

Explanatory Statement

Issued by the Authority of the Minister for the Arts
Income Tax Assessment Act 1997

Location Offset Amendment Rules 2024

Authority

This instrument is made under subsections 376-260(2) and (3) of the *Income Tax Assessment Act 1997* (ITAA 1997).

Purpose

The purpose of the Amending Rules is to amend the *Location Offset Rules 2018* (the Principal Rules) to reference additional conditions that need to be met to be eligible to receive the Location Offset so it is consistent with the ITAA 1997.

Impact and effect

Legislative amendments to the Division 376 contained in Schedule 6 of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* apply additional new conditions that must be met to be eligible to receive the Location Offset.

The new conditions specify that in addition to the existing conditions, one or more Australian providers must be used to deliver post, digital and visual effects for the film and a minimum training expenditure requirement must be met or a film may qualify for an exemption by investing in a long-term training program or permanent film and television infrastructure in Australia.

The Amending Rules include references to these additional conditions to provide consistency with the ITAA 1997. This allows for the Film Certification Advisory Board to assess Location Offset applications and for the issuing of provisional and final certificates that confirm the relevant conditions to be eligible for the Location Offset will be met, are likely to be met or have been met.

Consultation

The amendments to the Principal Rules are considered minor in nature and necessary to reflect the additional conditions included in the ITAA 1997 contained in Schedule 6 of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

The Office of Impact Assessment was consulted and determined that detailed analysis was not required under the Australian Government's Policy Impact Analysis Framework (OIA24-07661).

Consultation on the new conditions contained in Schedule 6 of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* was undertaken with screen industry stakeholders, including industry representative groups, the Film Certification Advisory Board and applicants to the Location Offset. Additionally, stakeholders were provided an opportunity to comment on the Exposure Draft of the legislation and provide further feedback through a public consultation process held as part of the Senate Economics Legislation Committee inquiry into the Bill.

Background

The objects of the Principal Rules are to provide for the issue of provisional certificates in relation to the Location Offset and to specify how applications for certificates in relation to the Location Offset are to be made.

The Location Offset is legislated in Division 376 of the ITAA 1997 and entitles eligible applicants to a rebate on qualifying Australian production expenditure. This is intended to incentivise the filming of large-scale productions in Australia, growing the sector and increasing its capabilities. Applicants use the online portal to lodge an application, which is received by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department).

Depending on the nature of the application, provisional assessments are completed by either an Independent Film Production Consultant or in-house by departmental officers and then reviewed by the Film Certification Advisory Board. The provisional certificate is signed by the Chair of the Film Certification Advisory Board and is used to establish eligibility, provide a level of assurance for budgeting purposes and, if necessary, to cash flow loans and acquire financing. Once finalised, applicants receive the provisional certificate with a letter from the Department.

For final applications, the certificate is signed by the Minister for the Arts and is provided to the Australian Taxation Office by the applicant, along with their tax return, for receipt of the Location Offset rebate.

The Principal Rules set out what the Film Certification Advisory Board is to consider in relation to assessing an application for eligibility to the Location Offset and issuing or refusing to issue a provisional certificate. The Principal Rules also set out what the Film Certification Advisory Board is to consider in relation to assessing an application for eligibility to the Location Offset and providing advice to the Arts Minister as to whether to issue a final certificate to the Location Offset.

Legislative amendments to the Division 376 contained in Schedule 6 of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* apply additional conditions that a film must meet to be eligible to receive the Location Offset.

Summary of the Location Offset Amendment Rules 2024

Schedule 1 of the Amendment Rules provides the amendments to the Principal Rules to reference additional conditions that need to be met to be eligible to receive the Location Offset consistent with the ITAA 1997.

The amendments consist of including references to new subsections 376-20(7) and 376-20(8) of the ITAA 1997 under the relevant sections of the Principal Rules so the Film Certification Advisory Board can take into consideration the new conditions in assessing applications for eligibility to the Location Offset.

