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Refundable Film Tax Offsets Review Response to Treasury

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This response has been compiled by the Australian Screen Editors, the peak body for Australia's editors, and the Australian Cinematographers Society, the peak organisation for cinematographers. Together, these associations represent the views of some 1500 professionals within the film and television industry as well as the views of representatives in each State and Territory.

The ACS and ACE welcome the invitation to contribute to a review of the Refundable Film Tax Offsets.

We support the introduction of the Offset and the principles behind it. In particular, we believe it is valuable relative to alternative funding mechanisms in that it:

- 1) provides funding directly and relatively efficiently to film producers;
- 2) helps to build sustainable businesses and rewards those that successfully make films; and
- 3) leaves the task of making creative decisions to the film-makers.

While we do not have data on the specific question of the impact of the tax offset on the relative levels of production by broadcasters and by the independent sector, we would like to take this opportunity to highlight a number of areas that are critical if the Producer Offset is to fulfil its potential.

Key Issues

CASHFLOW

The issue of cashflow remains a major problem. It should become less so once companies can start relying on the offset from previous films (along with income that may result from any enhanced equity) to fund future projects. But currently, at the start of this new funding method, film-makers are still in need of substantial support from Government – even if only as a cash-flow loan.

Enterprise funding proposed by Screen Australia may assist some businesses in this regard, but one-off or first projects will find it difficult to make films under this scheme. It needs to be remembered that, unlike the USA, we do not have a private sector that is used to funding, or investing in a range of films, or likely to do so for the majority of films.

Solution: Screen Australia needs to provide cashflow funding, especially in this period of transition to the new Producer Offset.

BUREAUCRACY

In many ways, the bureaucracy involved in accessing the Producer Offset is substantially lower than with alternative schemes. For those, however, accessing only the 20% Offset, which may in fact represent 15% of a \$300,000 budget, the bureaucratic requirements remain quite daunting.

Solution: Any methods of simplifying the process of claiming the Offset would be welcomed.

AUSTRALIAN-NESS

If the aim of the Producer Offset is to encourage the creation of viable Australian businesses, then this economic goal is not best reached by constraining the types of film made. What matters most is not where the film is shot, but who owns it – both creatively and financially.

There are certainly added spin-offs – for the environment, education and especially tourism – for films made about Australia. But this is logically a separate issue to the primary economic arguments for having the Offset.

What should ideally happen is that Government departments that gain a benefit from a particular film project (tourism, education etc.) should contribute to them separately from, and in addition to, the Offset. If this were to happen up-front, it could alleviate the cashflow problem described above.

Solutions:

- i) Review the Significant Australian Content test, recognising the primary importance of Australian creative and financial ownership, rather than the subject matter or location of a film;
- ii) A whole-of government approach should be adopted and departments that benefit from the making of films should contribute to them.

PERCENTAGES

40% is very useful percentage for the Producer Offset; 20% much less so. The benefits of most types of films to the Australian economy (through advertising Australia internationally, as well as through obtaining direct financial returns, i.e. export income) are such that the higher percentage could justifiably be more widely applied.

As just one example, the Australian tourism industry would rate the marketing value of a single \$1 million one-hour wildlife film that reaches over 50 countries as being well in excess of \$100 million, i.e. it would cost over \$100 million in production costs and “media buy” to generate the same level of publicity.

We believe that the value of the products of this industry are such that a 40% Offset across the Board can be justified. In the event, however, that the current 20/40% scheme remains, we believe it is arbitrary, and not in keeping with the primary aim of the Offset, to provide the maximum Offset only for drama features. It also creates real dilemmas for producers uncertain if their films will be successful in obtaining a theatrical release (see below).

Solution:

Investigate alternative ways to apply the offset.

One alternative would be to apply the offset as follows: a 20% offset could be applied when the creative “ownership” of a film is 100% Australian, i.e. all key creatives are

Australian; and a further 20% offset is applied when the financial ownership of a film is 100% Australian, i.e. when the rights to exploit a film remain with an Australian entity. (These percentages could either be applied as absolutes – as all or nothing – or on a sliding scale, depending upon levels of Australian creative and financial ownership).

Thus, the maximum Offset should be obtainable when the key creatives are all Australian and when the rights to exploit a film are retained within Australia. This would also encourage the employment of Australian creatives in as many roles as possible.

A FEATURE OR NOT A FEATURE

The difference between a 20% and 40% rebate is substantial and inevitably will make many filmmakers strive for a theatric release. In many cases, it cannot be determined until a film is finished whether or not it will get a successful theatric release, and one that meets the criteria of Screen Australia. In some instances, filmmakers may rely upon a 40% rebate only to find out, at the end of the production, that they will not receive it. This level of doubt is a serious impediment to many productions.

Solution:

The best solution, one that would remove the arbitrariness and risks attached to the current system, would be to provide 40% to films based not on the size of the screen they're initially exhibited on, but on the creative and financial ownership of a production.

THRESHOLDS

The thresholds applied at present are again arbitrary and the thresholds for documentaries, in particular, may have been set too high.

Solution:

A single, lower threshold could be applied, primarily as an administrative device to ensure that only *bona fide* productions apply. Otherwise, productions should not be constrained as to their budgets.

BENEFITS FOR ALL

It is likely to take some time before producers, the main beneficiaries from the Offset, pass on part of the Offset to other key creatives, either through enhanced up-front payments or back-end splits. Many in our industry are so used to working at bargain-basement prices that they will not be readily able to negotiate fair and reasonable agreements with producers.

It is also essential, as a means of encouraging the employment of Australians in all roles, that only payments made to Australians be eligible as QAPE.

Solutions:

- i) Clear regulations or guidelines need to be in place to ensure that the benefits of the Offset filter through to the entire industry;
- ii) Payments made to those involved in a production who are neither Australian citizens nor Australian residents should not be counted as QAPE and eligible for the Offset.

ATO – TAX YEAR

The fact that the Producer Offset is calculated only once a year is a significant problem, forcing producers to attempt to complete a production by 30th June.

Solution:

Create a mechanism for allowing the offset to be calculated and paid on a quarterly basis.