guidance.

3. Definition of ‘relevant programme’ (‘slot length’)

The proposed relief is available for the production of high-end programming in drama, documentaries and comedy with spend of £1m per hour or more. However, as currently drafted, the relief would be available only for programmes over 30 minutes in slot length. BSAC believes that this provision should be amended to reflect the format reality of contemporary television: not only are most comedies under 30 minutes in slot length, but high-end drama is increasingly frequently broken down in durations of 30 minutes only, because they allow for more flexibility in scheduling options.

BSAC suggests that it may be beneficial in due course for clause 1216AB to be adapted in order to facilitate the qualification of programmes with slot lengths of 30 minutes or longer.

4. Series and episode – certification issues

Clause 1216AA(4) of the draft Finance Bill states that programmes commissioned under the same agreement will be treated as a single programme for the purpose of applying the tax relief. This clause is unhelpful because it fails to take into account the need for flexibility: under this approach, a programme could not qualify for relief on any basis other than the whole series, with no option to apply for certification of individual programmes. BSAC believes companies should have the choice to qualify either entire series or individual programmes within a series.

Long-running series will employ a wide variety of creative contributors and their production cycle may take place in different countries depending on developing story lines and economic expediency. A series may start production with a few episodes already fully scripted while teams of writers are still at work on the later episodes to be shot in the series, and about which decisions will still be pending as to characters and storylines, casting and where to locate the production. A rigid obligation to qualify an entire series in advance would therefore fail to provide the requisite flexibility which TV production demands, especially high-cost/high-value drama series. BSAC would welcome clarification on this point.

5. Co-productions

The development of official co-production agreements has been an important plank of British audiovisual policy, creating incentives for British talent crews and infrastructure to become competitively integrated in the global filmed entertainment economy.

BSAC notes that – under current dispositions – the UK would have a paradoxical situation whereby it would be less tax efficient for a qualifying TV production to be made under an official co-production agreement than under the new tax relief. BSAC believes much may be gained from addressing this asymmetry in due course, so that official co-productions may benefit from a similar rate of relief as UK-only productions. We appreciate that this issue may require further consideration in view of the complexities involved and the need to avoid delays to the 1st April implementation date.

6. Live performances

We are concerned that 1216AD as drafted would exclude important high end programming such as documentaries based on live events, opera, ballet and other live theatre broadcasts, which fit the definition of drama as laid out in Section 1216AC. This would be counterproductive, given the cultural and economic value of such programmes to the UK audiovisual industry and the challenges involved in raising production finance for them.

BSAC requests that this Section be clarified so that these genres be clearly included in the relief. The exclusion of these categories of programming would reduce the intended economic and cultural impact of the relief.

7. ‘Television Production Company’

In Section 1216AE, the reference to the possibility for the production company to elect to be the one applying/qualifying for the tax (or not) is difficult to understand. The conditions which would require such choice are not made clear and we note there is no comparable clause in the 2006 film tax relief.

BSAC understands that the intention of this Section is to prevent a situation in which more than one company party to the production would apply for the relief. We suggest the clause would therefore be clearer if it plainly stated that only one company may claim the relief for any given qualifying programme.

II – Tax Relief for Video Games

BSAC welcomes the introduction of a specific tax relief for Britain’s video game industry. Though renowned for its creative edge, this sector has been struggling in recent years to maintain a competitive economic advantage, owing to the high sunk costs characteristic of this product and the lack of available financial incentives. The UK gaming sector has had to compete with overseas competitors who benefit from efficient tax relief measures. With the introduction of this tax relief, Britain’s video games industry has a golden opportunity to level the economic playing field and fully leverage its competitive advantage as a creative hotbed for cutting edge content with global appeal.

BSAC fully endorses the position of our member UKIE on the draft schedule for the tax relief on video games. UKIE has a detailed understanding of the challenges facing the video game industry, based on the practical frontline experience of its members.

We stress in particular, the importance of the relief being applied flexibly to the post-release development costs of the video games. It is an important bespoke feature of this relief, which takes into account the distinctive nature of the video game as compared to more traditional forms of audiovisual content.