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| **EXPOSURE DRAFT (05/02/2024)** |

Inserts for

Treasury Laws Amendment (2024 Measures No. 2) Bill 2024: Location offset and producer offset for films

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule [LP] | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. |  |
| 2. |  |  |
| 3. |  |  |

Schedule [LP]—Location offset and producer offset for films

Part 1—Location offset amount

Income Tax Assessment Act 1997

1 Paragraph 376-2(3)(b)

Omit “16.5%”, substitute “30%”.

2 Section 376-15

Omit “16.5%”, substitute “30%”.

3 Application provision—films

The amendments made by this Part apply in relation to a film for which:

(a) for a film that is predominantly a digital animation or other animation—the making of the film; or

(b) otherwise—the principal photography for the film;

commenced on or after 1 July 2023.

Part 2—Location offset conditions

Division 1—Amendments

Income Tax Assessment Act 1997

4 Section 376-1

Omit “media”.

5 Subsection 376-20(1)

Omit “and (5)”, substitute “, (5), (7) and (8)”.

6 At the end of subsection 376-20(1)

Add:

Note: The Minister may require the company to provide information to the Minister before issuing the certificate: see section 376-32.

7 Paragraph 376-20(3)(c)

Omit “$1 million”, substitute “$1.5 million”.

8 Paragraph 376-20(5)(a)

Omit “$15 million”, substitute “$20 million”.

9 At the end of section 376-20

Add:

Use of resident entities for post, digital and visual effects production

(7) The condition in this subsection is that:

(a) the company has entered into a contract for the provision of some or all of the \*post, digital and visual effects production for the \*film with an entity that:

(i) is an Australian resident; or

(ii) is a foreign resident but does have a \*permanent establishment in Australia and does have an \*ABN; and

(b) all or part of the post, digital and visual effects production (the ***contracted post, digital and visual effects production***) to which that contract relates has, under the contract, been provided by the entity to the company; and

(c) if the entity is a foreign resident—all or partof the contracted post, digital and visual effects production that has been provided by the entity to the company was provided at or through the entity’s permanent establishment in Australia; and

(d) all or part of the company’s expenditure on the contracted post, digital and visual effects production is \*qualifying Australian production expenditure of the company on the film.

Minimum training expenditure requirement

(8) The condition in this subsection is that the company:

(a) satisfies the minimum training expenditure requirement for the \*film under subsection 376-27(1); or

(b) is exempt from that requirement for the film under:

(i) section 376-28 (which relates to the establishment of permanent film infrastructure in Australia); or

(ii) section 376-29 (which relates to the undertaking of training programs).

10 After section 376-25

Insert:

376-27 Minimum training expenditure requirement

(1) A company satisfies the minimum training expenditure requirement for a \*film under this subsection if the company incurs expenditure that satisfies the conditions in subsections (2) and (3).

(2) The amount of the expenditure must be at least the \*minimum training expenditure amount for the film.

(3) Each part of the expenditure must be both:

(a) \*qualifying Australian production expenditure of the company on the \*film; and

(b) incurred for, or reasonably attributable to, eligible training that is provided to an individual that has worked or is working on the \*making of the film.

Meaning of minimum training expenditure amount

(4) The ***minimum training expenditure amount*** is:

(a) for a film with a production commencement day that is on or after 1 July 2024 but before 1 July 2025—either:

(i) unless subparagraph (ii) applies—the lesser of $250,000 and 0.5% of the company’s total QAPE on the film; or

(ii) if regulations have been made for the purposes of subsection (5)—the lesser of the prescribed percentage of the company’s total QAPE on the film and the prescribed monetary amount; or

(b) for a film with a production commencement day that is on or after 1 July 2025—either:

(i) unless subparagraph (ii) applies—the lesser of $500,000 and 1% of the company’s total QAPE on the film; or

(ii) if regulations have been made for the purposes of subsection (5)—the lesser of the prescribed percentage of the company’s total QAPE on the film and the prescribed monetary amount.

Prescribed amount and prescribed percentage

(5) Subject to subsection (6), regulations made for the purposes of this subsection may prescribe:

(a) a monetary amount (the ***prescribed monetary amount***) not exceeding $750,000; and

(b) a percentage (the ***prescribed percentage***) not exceeding 1%.