Subsection 376-20(7) refers to the new condition that one or more Australian providers must be used to deliver some of the post, digital and visual effects for the film.

Subsection 376-20(8) refers to the new condition that a minimum training expenditure requirement must be met, or alternatively the film is exempt from that requirement on the basis that film production company has established or upgraded certain permanent Australian film infrastructure in connection with the film (exemption set out at subsection 376-28) or the film is exempt because it satisfies certain training program requirements for one or more individuals working on a training program this is provided to support the production of two or more films (exemption set out at subsection 376-29).

The Amending Rules is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the default sunseting requirements and disallowance. The Amending Rules commences at the same time as Schedule 6 of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* commences. Details of the Amending Rules are set out in [Attachment A](#).

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. A Statement of Compatibility is at [Attachment B](#).

Conclusion

This Legislative Instrument does not raise any human rights issues.

Details of the Location Offset Amendment Rules 2024

Schedule 1 – Amendments

Item 1 inserts into Subsection 11(3) of the Principal Rules references to the additional new conditions (subsections 376-20(7) and (8)) that are included in Division 376 of the ITAA 1997 that must be met to be eligible to receive the Location Offset. As part of a provisional certificate process the Film Certification Advisory Board can request a written report about any matter that is relevant to whether the conditions for eligibility to the Location Offset a film will be met, or are likely to be met. Including the references to the new conditions allows the for these additional conditions to be considered as part of this process.

Item 2 inserts into Section 13 of the Principal Rules references to the additional new conditions that are included in Division 376 of the ITAA 1997 that must be met to be eligible to receive the Location Offset. This amendment will allow the Film Certification Advisory Board to consider the new conditions as part of its ability to refuse to issue a provisional certificate if it is not satisfied that the conditions for eligibility to the Location Offset will be met, or are likely to be met.

Item 3 inserts into Subsection 15(1) of the Principal Rules references to the additional new conditions that are included in Division 376 of the ITAA 1997 that must be met to be eligible to receive the Location Offset. This specifies that the Film Certification Advisory Board must issue a provisional certificate if it is satisfied that the film will meet or is likely to meet the conditions set out in Division 376-20 of the ITAA 1997.

Item 4 inserts into Subsection 16(1) of the Principal Rules references to the additional new conditions that are included in Division 376 of the ITAA 1997 that must be met to be eligible to receive the Location Offset. This Section specifies what information is to be contained in a provisional certificate. By inserting the references to the new conditions, these conditions will also be listed on the provisional certificate confirming the film will meet or is likely to meet all conditions for eligibility to the Location Offset.

Items 5 inserts into Subsection 21(3) of the Principal Rules references to the additional new conditions that are included in Division 376 of the ITAA 1997 that must be met to be eligible to receive the Location Offset. As part of an application for a certificate for the Location Offset, the Film Certification Advisory Board can request a written report about any matter that is relevant to whether a condition for eligibility to the Location Offset has been met. Including the references allows the additional new conditions to be considered as part of this process.

Item 6 inserts into Paragraph 23(1)(a) of the Principal Rules references to the additional new conditions that are included in Division 376 of the ITAA 1997 that must be met to be eligible to receive the Location Offset. As part of an application for a certificate for the Location Offset, the Film Certification Advisory Board must advise the Arts Minister whether it is satisfied that the conditions set out in Division 376-20 of the ITAA 1997 have been met. Including the references allows the additional new conditions to be included as part of this process.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Location Offset Amendment Rules 2024

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

Legislative amendments to the Division 376 contained in Schedule 6 of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* apply additional new conditions that must be met to be eligible to receive the Location Offset.

The purpose of the Amending Rules is to amend the *Location Offset Rules 2018* (the Principal Rules) to reference the additional new conditions that need to be met to be eligible to receive the Location Offset consistent with the ITAA 1997.

This allows for the assessment of Location Offset applications and for the issuing of certificates that confirm the relevant conditions to be eligible for the Location Offset, including the additional new conditions, will be met, are likely to be met or have been met.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument does not raise any human rights issues.