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TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL  
2021

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# ***Glossary***

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
PDV Offset	Post, digital and visual effects Offset



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# **Chapter 1**

## ***Australian Screen Production Incentive Reforms***

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### **Outline of chapter**

1.1 Schedule X makes amendments to Division 376 of the ITAA 1997 to increase the producer offset for films that are not feature films released in cinemas to 30 per cent of total qualifying Australian production expenditure, and to make various threshold and integrity amendments across the three screen tax offsets.

1.2 All legislative references in this Chapter are to the ITAA 1997 unless otherwise stated.

### **Context of amendments**

1.3 The Australian Screen Production Incentive is the Government's primary mechanism for supporting the Australian screen industry. It provides a tax offset for expenditure on Australian feature films, television production and other screen programs, post, digital and visual effects activity in the screen industry, as well as large budget international productions shot in Australia.

1.4 These amendments seek to revise the Australian Screen Production Incentive to ensure that the tax offsets effectively target areas that require support to encourage production and commercial distribution of quality Australian screen content. The amendments apply to productions that start principal photography or PDV activity on or after 1 July 2021.

1.5 The three film tax offsets are the producer offset, the location offset, and the PDV offset. Companies may only claim one of these refundable tax offsets in relation to expenditure incurred on goods and services provided or located in Australia in the making of the film.

1.6 The amount of the income tax offset that a company can claim is calculated as a percentage of the eligible film's total eligible qualifying Australian production expenditure. A film's total qualifying Australian production expenditure is determined by either the film authority, Screen Australia, (for the producer offset) or the Arts Minister (for the location and PDV offsets).

1.7 Generally, a company’s qualifying Australian production expenditure on a film is the company’s production expenditure, to the extent it is reasonably attributable to goods and services provided in Australia, the use of land in Australia, or the use of goods and services located in Australia at the time they are used in making the film. Production expenditure is expenditure that a company incurs to the extent the expenditure is incurred, or reasonably attributable to, making the film.

1.8 The rules for calculating production expenditure and qualifying Australian production expenditure are set out in Subdivision 376-C.

## Summary of new law

1.9 The amendments reform the Australian Screen Production Incentive to increase the Producer Offset rebate rate to 30 per cent for eligible screen content for television and other production, and make various threshold, eligibility, and integrity amendments across the three screen tax offsets.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<b>Increased rate of Producer Offset</b>	
The Producer Offset rate is 30 per cent across all types of eligible films that are not feature films released in cinemas.	The Producer Offset is 20 per cent across all types of eligible films that are not feature films.
<b>Increase in qualifying Australian production expenditure threshold</b>	
The minimum qualifying Australian production expenditure threshold for claiming the producer offset in relation to feature length films is \$1 million.	The minimum qualifying Australian production expenditure threshold for claiming the producer offset in relation to a feature film is \$500,000.
The minimum relevant qualifying Australian production expenditure threshold for claiming the PDV offset in relation to a film is \$1 million.	The minimum relevant qualifying Australian production expenditure threshold for claiming the PDV offset in relation to a film is \$500,000.
<b>Eligibility and integrity changes</b>	
The 65 commercial hour cap on claiming qualifying Australian production expenditure is removed for a series and seasons of a series.	A television series, or season of a series, cannot count production expenditure incurred as qualifying Australian production expenditure



<i>New law</i>	<i>Current law</i>
	past the episode that contains its 65 <sup>th</sup> commercial hour.
Expenditure on general business overheads can no longer be counted as qualifying Australian production expenditure towards any offset.	Expenditure on general business overheads can be counted up to a cap as qualifying Australian production expenditure towards the producer, location or PDV Offset.
Expenditure on goods and services provided by Australian residents outside Australia can no longer be counted towards a company's qualifying Australian production expenditure.	Expenditure on goods and services provided by Australian residents outside Australia can be counted towards a company's qualifying Australian production expenditure.
Expenditure in relation to a film incurred in acquiring Australian copyright or licensing Australian copyright in a pre-existing work for use in the film can be counted as qualifying Australian production expenditure up to a cap equal to 30 per cent of the film's total production expenditure.	All expenditure in relation to a film incurred in acquiring Australian copyright or licensing Australian copyright in a pre-existing work for use in the film can be counted as qualifying Australian production expenditure.
For a documentary, development expenditure and remuneration provided to the director, producers and principal cast ('above the line' expenditure) up to 20 per cent of the total production expenditure on a film can be counted as qualifying Australian production expenditure.	For a documentary, all development expenditure and remuneration provided to the director, producers and principal cast ('above the line' expenditure) incurred in relation to the film can be counted as qualifying Australian production expenditure.
A company may only claim expenditure as qualifying Australian production expenditure on the first copy of a film, and one-re-version.	A company may claim expenditure on any number of re-versions as qualifying Australian production expenditure.

