

EXPOSURE DRAFT

EXPOSURE DRAFT (05/02/2024)

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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.	
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1 **Schedule [LP]—Location offset and producer**
2 **offset for films**

3 **Part 1—Location offset amount**

4 *Income Tax Assessment Act 1997*

5 **1 Paragraph 376-2(3)(b)**

6 Omit “16.5%”, substitute “30%”.

7 **2 Section 376-15**

8 Omit “16.5%”, substitute “30%”.

9 **3 Application provision—films**

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

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

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

14 commenced on or after 1 July 2023.

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1 **Part 2—Location offset conditions**

2 **Division 1—Amendments**

3 *Income Tax Assessment Act 1997*

4 **4 Section 376-1**

5 Omit “media”.

6 **5 Subsection 376-20(1)**

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

8 **6 At the end of subsection 376-20(1)**

9 Add:

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

12 **7 Paragraph 376-20(3)(c)**

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

14 **8 Paragraph 376-20(5)(a)**

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

16 **9 At the end of section 376-20**

17 Add:

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

20 (7) The condition in this subsection is that:

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

24 (i) is an Australian resident; or

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

27 (b) all or part of the post, digital and visual effects production
28 (the *contracted post, digital and visual effects production*) to

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- 1 which that contract relates has, under the contract, been
2 provided by the entity to the company; and
- 3 (c) if the entity is a foreign resident—all or part of the contracted
4 post, digital and visual effects production that has been
5 provided by the entity to the company was provided at or
6 through the entity’s permanent establishment in Australia;
7 and
- 8 (d) all or part of the company’s expenditure on the contracted
9 post, digital and visual effects production is *qualifying
10 Australian production expenditure of the company on the
11 film.

Minimum training expenditure requirement

- 12
- 13 (8) The condition in this subsection is that the company:
- 14 (a) satisfies the minimum training expenditure requirement for
15 the *film under subsection 376-27(1); or
- 16 (b) is exempt from that requirement for the film under:
- 17 (i) section 376-28 (which relates to the establishment of
18 permanent film infrastructure in Australia); or
- 19 (ii) section 376-29 (which relates to the undertaking of
20 training programs).

10 After section 376-25

21
22 Insert:

376-27 Minimum training expenditure requirement

- 23
- 24 (1) A company satisfies the minimum training expenditure
25 requirement for a *film under this subsection if the company incurs
26 expenditure that satisfies the conditions in subsections (2) and (3).
- 27 (2) The amount of the expenditure must be at least the *minimum
28 training expenditure amount for the film.
- 29 (3) Each part of the expenditure must be both:
- 30 (a) *qualifying Australian production expenditure of the
31 company on the *film; and
- 32 (b) incurred for, or reasonably attributable to, eligible training
33 that is provided to an individual that has worked or is
34 working on the *making of the film.

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Meaning of minimum training expenditure amount

- 1
- 2 (4) The ***minimum training expenditure amount*** is:
- 3 (a) for a film with a production commencement day that is on or
- 4 after 1 July 2024 but before 1 July 2025—either:
- 5 (i) unless subparagraph (ii) applies—the lesser of \$250,000
- 6 and 0.5% of the company’s total QAPE on the film; or
- 7 (ii) if regulations have been made for the purposes of
- 8 subsection (5)—the lesser of the prescribed percentage
- 9 of the company’s total QAPE on the film and the
- 10 prescribed monetary amount; or
- 11 (b) for a film with a production commencement day that is on or
- 12 after 1 July 2025—either:
- 13 (i) unless subparagraph (ii) applies—the lesser of \$500,000
- 14 and 1% of the company’s total QAPE on the film; or
- 15 (ii) if regulations have been made for the purposes of
- 16 subsection (5)—the lesser of the prescribed percentage
- 17 of the company’s total QAPE on the film and the
- 18 prescribed monetary amount.

Prescribed amount and prescribed percentage

- 19
- 20 (5) Subject to subsection (6), regulations made for the purposes of this
- 21 subsection may prescribe:
- 22 (a) a monetary amount (the ***prescribed monetary amount***) not
- 23 exceeding \$750,000; and
- 24 (b) a percentage (the ***prescribed percentage***) not exceeding 1%.
- 25 (6) If the regulations prescribe a monetary amount or a percentage, the
- 26 regulations must prescribe both a monetary amount and a
- 27 percentage.

Definitions

- 28
- 29 (7) In this section:
- 30 ***eligible training*** means training or education provided in Australia
- 31 that contributes to the knowledge, skills or experience of an
- 32 individual in relation to the *making of films.

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

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

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

- 3 (a) for a film that is predominantly a digital animation or other
4 animation—the *making of the film;
5 (b) otherwise—the principal photography for the film.

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

9 **376-28 Minimum training expenditure exemption—permanent film** 10 **infrastructure established in Australia**

- 11 (1) A company is exempt from the minimum training expenditure
12 requirement for a *film under this section if:
- 13 (a) the company has contributed to the establishment or
14 upgrading of a piece of film infrastructure in Australia
15 (whether or not the establishment or upgrading is complete);
16 and
17 (b) the film infrastructure is or will be, or the upgrades are or
18 will be:
- 19 (i) permanent; and
20 (ii) reasonable in scale and cost, having regard to the scale
21 and cost of the film; and
22 (iii) reasonably located, having regard to the needs of the
23 Australian screen industry; and
24 (c) if the establishment or upgrading of the film infrastructure is
25 not complete—the establishment or upgrading will be
26 completed within a reasonable period of time; and
27 (d) the film infrastructure has, or the upgrades have, contributed
28 to alleviating capacity constraints in the Australian screen
29 industry.
- 30 (2) In this section, *film infrastructure* means buildings or other
31 physical structures that can be used in the *making of *films.