(6) If the regulations prescribe a monetary amount or a percentage, the regulations must prescribe both a monetary amount and a percentage.

Definitions

(7) In this section:

***eligible training*** means training or education provided in Australia that contributes to the knowledge, skills or experience of an individual in relation to the \*making of films.

***prescribed monetary amount***: see paragraph (5)(a).

***prescribed percentage***: see paragraph (5)(b).

***production commencement day***, for a \*film, means the day that the following commenced:

(a) for a film that is predominantly a digital animation or other animation—the \*making of the film;

(b) otherwise—the principal photography for the film.

***total QAPE***, of a company on a \*film, means the total of the company’s \*qualifying Australian production expenditure on the film (as determined by the \*film authority under section 376-30).

376-28 Minimum training expenditure exemption—permanent film infrastructure established in Australia

(1) A company is exempt from the minimum training expenditure requirement for a \*film under this section if:

(a) the company has contributed to the establishment or upgrading of a piece of film infrastructure in Australia (whether or not the establishment or upgrading is complete); and

(b) the film infrastructure is or will be, or the upgrades are or will be:

(i) permanent; and

(ii) reasonable in scale and cost, having regard to the scale and cost of the film; and

(iii) reasonably located, having regard to the needs of the Australian screen industry; and

(c) if the establishment or upgrading of the film infrastructure is not complete—the establishment or upgrading will be completed within a reasonable period of time; and

(d) the film infrastructure has, or the upgrades have, contributed to alleviating capacity constraints in the Australian screen industry.

(2) In this section, ***film infrastructure*** means buildings or other physical structures that can be used in the \*making of \*films.

376-29 Minimum training expenditure exemption—training programs

(1) A company is exempt from the minimum training expenditure requirement for a \*film (the ***relevant film***) under this section if:

(a) an individual (the ***trainee***) that has worked on the \*making of the relevant film has undertaken a training program; and

(b) the period during which the trainee worked on the making of the relevant film overlaps with the period during which the trainee undertook the training program; and

(c) training has been, or will be, provided under the training program for a period of at least 2 years; and

(d) the training program has contributed to:

(i) the making of the relevant film; and

(ii) alleviating capacity constraints in the Australian screen industry.

(2) The reference in paragraph (1)(c) to training provided under the training program includes, but is not limited to, a reference to training provided to the trainee.

(3) In determining whether a training program has contributed to a thing mentioned in paragraph (1)(d), the matters to which consideration may be given include, but are not limited to, the following:

(a) mentoring, industry partnerships and work experience placements facilitated by the training program;

(b) skills shortages in the Australian screen industry that are addressed by the training program;

(c) activities connected with the training program that contribute to improving health and safety, diversity and inclusion in the Australian screen industry;

(d) any matters specified in rules made under subsection (4).

(4) Subject to subsection (5), the \*Arts Minister may, by legislative instrument, make rules specifying matters for the purposes of paragraph (3)(d), including matters of a kind referred to in any of paragraphs (3)(a) to (c).

(5) Before making rules under subsection (4), the \*Arts Minister must consult the Minister.

11 After section 376-30

Insert:

376-32 Minister may require information

(1) Either:

(a) before determining a company’s \*qualifying Australian production expenditure on a \*film under subsection 376-30(1) for the purposes of the location offset; or

(b) before issuing a certificate to the company for the film under section 376-20 (certificate for the location offset);

the \*Arts Minister may, by written notice given to the company, require that the company provide to the Arts Minister information specified in the notice.

(2) The information specified in the notice must be information that the Arts Minister considers relevant to:

(a) determining the company’s qualifying Australian production expenditure or issuing the certificate to the company; or

(b) assessing the benefit of the film to the Australian screen industry.

(3) The notice must specify the time by which the information is to be provided (which must be at least 30 business days after the notice is given).

(4) The \*Arts Minister may, on request by the company, extend the time by written notice given to the company.

(5) If the information is not provided by the specified time (including any extensions), the \*Arts Minister may refuse to determine the company’s qualifying Australian production expenditure or issue the certificate to the company.

