

## Film Industry Incentives

A deduction may be allowed for capital moneys expended by a resident of Australia in, or by way of a contribution to, the production of a qualifying Australian film. These notes cover expenditure or contributions made under a contract entered into on or after 13 January 1983.

In the May 1988 Economic Statement the Government announced changes to the legislation in respect of Film Industry Incentives. The effect of these changes is to reduce to 100 per cent the rate of the deduction allowable for eligible capital moneys that are expended:

- in the case of moneys expended by way of contribution to the cost of producing a film — after 24 May 1988;
- in the case of moneys expended directly in producing a film — after 25 May 1988.

In limited circumstances, transitional provisions apply so that certain capital expenditure after these dates will continue to qualify for the existing higher rates of deduction of 120 per cent, 133 per cent and 150 per cent. These cases will be:

- capital expenditure incurred in producing or contributing to the cost of producing a film, under a contract, entered into at any time, where the film was underwritten before 25 May 1988 and;
  - (a) a copy of the underwriting agreement was lodged with the Secretary to the Department of the Arts, Sport, the Environment, Tourism and Territories before 2 June 1988; and
  - (b) the moneys were deposited in the Australian Film Industry Trust Fund before 1 July 1988;
- capital expenditure incurred on a film, under a contract entered into before 25 May 1988, that was not underwritten before 25 May 1988, where the moneys were deposited in the Australian Film Industry Trust Fund before 9 June 1988;
- capital expenditure incurred on a film, under a contract entered into on or after 25 May 1988, that was not underwritten before 25 May 1988, provided that:
  - (a) the Secretary to the Department of the Arts, Sport, the Environment, Tourism and Territories certifies that the film was substantially in production before 25 May 1988; and
  - (b) the moneys were deposited in the Australian Film Industry Trust Fund before 9 June 1988.

These changes also have the effect that where expenditure qualifies for the 100 per cent rate of deduction there will be no exemption from income tax of any of the net revenue from a film.

Subject to the provisions which apply where an underwriter has conditionally agreed to contribute to the cost of producing the film (see the notes under the heading 'Deductions for Investors who take the Place of an Underwriter' below) and subject to the above transitional provisions, the deduction is an amount equal to:

- 100 per cent of the amount contributed or expended under a contract entered into on or after 25 May 1988; or
- 120 per cent of the amount contributed or expended under a contract entered into after 19 September 1985 but before 25 May 1988; or
- 133 per cent of the amount contributed or expended under a contract entered into after 23 August 1983 but on or before 19 September 1985; or
- 150 per cent of the amount contributed or expended under a contract entered into on or before 23 August 1983.

To qualify, the relevant investment must be in a film that is certified by the Minister for the Arts, Sport, the Environment, Tourism and Territories:

- to be a feature film (including animated feature length movies and telemovies), a documentary or a mini-series of television drama, produced for exhibition to the public in cinemas or by way of television broadcasting, and
- to have been made wholly or substantially in Australia (or an external Territory) and to have a significant Australian content or to be a film made pursuant to an agreement between the Australian Government and the Government of another country.

Provisional certificates of qualification may be obtained from the Minister. However, eligibility is dependent on a final certificate being issued on completion of the film.

The Minister may delegate powers in this regard to the Secretary of the Department of the Arts, Sport, the Environment, Tourism, and Territories or a member of that Department's Senior Executive Service.

### Deductions for Expenditure or Contributions

A deduction is available in the year of expenditure or contribution conditional on the film being used for income-producing purposes within two years after the end of the year of income in which moneys were first expended in, or contributed towards, the production of the film.

Deductions in respect of moneys contributed are limited to amounts that are to be expended directly in the production of the film and are subject to the following additional requirements:

- a production agreement, or alternatively such an agreement together with one or more underwriting agreements, securing all funds necessary for the production of the film be entered into by the end of the financial year in which moneys were first expended in, or contributed towards, the production of the film;
- moneys contributed towards the production be held in a non-interest bearing account (hereafter referred to as a film account) opened in relation to the film in the Australian Film Industry Trust Fund administered by the Department of the Arts, Sport, the Environment, Tourism and Territories, pending their expenditure in producing the film; and
- a declaration be made in writing in relation to the film by an appropriate person within one month after the end of the financial year in which moneys are first contributed, or such further time as the Commissioner allows. Broadly, the declaration is to evidence that qualifying contributions have been, or are to be, dealt with in the appropriate manner.

### Deductions for Investors who take the Place of an Underwriter

An investor in a qualifying film who takes the place of an underwriter may be eligible for a deduction although not a party to the production agreement. Provided that the above requirements are satisfied, a deduction will be allowed to the investor who, in effect, takes up an underwriter's interest in a film, in the year in which the investor contributes to the cost of its production.

Subject to the above transitional provisions, where the investor's expenditure is incurred under a contract entered into:

- on or after 25 May 1988, the deduction will generally be allowed at a rate of 100 per cent; or
- after 19 September 1985 and before 25 May 1988, the deduction will generally be allowed at a rate of 120 per cent; or
- after 23 August 1983 but on or before 19 September 1985, the deduction will generally be allowed at a rate of 133 per cent.

However, subject to the above transitional provisions, where the investor has taken up an underwriter's interest in a qualifying film the production budget of which had been guaranteed by the underwriter under a contract entered into:

- before 25 May 1988 but after 19 September 1985, money contributed by the investor under a contract may qualify for the 120 per cent deduction;
- on or before 19 September 1985, but after 23 August 1983, money contributed by the investor under a contract entered into after 19 September 1985 may qualify for the 133 per cent concession;
- on or before 23 August 1983, money contributed by the investor under a contract entered into after 23 August 1983 may qualify for the 150 per cent concession.

