STATUTORY INSTRUMENTS

2015 No. 1449

CORPORATION TAX

The Cultural Test (Television Programmes) (Amendment) Regulations 2015

Made - - - -	*29th June 2015*
Laid before the House of Commons	*1st July 2015*
Coming into force - -	*23rd July 2015*

The Secretary of State, in exercise of the powers conferred by sections 1216CB(2) and 1216CC(7) of the Corporation Tax Act 2009(**a**), makes the following Regulations.

Regulations 2, 4, 5 and 7 are made with the approval of the Treasury in accordance with section 1216CB(2) of that Act.

Citation and commencement

1. These Regulations may be cited as the Cultural Test (Television Programmes) (Amendment) Regulations 2015 and come into force on 23rd July 2015.

Application

2.—(1) These Regulations have effect in relation to any television programme(**b**) other than an excepted programme.

(2) A television programme is an excepted programme if—

(a) an application for certification of the programme was made before the commencement day, or

(b) the television production company(**c**) has made an election in relation to the programme under paragraph (3).

(3) A television production company may make an election under this regulation in relation to a television programme if—

(a) the first day of principal photography (in relation to dramas(**d**)) or shooting (in relation to documentaries or animations) was before the commencement day, and

(b) no application for certification of the programme was made before the commencement day.

(**a**) 2009 c. 4. Part 15A of the Act, which contains sections 1216CB and 1216CC(7), was inserted by Schedule 16 to the Finance Act 2013 (c. 29). That Part was further amended by section 33 of the Finance Act 2014 (c. 26) and by sections 30 and 31 of the Finance Act 2015 (c. 3).

(**b**) "Television programme" is defined in section 1216AA of the Corporation Tax Act 2009.

(**c**) "Television production company" is defined in section 1216AE of the Corporation Tax Act 2009.

(**d**) "Drama" is defined in section 1216AC(2) of the Corporation Tax Act 2009.

(4) In this regulation—

"application for certification" means an application for an interim or final certificate under section 1216CC of the Corporation Tax Act 2009, and

"commencement day" means 23rd July 2015.

Interpretation

3. In these Regulations "the 2013 Regulations" means the Cultural Test (Television Programmes) Regulations 2013(**a**).

Amendments to Part 1 of the 2013 Regulations

4.—(1) Part 1 of the 2013 Regulations is amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of "participant", after "in a documentary" insert "or a children's programme";

(ii) in the definition of "programme", for "or an animation" substitute ", an animation or a children's programme";

(b) in sub-paragraph (2)(c), after "lead modelling supervisor" insert—

"and;

(d) in relation to a children's programme, lead cinematographer, lead production designer, lead costume designer, lead editor, lead sound designer, lead visual effects supervisor, lead hair and makeup supervisor and lead researcher".

Amendments to Part 2 of the 2013 Regulations

5.—(1) Part 2 of the 2013 Regulations is amended as follows.

(2) In regulation 3 (Cultural test: dramas and documentaries)—

(a) in sub-paragraph (2)(a), for "16 points" substitute "18 points";

(b) in paragraph (4)—

(i) for "16 points" substitute "18 points";

(ii) in sub-paragraph (d)—

(aa) for "4 points" substitute "6 points" (in both places);

(bb) for "the English language or a recognised regional or minority language" substitute "a language recognised for official purposes in the United Kingdom or another EEA state"; and

(cc) for "3 points" substitute "4 points";

(c) in paragraph (5), for "British culture" substitute—

"one or more of the following—

(a) British creativity;

(b) British heritage; or

(c) diversity";

(d) for paragraph (6), substitute—

"(6) Up to 5 points will be awarded in respect of work carried out in the making of the drama or documentary as follows—

(**a**) S.I. 2013/1831.

