TBA

### EXPOSURE EXPLANATORY MATERIALS

#### **Consultation preamble**

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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# Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ITAA 1997	Income Tax Assessment Act 1997
QAPE	Qualifying Australian production expenditure

## Outline of chapter

- 1.1 Schedule # to the Bill amends the ITAA 1997 to make changes to the location tax offset to:
  - increase the rate of the location tax offset to 30 per cent;
  - increase the minimum qualifying Australian production expenditure required to \$20 million and the per hours threshold to \$1.5 million;
  - include a minimum training expenditure test or alternatively a requirement to establish or upgrade certain permanent Australian film infrastructure or satisfy certain training program requirement for individuals working on the film;
  - require some post, digital and visual effects for productions to be provided by Australian providers or through an Australian permanent establishment; and
  - enable the Arts Minister to request information by written notice in a specified period for the location tax offset.

## Context of amendments

- 1.2 The location tax offset is a refundable tax offset calculated by reference to qualifying Australian production expenditure incurred in making films. Film production companies may be entitled to this offset for their film productions. The tax offset is intended to support and develop the Australian screen industry by providing concessional tax treatment for Australian film expenditure.
- 1.3 For a company to qualify for the location tax offset, there are certain conditions which must be met. Amongst other production requirements, the current eligibility conditions include that the production is of a certain type, the minimum total qualifying production expenditure is met and the company carried out or made the arrangements for all the activities in Australia which were necessary for the making of the film.
- 1.4 The amendments introduce new eligibility conditions which must be satisfied for a film production company to qualify for the location tax offset, including the use of Australian providers of post, digital and visuals effect and training requirements in recognition of the higher level of support provided under the changes.
- 1.5 Prior to the amendments, companies were eligible for the location tax offset at a rate of 16.5 per cent of their total qualifying Australian production

expenditure on a film. Under the amendments this rate increases to 30 per cent of a company's total qualifying Australian production expenditure on the film.

- 1.6 Prior to the amendments, the amount of a company's minimum qualifying Australian production expenditure on a film was \$15 million. Under the amendments, this increases to a minimum of \$20 million. The minimum qualifying Australian production expenditure per hour threshold for television series increases under the amendments from \$1 million to \$1.5 million.
- 1.7 The Government recognises the need to provide a boost to the Australian film industry and incentivise large budget productions to be filmed in Australia. The location tax offset changes will maintain Australia's competitiveness in attracting production and maintain investment in the Australian screen industry. Attracting international productions to Australia directly supports our local screen industry. It provides invaluable additional employment and development opportunities for Australian cast and crew, beyond what is available on domestic productions. This strengthens Australia's screen industry and its capacity to produce high-quality cultural content for Australian and international audiences.

## Summary of new law

1.8 Schedule # to the Bill amends the ITAA 1997 to make changes to the location tax offset. These include to increase the rate of the tax offset to 30 per cent, increase the minimum qualifying Australian production expenditure to \$20 million and the per hours threshold of film expenditure to \$1.5 million. Schedule # also includes new eligibility requirements for film training obligations and requires some post, digital and visual effects for productions to be provided by Australian providers or through an Australian permanent establishment of a foreign resident entity.

# Comparison of key features of new law and current law

New law	Current law
A 30 per cent rate applies for the location tax offset.	A 16.5 per cent rate applies for the location tax offset.

### Table 1.1 Comparison of new law and current law

New law	Current law
The qualifying Australian production expenditure per hour threshold for the location tax offset is \$1.5 million.	The qualifying Australian production expenditure per hour threshold for the location tax offset is \$1 million.
The qualifying Australian production expenditure threshold for the location tax offset is \$20 million.	The qualifying Australian production expenditure threshold for the location tax offset is \$15 million.
To qualify for the location tax offset, a film production company must use one or more Australian providers to supply some of the post, digital and visual effects for the film production.	Not applicable.
To qualify for the location tax offset a film production company must satisfy a minimum training expenditure test or alternatively:	Not applicable.
• establish or upgrade certain permanent Australian film infrastructure in connection with the film; or	
• satisfy certain training program requirements for one or more individuals working on the film.	
A rule making power enables the Arts Minister to set additional eligibility requirements that apply for the location tax offset that require a film production company to meet minimum training program requirements or contribute to the broader workforce or infrastructure capacity of the sector.	
The Arts Minister may seek information by written notice from a film production company in relation to the location tax offset.	Not applicable.