A further condition for the 133 or 150 per cent concession to apply in the above circumstances, is that the estimated cost of production at the time the investor contracted to contribute had to exceed investors' committed capital (i.e. funds other than underwritten amounts).

## Special Withholding Tax Arrangements

Payments out of a film account for a purpose other than expenditure in the production of the film will generally be subject to special withholding tax arrangements.

Under these arrangements, where an amount is withdrawn from a film account to be paid as a refund of contributions to an investor, an amount equal to 72 per cent of the withdrawal (55 per cent in the case of a refund to a corporate investor, otherwise than in the capacity of a trustee of a trust estate) is to be withheld and remitted within 21 days to the Taxation Office. Amounts withheld under these arrangements will be credited against tax due on the amended assessment withdrawing the deduction previously allowed in respect of the excess contribution. Any excess credit will be applied against the amount of any other tax due to the Commissioner of Taxation, with any remaining excess being refunded to the investor.

An investor who has had an amount deducted under these arrangements from a refund of contributions may apply to the Taxation Office for a certificate exempting the person who made the deduction from the requirement to remit the amount of the deduction to the Taxation Office. Application for this certificate should be made within seven days of the amount of refund being withdrawn from the film account. Such a certificate will be issued where the Commissioner of Taxation is satisfied that a deduction has not been allowed to the investor in respect of the contribution to which the refund relates.

Broadly similar withholding arrangements apply in the case of amounts withdrawn from a film account otherwise than for expenditure in the production of the film or refund to an investor.

## Proceeds from Film and Revenue Expenses

Receipts from the film, whether the receipts are from Australia or overseas, including amounts received on the disposal of the whole or a part of a copyright will be treated as assessable income. However, there is an exemption of net receipts from the film up to a certain percentage of the taxpayer's qualifying investment in the film. This percentage is:

- 20 per cent in cases where a 120 per cent deduction has been allowed or is allowable;
- 33 per cent in cases where a 133 per cent deduction has been allowed or is allowable;
- 50 per cent in cases where a 150 per cent deduction has been allowed or is allowable.

The exemption applies to receipts net of deductions available to the investor for revenue expenses incurred in deriving the receipts. Revenue expenses associated with a film are deductible only on this basis. Where the deduction is 100 per cent, no exemption applies to net receipts.

Where film receipts from overseas are included in assessable income and foreign tax has been paid in respect of those receipts, a credit for the foreign tax paid may be available. Further information on the Foreign Tax Credit System can be obtained from the Taxation Office.

## Partnerships

Where a partnership is involved, the concession does not apply in the calculation of the partnership net income or loss. The concession is available instead to the individual partners and capital expenditure is treated as having been expended by the partners either in accordance with any agreement as to how the expenditure is to be borne or, in the absence of any agreement, according to each partner's interest in the partnership income. Similarly, film income is apportioned to each partner.

## Losses

Losses generated in an income year by deductions conferred by the concessions are available to be carried forward for deduction for seven years, but only against income derived from a qualifying Australian film. Any film losses must be first offset against net exempt film income and then against net assessable film income.

## Provisional Tax

Any deduction conferred by the concession in a year of income is not taken into account in determining the amount of provisional tax payable in respect of the succeeding year of income. However, by the process of self-assessment of provisional tax for a year, a taxpayer may take into account a deduction to which the taxpayer becomes entitled in that year.

## Deduction Safeguards

The relevant provisions contain safeguards, including a general 'at risk' rule so that expenditure qualifying for the concession is limited to amounts in respect of which the investor is at risk of loss should the film venture fail. They also include rules to prevent the substitution of contracts entered into before 13 January 1983 to gain eligibility on the basis of a deduction applying from that date.

## Information to Accompany Returns

Individual taxpayers claiming an amount of deduction for an investment in a qualifying Australian film must use Form AB. The deduction should be shown at Item 29. For trusts, the amount of the claim should be shown at Item 12 of Form T. For companies, the amount of the claim should be shown at Item 12 of Form C.

The claim should be clearly identified as a 'Film Industry Incentive' deduction and a statement (in the case of trusts and companies, as Schedule 9A) attached to the return showing:

- the title or proposed title of the film;
- the date of issue, by the Minister for the Arts, Sport, the Environment, Tourism and Territories, of the provisional certificate or, where the film has been completed, the final certificate in respect of the film;
- the date of completion of the film or, where the film has not been completed, the proposed date of completion of the film;
- details of your contribution(s) or expenditure, including the date of any contract under which the expenditure was made, the date(s) and amount(s) paid, whether the amount(s) paid was in lieu of an underwriter and the name and address of the person to whom payment(s) was made;
- details of your interest or expected interest in the copyright arising out of your expenditure on the film;
- details of all income derived from the film, including any amounts received or receivable in respect of the disposal of the whole or any part of your interest in the film copyright;
- where the film has not been completed, details of arrangements or proposals under which it may be expected that income will be derived from the film;
- the name and address of the entity undertaking the production of the film;
- the name and address of the person who has lodged, or who is expected to lodge, the necessary declaration in relation to the film and the Taxation Office at which the declaration is, or is to be, lodged; and
- if a claim is in respect of any amount paid by a partnership of which you are a partner, the name and file number of the partnership and the Taxation Office where the income tax return of the partnership is, or is to be, lodged.

Depending on the circumstances, the Taxation Office may need to seek additional details.

## Further Information

Should further information be required about any income tax aspect of the film industry provisions, contact should be made with the nearest Taxation Office. Questions relating to the certification of qualifying Australian films and to the administration of the Australian Film Industry Trust Fund should be directed to the Department of the Arts, Sport, the Environment, Tourism and Territories.