(a) 4 points if at least 80% of the work carried out on any of the following is carried out in the United Kingdom (unless points are awarded under sub-paragraphs (b) or (c) below, in which case nil)—

(i) in relation to a drama—

(aa) principal photography;

(bb) visual effects;

(cc) special effects;

(ii) in relation to a documentary—

(aa) shooting;

(bb) visual effects;

(cc) research and development;

(dd) special effects;

(b) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—

(i) in relation to a drama—

(aa) principal photography;

(bb) special effects;

(ii) in relation to a documentary—

(aa) shooting;

(bb) research and development;

(cc) special effects;

(c) 2 points if at least 50% of the work carried out on visual effects is carried out in the United Kingdom;

(d) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—

(i) performing and recording the music score created for the drama or documentary;

(ii) audio post production;

(iii) picture post production.".

(3) After regulation 4 (Cultural test: animation), insert—

"Cultural test: children's programme

4A.—(1) A children's programme(**a**) will be certified by the Secretary of State as a British programme under section 1216CB(1) of the Act only if it passes the following cultural test.

(2) A children's programme passes the cultural test if it meets either of the following conditions—

(a) subject to paragraph (3), it is awarded at least 18 points in total under paragraphs (4) to (7); or

(b) it is a qualifying co-production(**b**) made in accordance with an international agreement specified in Schedule 1.

(3) A children's programme that is awarded all the points available under paragraphs (4)(d) (language), (6) (where work carried out) and (7) (personnel) will not pass the cultural test unless it is awarded—

(**a**) "Children's programme" is defined in section 1216AC(2A) of the Corporation Tax Act 2009.
(**b**) "Qualifying co-production" is defined in section 1216AI(a) of the Corporation Tax Act 2009.

(a) at least 2 points under paragraph (4)(a) (setting);

(b) at least 2 points under paragraph (4)(b) (characters); or

(c) 4 points under paragraph (4)(c) (story).

(4) Up to 18 points will be awarded in respect of the content of the children's programme as follows—

(a) up to 4 points depending on the percentage of the children's programme that is set in the United Kingdom or another EEA state as follows—

(i) 4 points for at least 75%;

(ii) 3 points for at least 66%;

(iii) 2 points for at least 50%;

(iv) 1 point for at least 25%;

(b) up to 4 points depending on the number of the characters or participants in the children's programme that are from the United Kingdom or another EEA state as follows—

(i) if there are more than three characters or participants in the children's programme—

(aa) if two or three of the three lead characters or participants are from the United Kingdom or another EEA state, 4 points;

(bb) if only one of the three lead characters or participants is from the United Kingdom or another EEA state, 2 points if that character or participant is the first or second lead, or 1 point if that character or participant is the third lead;

(ii) if there are only three characters or participants in the children's programme—

(aa) if two or three of the characters or participants are from the United Kingdom or another EEA state, 4 points;

(bb) if only one of the characters or participants is from the United Kingdom or another EEA state, 2 points if that character or participant is the first or second lead, or 1 point if that character or participant is the third lead;

(iii) if there are only two characters or participants in the children's programme—

(aa) if both of the characters or participants are from the United Kingdom or another EEA state, 4 points;

(bb) if one of the characters or participants is from the United Kingdom or another EEA state, 2 points;

(iv) if there is only one character or participant in the children's programme, 4 points if that character is from the United Kingdom or another EEA state.

(c) 4 points if the children's programme depicts a British story or a story which relates to another EEA state;

(d) up to 6 points depending on the percentage of the original dialogue that is recorded in a language recognised for official purposes in the United Kingdom or another EEA state as follows—

(i) 6 points for at least 75%;

(ii) 4 points for at least 66%;

(iii) 2 points for at least 50%;

(iv) 1 point for at least 25%.

(5) Up to 4 points will be awarded in respect of the contribution of the children's programme to the promotion, development and enhancement of one or more of the following—

(a) British creativity;

(b) British heritage; or

(c) diversity.