## **Detailed explanation of new law**

### *Producer offset rate*

1.10 The amendments change the producer offset so that a company that produces a feature film that is commercially released for exhibition to the public in cinemas can claim 40 per cent of the total qualifying Australian production expenditure for the film as an income tax offset.

1.11 A company that produces any other type of film is eligible for the 30 per cent producer offset rate. Prior to the amendments a company that produced a film that was not a feature film could claim a 20 per cent offset. This means that companies can claim a higher income tax offset in relation to qualifying Australian production expenditure for single episode television shows, a television series, a documentary, or any other film production that is not released in cinemas but is otherwise distributed to the Australian public. *[Schedule X, items 1 and 5, sections 376-2(3)(a) and 376-60(a) and (b)]*

1.12 To be eligible for the 40 per cent producer offset, the feature film must be commercially distributed in Australian cinemas. The commercial release is expected to be the primary release of the film in Australia. This change ensures feature films claiming the higher rate of offset have a genuinely wide, commercial, and public release. This change is consistent with how the producer offset is currently administered by Screen Australia. *[Schedule X, item 6, section 375-65(2)(b)(i)]*

*Minimum qualifying threshold for producer and PDV offsets*

1.13 Prior to the amendments the minimum qualifying Australian production expenditure threshold in relation to a feature film that enabled a company to claim the producer offset in respect of that film was \$500,000.

1.14 The amendments increase this threshold for all feature length content. The new term feature length content covers any screen production, including a documentary that is more than 60 minutes in length or a production that is 45 minutes in length and in a large format (productions made for IMAX cinemas). This includes feature films and feature length documentaries. *[Schedule X, items 26 and 27, section 995-1]*

1.15 For feature length content, the minimum qualifying Australian production expenditure in order to claim the producer offset is increased to \$1 million. For non-feature length content (for example, a single episode program that is 60 minutes or less in length), the minimum qualifying Australian production expenditure in order to claim the producer offset remains unchanged. *[Schedule X, items 9, 10 and 11, section 376-65(6)]*

1.16 The minimum qualifying Australian production expenditure as it relates to post, digital and visual effects for the purposes of eligibility for the PDV offset is also increased from \$500,000 to \$1 million. *[Schedule X, item 2, Section 376-45(5)(a)]*

*Commercial hour cap for a drama series and seasons of a drama series*

1.17 Prior to the amendments, a television drama series, or a season of a drama series, was considered complete for the purposes of calculating the producer offset when it was either in a state where it is ready to distribute and screen or when the episode that contains the 65<sup>th</sup>

commercial hour was in that state. This meant that a company's production expenditure on a television show past the 65<sup>th</sup> commercial hour could not be counted as qualifying Australian production expenditure for the purposes of calculating the producer offset.

1.18 The amendments remove the 65 commercial hour cap on qualifying Australian production expenditure for a drama series and seasons of a television drama series. This means that a company can claim the producer offset on a drama series or season on the whole run of the series or season, not just the first 65 commercial hours. If a drama season of a series has already reached the 65 commercial hour cap, a new season may be eligible for the producer offset if it commences principal photography on or after 1 July 2021. This change encourages greater investment in longer series of drama.

1.19 A consequential change has also been made to remove the requirement for a drama series, or season of a series, to demonstrate a new creative concept in order to attract a producer offset. Prior to the amendment, if a company producing a drama series, which had already reached the 65 hour cap, could demonstrate that a new season of a series exhibited a new creative concept, the 65 commercial hour cap would restart for that season and subsequent seasons with the same creative concept. Since the 65 hour commercial cap has been removed for a drama series, this requirement is subsequently also removed for a drama series. *[Schedule X, items 3, 4, 7, 8 and 24, sections 376-55(2), 376-65(5)(a)(iii) and 376-170(4)(c)]*

#### *General business overheads*

1.20 The general business overheads of a company that are not incurred in, or in relation to, the making of a film are specifically excluded as production expenditure of the company. However, prior to these amendments part of those overheads could be counted as qualifying Australian production expenditure under the specific rules for the location offset, PDV offset and producer offset.