## Detailed explanation of new law

### Rate of location tax offset

1.9 Schedule # to the Bill increases the rate of the location tax offset from 16.5 per cent to 30 per cent for qualifying film production companies. The increase in

the rate is made to compensate for withdrawal of the location incentive grant of 13.5 per cent from 1 July 2023.

# [Schedule #, items 1 and 2, paragraph 372-2(3)(b) and section 376-15 of the ITAA 1997]

### Per hour production expenditure threshold

1.10 Schedule # to the Bill makes a number of changes to the requirements to be met before the Arts Minister is required to issue a certificate to a film production company in relation to the location tax offset. One of these changes is to increase the per hour qualifying Australian production expenditure threshold required to be met. Under the amendment the threshold increases from \$1 million to \$1.5 million.

[Schedule #, items 5 and 7, subsection 376-20(1), paragraph 372-20(3)(c) of the ITAA 1997]

### Production expenditure threshold

1.11 Schedule # to the Bill increases the qualifying Australian production expenditure threshold required to be met before the Arts Minister must issue a certificate to a film production company in relation to the location tax offset. Under the amendment the threshold increases from \$15 million to \$20 million.

[Schedule #, item 8, paragraph 376-20(5)(a) of the ITAA 1997]

# Australian or permanent establishment provider – post, digital and visual effects

- 1.12 To qualify for the location tax offset a film production company must engage one or more Australian resident entities or foreign resident entities with a permanent establishment in Australia and a valid Australian Business Number, that supply some of the post, digital and visual effects for the film production. Those services under the contract must have been provided to the film production company and at least part of the company's expenditure on the post, digital and visual effects production must be qualifying Australian production expenditure on the film.
- 1.13 Where the services are provided by an entity that is a foreign resident with an Australian permanent establishment, at least part of those services must have been provided through its Australian permanent establishment.

### [Schedule #, item 9, subsection 376-20(7) of the ITAA 1997]

1.14 These requirements ensure that Australian providers or Australian permanent establishments of foreign resident entities supply at least some of these

important services to film production companies and build and support the Australian post, digital and visual effects industry.

### Minimum training expenditure requirement

- 1.15 Schedule # to the Bill includes an additional training expenditure requirement before the Minister is required to issue a certificate to a film production company in relation to the location tax offset. This can be satisfied if the film production company incurs qualifying Australian production expenditure on eligible training activities or alternatively is eligible for an exemption from this requirement because the film production company:
  - establishes or upgrades or is establishing or upgrading permanent film infrastructure in Australia; or
  - undertakes a qualifying training program for individuals that have worked on the film.

### [Schedule #, item 9, subsection 376-20(8) of the ITAA 1997]

- 1.16 The minimum training expenditure requirement can be satisfied if a film production company incurs sufficient qualifying Australian production expenditure that meets certain requirements. The expenditure must be at least the minimum training expenditure or a higher amount. Each part of the expenditure must be:
  - qualifying Australian production expenditure that the company incurs on the film; and
  - incurred for or reasonably attributed to the eligible training of one or more individuals that have worked or are working on the making of the company's film.

# [Schedule #, item 10, subsections 376-27(1) and (2) and paragraphs 376-27(3)(a) and (b) of the ITAA 1997]

- 1.17 Schedule # of the Bill provides for the event that production costs overrun and the estimated minimum training expenditure requirement has not been met, a top up mechanism will be provided for film production companies to make a non-QAPE payment to a government film training or education provider of no more than 50 percent of the minimum training expenditure requirement.
- 1.18 Eligible training is defined by Schedule # as training or education provided in Australia that contributes to the knowledge, skills or experience of an individual in relation to the making of the film.

# [Schedule #, item 10, definition of eligible training in subsection 376-27(7) of the ITAA 1997]

1.19 The minimum training expenditure requirement ensures that film production companies that receive support under the location offset invest in the training of staff to contribute to the skills and capability of the Australian film industry.

# [Schedule #, item 11, definition of eligible training, section 376-27 of the ITAA 1997]

- 1.20 Production commencement day is defined as:
  - for a film that is predominantly a digital animation or other animation, the day that the making of the film commenced;
  - in any other case, the day that the principal photography commenced.