(6) Up to 5 points will be awarded in respect of the work carried out in the making of the children's programme as follows—

(a) 4 points if at least 80% of the work carried out on any of the following is carried out in the United Kingdom (unless points are awarded under sub-paragraphs (b) or (c) below, in which case nil)—

(i) principal photography;

(ii) animation shooting;

(iii) visual design;

(iv) layout and storyboarding;

(v) research and development;

(vi) visual effects;

(vii) special effects;

(b) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—

(i) principal photography;

(ii) animation shooting;

(iii) visual design;

(iv) layout and storyboarding;

(v) research and development;

(vi) special effects;

(c) 2 points if at least 50% of the work carried out on visual effects is carried out in the United Kingdom;

(d) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—

(i) performing and recording the music score for the children's programme;

(ii) voice recording;

(iii) audio post production;

(iv) picture post production.

(7) Up to 8 points will be awarded in respect of the personnel involved in the making of the children's programme as follows—

(a) 1 point if a director (or, if there are more than three, one of the three lead directors) is a qualifying person;

(b) 1 point if at least one of the scriptwriters (or, if there are more than three, one of the three lead scriptwriters) is a qualifying person;

(c) 1 point if at least one of the producers (or, if there are more than three, one of the three lead producers) is a qualifying person;

(d) 1 point if a composer (or, if there are more than three, one of the three lead composers) is a qualifying person;

(e) 1 point if at least one of the actors or participants (or, if there are more than three, one of the three lead actors or participants) is a qualifying person;

(f) 1 point if at least 50% of the cast are qualifying persons;

(g) 1 point if at least one of the heads of department is a qualifying person;

(h) 1 point if at least 50% of the production crew are qualifying persons.

(8) A children's programme which is set in, or in which any character or participant is from, an undetermined location is eligible to be awarded points under paragraphs (4)(a)(ii)-(iv) (setting) and (4)(b) (characters or participants) as if that location were in the UK or another EEA state, provided that it complies with the following condition.

(9) The condition is that that children's programme is awarded at least one point under any of—

(a) paragraph (4)(c) (story);

(b) paragraph (4)(d) (language); or

(c) paragraph (5) (culture).".

Amendments to Part 3 of the 2013 Regulations

6.—(1) Part 3 of the 2013 Regulations is amended as follows.

(2) In regulation 6(2)(b), for "regulation 3(2)(b) or 4(2)(b)" substitute "regulation 3(2)(b), 4(2)(b) or 4A(2)(b)".

(3) In regulation 9(1), for "regulation 3(6) or (7), or 4(6) or (7)" substitute "any of regulations 3(6), 3(7), 4(6), 4(7), 4A(6) or 4A(7)".

(4) In regulation 11(a), for "regulation 3(6)(a)(i)(aa)", substitute "regulations 3(6)(a)(i)(aa), 3(6)(b)(i)(aa), 4A(6)(a)(i), or 4A(6)(b)(i)".

(5) In regulation 11(b), for "regulation 3(6) and regulation 4(6)" substitute "regulations 3(6), 4(6) and 4A(6)".

(6) In regulation 12, for "regulation 3(6) or regulation 4(6)" substitute "regulations 3(6), 4(6) or 4A(6)".

Amendments to Schedule 1 to the 2013 Regulations

7.—(1) Schedule 1 to the 2013 Regulations is amended as follows.

(2) In the heading, for "Regulation 3(2)(b), 4(2)(b)" substitute "Regulations 3(2)(b), 4(2)(b), 4A(2)(b)".

(3) For "regulations 3(2)(b) and 4(2)(b)" substitute "regulations 3(2)(b), 4(2)(b) and 4A(2)(b)".

Amendments to Schedule 2 to the 2013 Regulations

8.—(1) Schedule 2 of the 2013 Regulations is amended as follows.

(2) In paragraph 2, for "or an animation" substitute "an animation, or a children's programme".

(3) In paragraph 11, after "drama" insert "or a children's programme".

(4) In paragraph 14, for "or animation" substitute ", animation, or children's programme".

