EXPLANATORY MEMORANDUM TO

THE CORPORATION TAX (CERTIFICATION AS LOW-BUDGET FILM) REGULATIONS 2024

2024 No. 1009

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Sir Chris Bryant MP, Minister for Creative Industries, Arts and Tourism at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

2.2 Alastair Jones, Deputy Director for Creative Industries, at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sasha Spyrou at the Department for Culture, Media and Sport (email: sasha.spyrou@dcms.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Finance (No.2) Act 2024 inserted a new section 1179DJA into the Corporation Tax Act 2009 (CTA 2009). This introduced a higher rate of tax relief for low-budget films with a specified UK connection. Film production companies making eligible films can opt-in to claim the higher rate of tax relief, known as enhanced Audio-Visual Expenditure Credit (AVEC), at a rate of 53% on their qualifying expenditure. The standard AVEC rate is 34%. Film production companies can claim enhanced AVEC in relation to films whose principal photography began on or after 1 April 2024, and in relation to expenditure incurred on or after 1 April 2024.

4.2 This instrument makes provision in relation to the conditions that film production companies must meet to claim enhanced AVEC. In particular, it provides as follows:

4.2.1 Budget Condition: The "specified expenditure" that can be incurred is a maximum of £23.5 million core expenditure. Enhanced AVEC is available in relation to £15 million of this total. "Core expenditure" excludes marketing and distribution costs.

4.2.2 Modified Creative Connection Condition: In situations where there are multiple scriptwriters or directors, a lead director or scriptwriter must be a British citizen or ordinarily resident in the UK.

4.2.3 Particulars and Evidence: Applicants must provide certain evidence and particulars to satisfy the Secretary of State that they meet the budget and creative connection conditions.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The primary purpose of enhanced AVEC is to incentivise UK independent film production. To qualify for enhanced AVEC, the film production must first qualify under the current cultural test set out in Schedule 1 to the Films Act 1985 (i.e. be certified as British) and then meet the budget and creative connection conditions set out in the amended CTA 2009. This instrument sets out the detail of the budget condition, modifies the creative connection condition where there are multiple scriptwriters and directors, and sets out the particulars and evidence to be included with the application.

5.1.1 **Budget Condition:** To meet this condition, a film's total core expenditure must not exceed £23.5 million. Enhanced AVEC is available in relation to £15 million of this total. The higher £23.5 million cap on total core expenditure is necessary to mitigate risks of cash flow abuse and to avoid a cliff edge that excludes productions just above the £15 million limit for enhanced AVEC.

5.1.2 **Modified Creative Connection Condition:** To meet the unmodified creative connection condition set out in the CTA 2009, a film must have a director or scriptwriter who is a British citizen or ordinarily a resident in the UK, or the film must be an official UK co-production. Where there are multiple directors or scriptwriters, a director or scriptwriter who qualifies as a lead director or scriptwriter must be a British citizen or be ordinarily a resident in the UK. A director or scriptwriter qualifies as a lead where their contribution to the film in that role is the same as or greater than the contribution of each other director or scriptwriter to the film in that role.

5.1.3 **Particulars and Evidence:** Applicants will be required to provide certain particulars and evidence in order to satisfy the Secretary of State that the budget and creative connection conditions are met. The regulations include a Schedule detailing these particulars and evidence that should be provided alongside a statutory declaration and auditor's report.

What was the previous policy, how is this different?

5.2 The current standard AVEC rate for eligible productions under the Films Act 1985 (i.e. productions certified as British) is 34%, targeted at productions no matter the size of their budget. The enhanced AVEC rate is 53%.

6. Legislative and Legal Context

How has the law changed?

6.1 New section 1179DJA CTA 2009 allows film production companies to claim a higher rate of tax relief (i.e. the enhanced AVEC rate) in respect of films meeting certain

conditions. The existing rate of tax relief (i.e. the standard AVEC rate) is set at 34% by section 1179DV(2) CTA 2009, and the Finance (No. 2) Act 2024 inserted a new section 1179DV(5A) into the CTA 2009 which sets the rate of enhanced AVEC at 53%. Applicants can claim standard AVEC if their film is certified as a British film under the Films Act 1985, and new section 1179DJA allows production companies to specify in their application for certification as a British film that they are also applying for certification as a low-budget film. Under the new section, the film will also be certified as a low-budget film if the Secretary of State is satisfied that the "budget condition" (i.e. an amount of specified expenditure) and the "creative connection condition" are met. Certification as a low-budget film means that the film production company can claim enhanced AVEC.

6.2 Section 1179DJA(2) and (5) of the amended CTA 2009 gives the Secretary of State the power to make regulations setting out the budget condition, modifying the creative connection condition where there are multiple scriptwriters or directors, and prescribing the particulars and evidence necessary for satisfying the Secretary of State that the conditions have been met. This instrument therefore sets out the budget condition, the modified creative connection condition and the necessary particulars and evidence in the ways explained in section 5 ("Policy Context").

6.3 A separate instrument made under s.15(5) Finance (No. 2) Act 2024, which is not subject to parliamentary procedure, provides that production companies can apply for certification as a low-budget film from 30 October 2024.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes to give effect to the policy of the low-budget film certification, as described above.

7. Consultation

Summary of consultation outcome and methodology

7.1 Engagement and evidence gathering took place prior to the announcement of this policy at the Spring Budget 2024, and engagement with the British Film Institute and the sector has informed the drafting of this instrument. No formal consultation has been undertaken given the need to deliver this at speed to address the challenges facing the independent film sector.

8. Applicable Guidance

8.1 Accompanying guidance for production companies setting out the changes introduced by this instrument will be made available on 30 October 2024 on the British Film Institute's website.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been prepared for this instrument. A policy note on enhanced AVEC was published on gov.uk on 6 March 2024 and includes an assessment of impacts.

9.2 Enhanced AVEC is intended to boost the production of UK independent films and support UK talent in the film sector. This is in recognition of the specific challenges faced by the sector and their important role in incubating UK film talent.

9.3 As set out in the policy note, the measure is expected to impact only a small number of businesses, including small and micro businesses. Fewer than 3,000 businesses claim at least one of the creative industries tax reliefs each year, and enhanced AVEC is expected to impact around 700 businesses for film production each year only.

Impact on businesses, charities and voluntary bodies

9.4 The Enhanced AVEC will have no impact on:

9.4.1 civil society organisations such as charities and voluntary bodies, or the public sector.

9.4.2 individuals, households or families.

9.4.3 those in groups sharing protected characteristics.

9.5 Enhanced AVEC is not expected to have any significant macroeconomic impacts.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 As set out in the policy note for the Finance (No.2) Bill 2024, enhanced AVEC will be monitored through information collected from company tax returns and the additional information form filled out by claimants to the creative industries tax reliefs, and reporting from the authorised authority delivering these tax reliefs.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").