[Schedule #, item 10, definition of production commencement day, subsection 376-27(8) of the ITAA 1997]

### Minimum training expenditure amount

- 1.21 Schedule # to the Bill provides that the minimum training expenditure amount is, for a film with a production start date:
  - between 1 July 2024 but before 1 July 2025 the lesser of \$250,000 and 0.5 per cent of the film production company's total qualifying Australian production expenditure;
  - on or after 1 July 2025 the lesser of \$500,000 and 1 per cent of the film production company's total qualifying Australian production expenditure.
- 1.22 Alternatively, if an amount has been prescribed by regulations for the purposes of determining the minimum training expenditure amount, then the minimum training expenditure for the relevant years is the lesser of the prescribed monetary amount and the prescribed percent of the film production company's total qualifying Australian production expenditure.
- 1.23 Minimum training expenditure amount is defined by reference to the meaning given by subsection 376-27(4) of the ITAA 1997.
- 1.24 Total qualifying Australian production expenditure on a film (total QAPE) is defined for a company as the total of the company's qualifying Australian production expenditure on the film. This is the amount determined by the Arts Minister under section 376-30 of the ITAA 1997.

# [Schedule #, items 10 and 13, subsection 376-27(4), definition of total QAPE in subsection 376-27(7) and definition of minimum training expenditure amount in subsection 995-1(1) of the ITAA 1997]

- 1.25 The regulation making power to prescribe the prescribed monetary amount and prescribed percentage for the purposes of the location tax offset is limited so that:
  - the prescribed monetary amount must not exceed \$750,000; and
  - the prescribed percentage must not exceed 1 per cent of the film production company's qualifying Australian production expenditure for the relevant film.

- 1.26 Where the regulation making power is used it must prescribe both the prescribed monetary amount and the prescribed percentage. This is because if there is a need to prescribe an amount under the regulation making power both the amount and percentage would be expected to need to be adjusted.
- 1.27 Prescribed monetary amount and prescribed percentage are defined by reference to how they are calculated under paragraphs 376-27(5)(a) and (b) of the ITAA 1997 respectively.

# [Schedule #, item 10, subsections 376-27(5) and (7) and definition of prescribed monetary amount and prescribed percentage in subsection 376-27(7) of the ITAA 1997]

1.28 The new definitions and explanations introduced in Schedule # give effect to the policy intention for film production companies that receive support under the location offset, to invest in the training of staff to contribute to the skills and capability of the Australian film industry.

# Alternatives to minimum training expenditure threshold – establishing permanent film infrastructure or training programs

- 1.29 The minimum training expenditure threshold requirement has two specific exemptions. These are the permanent film infrastructure exemption and the training programs exemption.
- 1.30 The permanent film infrastructure exemption is available to a film production company that has contributed to or wholly established or upgraded permanent film infrastructure in Australia. Film infrastructure refers to buildings or other physical structures that can be used for the making of films. The infrastructure that has contributed to by the film production company must be permanent and reasonable in the scale and cost determined by reference to the scale and cost of the film and must be reasonably located having regard to the requirements of the Australian screen industry. If the film infrastructure is still to be fully established or completed at the end of the production of the film, then it must be completed within a reasonable period. The permanent film infrastructure must also contribute to alleviating capacity constraints in the Australian screen industry.

#### [Schedule #, item 10, section 376-28 of the ITAA 1997]

- 1.31 The training programs exemption may be available to a film production company where one or more individuals that have worked or are working on the making of the relevant film in Australia, have or will undertake a training program. An eligible training program must have:
  - commenced on or after 1 July 2024;
  - been provided for two or more years; and

- the period during which a person is trained under the training program must include at least part of the period of the principal photography for the relevant film or for a film that is predominantly a digital animation or other animation for at least some period during the making of the film.
- 1.32 The training must have or will contribute to the making of the relevant film in Australia. In addition, the training program must have contributed to alleviating the capacity restraints in the Australian screen industry.
- 1.33 In working out if a training program satisfies the necessary requirements, the following factors must be considered together with any other relevant matters:
  - mentoring, industry partnerships and work experience placements facilitated by the training program;
  - skills shortages in the Australian screen industry that are addressed by the training program;
  - activities connected with the training program contribute to improvements in health and safety, diversity and inclusion in the Australian screen industry; and
  - any matters specified in rules made as a legislative instrument by the Arts Minister (following consultation with the Treasurer), including those related to the above matters.

### [Schedule #, item 10, section 376-29 of the ITAA 1997]

- 1.34 The Arts Minister assesses if the minimum training expenditure threshold has been met through the certification process.
- 1.35 The alternatives to the minimum training expenditure threshold allow film production companies alternative pathways to meet the eligibility requirements of the location tax offset. The two alternatives available to a film production company, permanent infrastructure projects and training programs, encourage activities that alleviate skill and capacity restraints in the Australian film industry. Such projects and training programs support stability and continuity for the screen sector including encouraging increased economic investment, employment and skills development opportunities, technical innovation, growth opportunities for small and medium sized businesses and tourism gains. The training programs would also, where appropriate, provide opportunities in regional and remote Australia, for Indigenous persons and persons with disabilities.