(5) For paragraph 15, substitute "The reasons why any point should be awarded under regulation 3(4) (drama or documentary), 4(4) (animation) or 4A(4) (children's programme) (as the case may be).".

(6) For paragraph 16, substitute "The reasons why any point should be awarded under regulation 3(5) (drama or documentary), 4(5) (animation) or 4A(5) (children's programme) (as the case may be).".

(7) In paragraph 17, after "regulation 3(6)(a)(i)(aa)", insert ", 3(6)(b)(i)(aa), 4A(6)(a)(i) or 4A(6)(b)(i)".

(8) In paragraph 18, for "regulation 3(6) or 4(6)" substitute "regulation 3(6), 4(6) or 4A(6)".

(9) In paragraph 19, for "regulation 3(7) or 4(7)" substitute "regulation 3(7), 4(7) or 4A(7)".

Ed Vaizey
Minister of State
29th June 2015 Department for Culture, Media and Sport and
Department for Business, Innovation and Skills

We approve,

David Evennett
Mel Stride
29th June 2015 Two Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Cultural Test (Television Programmes) Regulations 2013 (the 2013 Regulations), updating the cultural test for drama and documentary television programmes, as well as introducing a new cultural test for children's programmes.

The purpose of the tests is to determine whether a programme may be certified as a "British programme" by the Secretary of State under Part 15A of the Corporation Tax Act 2009 (as inserted by the Finance Act 2013 and as amended by the Finance Act 2014 and Finance Act 2015). Points under the tests are awarded on the basis of the setting, origin of characters, story, language and cultural aspects of the programme, where certain work on the making of the programme is carried out, and the residence or nationality of the personnel involved in the making of the programme. Certification as a British programme is a condition of eligibility for television tax relief under that Act.

Regulation 2 provides for application and exempts certain television programmes from the amendments made by these regulations. Regulation 2(2)(a) provides that the amendments will not apply if an application for certification is made prior to the entry into force of the regulations. Regulation 2(2)(b) and 2(3) provide that if principal photography or shooting has commenced before the entry into force of the regulations, but no application for certification has been made, the television production company may elect to have the amendments made by these regulations not apply to that programme; accordingly such programmes are assessed against the applicable rules for that programme as if these regulations had not been made.

Regulation 4 introduces a new definition for heads of department involved in the production of children's television programmes. Heads of department are eligible to receive points under the new test for children's television programmes.

Regulation 5 amends the test for dramas and documentaries to bring it into line with the cultural test for films (Schedule 1 to the Films Act 1985, as amended) by increasing the number of points available from 4 to 6 for programmes with a high percentage of dialogue in English or another language recognised for official purposes in an EEA state, as well as increasing the number of points available when a high percentage of specified production activities involved in the making of the programme take place in the United Kingdom. The number of points available under the test therefore rises from 31 to 35, with the pass mark rising from 16 to 18 points. Regulation 5 also introduces a new cultural test for children's television programmes, based on the existing cultural tests for other types of television programmes. Points are awarded under the same categories (setting, origin of characters, story, language and cultural aspects of the programme, where certain work on the making of the programme is carried out, and the residence or nationality of the personnel involved in the making of the programme) as for the other categories of television programme.

Regulations 6 to 8 update cross-references in the 2013 Regulations to other conditions relating to passing the tests and provisions that specify the information that must be supplied by applicants requesting certification of their television programmes under the 2013 Regulations.

The impact on business, charities or voluntary bodies arising from this instrument has been included in the Tax Information and Impact Notes prepared for the Finance Act 2015 which was published alongside the Budget on 18th March 2015. The Notes are available on the HMRC website at https://www.gov.uk/government/publications/corporation-tax-high-end-television-tax-relief (in respect of dramas and documentary programmes) and https://www.gov.uk/government/publications/childrens-television-tax-relief (in respect of children's television programmes). No separate impact assessment has been prepared.

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