1.21 The amendments remove the ability of companies to include general business overheads as qualifying Australian production expenditure for the purposes of calculating an offset. General business overheads are removed as qualifying Australian production expenditure as this expenditure is not directly incurred in the making of a film and this ensures that the incentive more directly supports core production expenditure. The amendments confirm that expenditure incurred on general business overheads, that are not incurred in or in relation to making a film, or are not reasonably attributable to any equipment or activities undertaken in making the film, is not production expenditure for the purposes of calculating qualifying Australian production expenditure. *[Schedule X, items 12, 15, 16, 17, 18 sections 376-135, 376-165 and 376-170(2)]*

*Copyright expenditure*

1.22 Expenditure incurred in acquiring Australian copyright, or an Australian licence in relation to copyright, in a pre-existing work for use in a film is qualifying Australian production expenditure on a film. Prior to the amendments, all expenditure in relation to this type of copyright or licence acquisition could be counted as qualifying Australian production expenditure for the purposes of calculating an income tax offset if used in the film.

1.23 The amendments cap the amount of this expenditure that can be counted towards qualifying Australian production expenditure, in relation to acquiring Australian copyright or an Australian licence in relation to copyright in a pre-existing work for use in the film, to 30 per cent of the total of the company's production expenditure on the film. [*Schedule X, items 13 and 14, section 376-150*]

1.24 This means that when calculating qualifying Australian production expenditure for the purposes of an income tax offset, a company can only attribute qualifying Australian production expenditure in relation to that type of Australian copyright acquisition expenditure up to 30 per cent of the total production expenditure of the film. For the producer offset, this cap is not intended to cover expenditure on acquisition material such as story rights or fees for the assignment of copyright in literary works. Expenditure towards this type of rights acquisition is already capped under the development expenditure cap (see paragraph 1.27 to 1.29).

*Expenditure incurred overseas*

1.25 Prior to the amendments, if a film was required to shoot scenes outside of Australia because the subject matter of the film reasonably requires it, expenditure on goods and services that a company incurs outside Australia, where the goods and services are provided by Australian residents, was counted as qualifying Australian production expenditure.

1.26 The amendments remove the ability for expenditure incurred by a company overseas to count as qualifying Australian production expenditure. This ensures that the income tax offsets support and encourage expenditure directly in Australia. This restriction applies regardless of whether the goods and services provided overseas are provided by an Australian resident or not. [*Schedule X, items 19, 20 and 22, sections 376-170(2) item 4 in the table and 376-170(3A)*]

*Development expenditure*

1.27 Development expenditure on a film is expenditure incurred in meeting the development costs for a film and includes expenditure such as research, storyboarding, casting, budgeting, and developing a shooting schedule.

1.28 Expenditure incurred as development expenditure on a film and remuneration provided to the director, producers and principal cast can be counted as qualifying Australian production expenditure up to an amount equal to 20 per cent of the company's total film expenditure on a film. Prior to the amendments, this limit did not currently apply where the film is a documentary.

1.29 The amendments harmonise the treatment of development expenditure across all films by applying the limit on counting development expenditure and director, producer and principal cast remuneration as qualifying Australian production expenditure to films that are documentaries for the purposes of the producer offset. *[Schedule X, items 23 and 25, sections 376-170(4)(b) and 376-170(4A)]*

#### *Re-versioning*

1.30 The current producer offset rules allow expenditure incurred by a company in delivering or distributing unlimited revisions of the first copy of the film to be counted as qualifying Australian production expenditure for the purposes of calculating a producer offset, provided it is incurred prior to the end of the income year in which the film is complete.

1.31 A re-version of a film is most commonly understood as a director's cut, a foreign or international version or an alternative length version (with either more or less content) for different distribution markets. Prior to the amendments a company could incur expenditure that can be counted as qualifying Australian production expenditure for the purposes of calculating the producer offset, on unlimited re-versions of the first copy of the film provided it is incurred prior to the end of the income year in which the film is complete.

1.32 The amendments limit the number of re-versions of the first copy of a film where expenditure on those revisions can be counted as qualifying Australian production expenditure, to one re-version of the first copy of the film provided it is incurred prior to the end of the income year in which the film is complete. *[Schedule X, item 21, item 7 in the table in section 376-170(2)]*

## **Application and transitional provisions**

1.33 The Schedule commences on the first 1 January, 1 April, 1 July or 1 October after Royal Assent.

1.34 The amendments making changes to the producer offset apply to a film that commences principal photography on or after 1 July 2021. *[Schedule X, item 28(a)]*

1.35 The amendments making changes to the PDV offset apply to films that commence post, digital and visual effect activity on or after 1 July 2021. *[Schedule X, item 28(b)]*