### Information

1.36 The Minister may require information from a film production company by providing a written notice to the company, prior to determining the qualifying Australian production expenditure for the location tax offset, and prior to the Minister issuing a certificate for a film.

- 1.37 The notice must only request information the Minister considers relevant to determine the film production company's qualifying Australian production expenditure, or for the assessment of the benefit of the film to the Australian screen industry.
- 1.38 The notice must include the period in which the film production company must provide the requested information to the Minister, and this must be a minimum of 30 business days after the notice is issued to the film production company. This time period for providing the requested information, may be extended by the Minister upon request from the film production company.
- 1.39 Should the film production company fail to provide the requested information to the Minister in the specified period (including any extension), the Minister may refuse to determine the qualifying Australian production expenditure or issue a certificate for the film production company. A note is included in the legislation dealing with the issue of film certificates by the Arts Minister as a cross reference to refer to the Arts Minister's power to require the provision of information about films prior to issuing a film certification.
- 1.40 The information gathering power allows the Minister to accurately assess a film production company's qualifying Australian production expenditure, in addition to assessing the eligibility for the location tax offset. The information gathering power also allows the Minister to conduct the relevant research into the program and to ensure the program is working as intended.

# [Schedule #, items 6 and 11, note to subsection 376-20(1), section 376-32 of the ITAA 1997]

1.41 The Arts Minister may make a written delegation of their information gathering power to the Secretary of the Department administered by the Arts Minister or an Senior Executive Service (SES) employee or acting SES employee in the Department administered by the Arts Minister.

[Schedule #, item 12, paragraph 376-247(2)(ba) of the ITAA 1997]

### Consequential amendments

1.42 Schedule # removes the reference to media in the guide to Division 376 so that the Australia film industry is more accurately referred to as the Australian screen industry.

[Schedule #, item 4, section 376-1]

# Commencement, application, and transitional provisions

### Commencement

1.43 Schedule # commences on the first day of the first quarter after Royal Assent.[Clause 2]

### Application

- 1.44 The amendment to the increase in the rate of the location offset applies:
  - for a film that is predominantly a digital animation or other animation—the making of the film; or
  - otherwise—the principal photography for the film;

that commenced on or after 1 July 2023.

### [Schedule #, item 3]

- 1.45 Although, the amendment to the rate of the location tax offset applies retrospectively it is wholly beneficial for affected film production companies as the amendment enables qualifying companies to access a higher rate of the location tax offset.
- 1.46 The amendments to increase the per hours threshold, the Australian production expenditure threshold and the requirement to use one or more Australian entities for post, digital and visual effects apply:
  - for a film that is predominantly a digital animation or other animation—the making of the film; or
  - otherwise—the principal photography for the film;

commenced on or after 1 July 2023.

### [Schedule #, item 14]

1.47 The amendments in Schedule # to the Bill concerning the use of resident entities for post, digital and visual effects apply to post, digital and visual effects production provided on or after 1 July 2023 under a contract that has been entered into by the film company before, on or after 1 July 2023.

### [Schedule #, item 15]

1.48 The amendments introducing the minimum training expenditure requirement apply to contracts entered into before on or after commencement of this Schedule.

[Schedule #, item 16]

1.49 The amendments introducing the permanent film infrastructure exemption to the minimum training expenditure requirement apply to permanent film infrastructure for which the establishment or upgrading is completed on or after 1 July 2024.

### [Schedule #, item 17]

1.50 The amendments introducing the training program exemption to the minimum training expenditure requirement, apply to a training program, undertaken on or after 1 July 2024 other than the requirement to provide the training over a two-year period and the contribution of the training program to the making of the film and alleviating Australian film industry capacity constraints which can also occur in part prior to 1 July 2024.

### [Schedule #, item 18]

1.51 The amendments introducing the Minister's information gathering power, apply in relation to information, which was obtained by a company before, on or after commencement of Schedule # to the Bill. Although, the amendments apply to information obtained by a company before the commencement of Schedule # to the Bill, the information request can only be made prospectively following commencement of Schedule # to the Bill. The provision applies to information held prior to commencement to ensure that relevant information concerning films that are currently in production can be obtained.

[Schedule #, item 19]