12 After paragraph 376-247(2)(b)

Insert:

(ba) section 376-32 (power to require information for the purposes of the location offset);

13 Subsection 995-1(1)

Insert:

***minimum training expenditure amount*** has the meaning given by subsection 376-27(4).

Division 2—Application provisions

14 Application provision—films

(1) Subject to subitems (2) and (3), the amendments made by this Part apply in relation to a film for which:

(a) for a film that is predominantly a digital animation or other animation—the making of the film; or

(b) otherwise—the principal photography for the film;

commenced on or after 1 July 2023.

(2) Subsection 376-20(8) of the *Income Tax Assessment Act 1997*, as added by this Part, applies in relation to a film for which:

(a) for a film that is predominantly a digital animation or other animation—the making of the film; or

(b) otherwise—the principal photography for the film;

commenced on or after 1 July 2024.

Note: Subsection 376-20(8) deals with the minimum training expenditure requirement.

(3) To avoid doubt, the reference to subsection 376-20(8) of the *Income Tax Assessment Act 1997* in subsection 376-20(1) of that Act (as amended by this Part) is to be disregarded for the purposes of applying subsection 376-20(1) of that Act in relation to a film for which the making of the film or the principal photography for the film (whichever applies) commenced on or after 1 July 2023 but before 1 July 2024.

15 Application provision—use of resident entities for post, digital and visual effects production

Subsection 376-20(7) of the *Income Tax Assessment Act 1997*, as added by this Part, applies in relation to post, digital and visual effects production provided under a contract on or after 1 July 2023, whether the contract was entered into before, on or after that date.

16 Application provision—minimum training expenditure requirement

Section 376-27 of the *Income Tax Assessment Act 1997*, as inserted by this Part, applies in relation to expenditure incurred before, on or after the commencement of this Part.

17 Application provision—infrastructure exemption

Section 376-28 of the *Income Tax Assessment Act 1997*, as inserted by this Part, applies in relation to film infrastructure for which the establishment or upgrading is completed on or after 1 July 2024.

18 Application provision—training programs exemption

(1) Paragraphs 376-29(1)(a) and (b) of the *Income Tax Assessment Act 1997*, as inserted by this Part, apply in relation to the undertaking of a training program by an individual if the individual began to undertake the training program on or after 1 July 2024.

(2) Paragraphs 376-29(1)(c) of the *Income Tax Assessment Act 1997*, as inserted by this Part, applies in relation to training provided before, on or after 1 July 2024.

19 Application provision—power to request information

Section 376-32 of the *Income Tax Assessment Act 1997*, as inserted by this Part, applies in relation to information obtained by a company before, on or after the commencement of this Part.

Part 3—Producer offset

Income Tax Assessment Act 1997

20 Subsection 376-65(6)

Omit “The conditions”, substitute “Subject to subsection (6A), the conditions”.

21 Subsection 376-65(6) (after table item 7)

Insert:

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| 7A | A \*film where:  (a) the application for the certificate is for a season of a series; and  (b) the series is a drama series; and  (c) the series is not a \*documentary; and  (d) the season meets the conditions in subsection (6B) | $35 million | not applicable |

22 After subsection 376-65(6)

Insert:

(6A) A \*film that is both of the type referred to in item 7, and of the type referred to in item 7A, of the table in subsection (6) meets the conditions in that subsection if the film meets the conditions set out in one or both of those items.

(6B) The conditions in this subsection are that:

(a) the season is produced wholly or principally for exhibition to the public on television under a single title; and

(b) the season is made up of at least 2 episodes that are produced wholly or principally for exhibition together; and

(c) either:

(i) for a season that is predominantly a digital animation or other animation—the \*making of the season (other than a pilot episode, if any) takes place within a period of not longer than 36 months; or

(ii) otherwise—all principal photography for the season (other than a pilot episode, if any) takes place within a period of not longer than 12 months.

23 Application provision—films

The amendments made by this Part apply in relation to a film for which:

(a) for a film that is predominantly a digital animation or other animation—the making of the film; or

(b) otherwise—the principal photography for the film;

commenced on or after 1 July 2024.