32 **376-29 Minimum training expenditure exemption—training** 33 **programs**

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

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- 1 (a) an individual (the *trainee*) that has worked on the *making of
2 the relevant film has undertaken a training program; and
3 (b) the period during which the trainee worked on the making of
4 the relevant film overlaps with the period during which the
5 trainee undertook the training program; and
6 (c) training has been, or will be, provided under the training
7 program for a period of at least 2 years; and
8 (d) the training program has contributed to:
9 (i) the making of the relevant film; and
10 (ii) alleviating capacity constraints in the Australian screen
11 industry.
- 12 (2) The reference in paragraph (1)(c) to training provided under the
13 training program includes, but is not limited to, a reference to
14 training provided to the trainee.
- 15 (3) In determining whether a training program has contributed to a
16 thing mentioned in paragraph (1)(d), the matters to which
17 consideration may be given include, but are not limited to, the
18 following:
19 (a) mentoring, industry partnerships and work experience
20 placements facilitated by the training program;
21 (b) skills shortages in the Australian screen industry that are
22 addressed by the training program;
23 (c) activities connected with the training program that contribute
24 to improving health and safety, diversity and inclusion in the
25 Australian screen industry;
26 (d) any matters specified in rules made under subsection (4).
- 27 (4) Subject to subsection (5), the *Arts Minister may, by legislative
28 instrument, make rules specifying matters for the purposes of
29 paragraph (3)(d), including matters of a kind referred to in any of
30 paragraphs (3)(a) to (c).
- 31 (5) Before making rules under subsection (4), the *Arts Minister must
32 consult the Minister.

11 After section 376-30

34 Insert:

35 376-32 Minister may require information

- 36 (1) Either:
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- 1 (a) before determining a company's *qualifying Australian
2 production expenditure on a *film under subsection 376-
3 30(1) for the purposes of the location offset; or
4 (b) before issuing a certificate to the company for the film under
5 section 376-20 (certificate for the location offset);
6 the *Arts Minister may, by written notice given to the company,
7 require that the company provide to the Arts Minister information
8 specified in the notice.
- 9 (2) The information specified in the notice must be information that
10 the Arts Minister considers relevant to:
11 (a) determining the company's qualifying Australian production
12 expenditure or issuing the certificate to the company; or
13 (b) assessing the benefit of the film to the Australian screen
14 industry.
- 15 (3) The notice must specify the time by which the information is to be
16 provided (which must be at least 30 business days after the notice
17 is given).
- 18 (4) The *Arts Minister may, on request by the company, extend the
19 time by written notice given to the company.
- 20 (5) If the information is not provided by the specified time (including
21 any extensions), the *Arts Minister may refuse to determine the
22 company's qualifying Australian production expenditure or issue
23 the certificate to the company.

24 **12 After paragraph 376-247(2)(b)**

25 Insert:

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

28 **13 Subsection 995-1(1)**

29 Insert:

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

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1 Division 2—Application provisions

2 14 Application provision—films

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

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

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

8 commenced on or after 1 July 2023.

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

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

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

14 commenced on or after 1 July 2024.

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

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

22 15 Application provision—use of resident entities for post, 23 digital and visual effects production

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

28 16 Application provision—minimum training expenditure 29 requirement

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

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1 **17 Application provision—infrastructure exemption**

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

5 **18 Application provision—training programs exemption**

6 (1) Paragraphs 376-29(1)(a) and (b) of the *Income Tax Assessment Act*
7 *1997*, as inserted by this Part, apply in relation to the undertaking of a
8 training program by an individual if the individual began to undertake
9 the training program on or after 1 July 2024.

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

13 **19 Application provision—power to request information**

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

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1 Part 3—Producer offset

2 *Income Tax Assessment Act 1997*

3 **20 Subsection 376-65(6)**

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

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

7 Insert:

8	7A	A *film where:	\$35 million	not applicable
		(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)		

9 **22 After subsection 376-65(6)**

10 Insert:

11 (6A) A *film that is both of the type referred to in item 7, and of the type
12 referred to in item 7A, of the table in subsection (6) meets the
13 conditions in that subsection if the film meets the conditions set out
14 in one or both of those items.

15 (6B) The conditions in this subsection are that:

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

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

20 (c) either:

21 (i) for a season that is predominantly a digital animation or
22 other animation—the *making of the season (other than

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- 1 a pilot episode, if any) takes place within a period of not
2 longer than 36 months; or
3 (ii) otherwise—all principal photography for the season
4 (other than a pilot episode, if any) takes place within a
5 period of not longer than 12 months.

6 **23 Application provision—films**

- 7 The amendments made by this Part apply in relation to a film for which:
8 (a) for a film that is predominantly a digital animation or other
9 animation—the making of the film; or
10 (b) otherwise—the principal photography for the film;
11 commenced on or after 1 July 2024.

12