

**National Interest Analysis [2023] ATNIA 10**

**with attachment on consultation**

**Audiovisual Co-production Agreement between the Government of the Republic of  
India and the Government of Australia**

(Mumbai, 10 March 2023)

**[2023] ATNIF 10**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### Audiovisual Co-production Agreement between the Government of the Republic of India and the Government of Australia

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#### Nature and timing of proposed treaty action

1. The proposed treaty action is the entry into force through exchange of notes of the *Audiovisual Co-production Agreement between the Government of the Republic of India and the Government of Australia* ('the Agreement'), which was signed in Mumbai on 10 March 2023.
2. Article 20 of the Agreement provides that the Agreement shall enter into force once the Parties have notified each other through diplomatic channels that their respective domestic requirements have been completed. The Agreement shall enter into force on the latter date of these two notifications. Australia will provide its notification to India as soon as practicable following the completion of domestic treaty-making requirements. India has notified Australia that it has completed its domestic treaty-making process.

#### Overview and national interest summary

3. The purpose of the proposed Agreement is to encourage screen industry employment, technical development and cultural exchange between Australia and India by facilitating screen co-productions between the two countries. The Agreement provides a framework within which the relevant authorities of each country may cooperate to approve the making of a broad range of audiovisual productions including feature films, television, video recordings, animations and digital format productions.
4. Under the Agreement, projects approved as official co-productions will be regarded as national productions of both Australia and India, and will therefore be entitled to the full enjoyment of any benefits or programs of assistance available under the domestic laws of either country. India's screen industry has a system of government support to encourage the creation of local content and to attract foreign production. The model of government support is very similar to the Australian Government screen support model, with rebates for qualifying expenditure.
5. Article 8 requires that each co-producer contribute a minimum of 20 percent of the total financial and creative contributions and that the creative contribution is in reasonable proportion to that co-producer's financial contribution. Pursuant to Article 16, each Competent Authority will monitor and ensure that an overall balance of contributions is achieved over each three-year period, consistent with the aims of

the Agreement. Where the approval of a project as a co-production will affect this overall balance, paragraph 2 of Article 16 allows either Competent Authority to withhold such approval.

6. Articles 9 to 12 detail the responsibilities of the Competent Authorities and co-producers in relation to various aspects of film production. Article 9 relates to location filming in a country other than the countries of the participating co-producers. Article 10 sets out the requirements for the nationality of individuals participating in the making of audiovisual co-productions according to various circumstances, including those subject to the Competent Authorities' approval. Article 11 relates to language and location requirements for the original soundtrack, narration, dubbing, subtitling and music composition. Article 12 provides detail of requirements relating to the making of audiovisual co-productions up to first print, including the location of the work and proportion of specially shot footage.
7. The Australian screen industry supports the Agreement, and has done so from the outset of negotiations. This Agreement will open new avenues for industry investment and distribution for Australian producers in a very large and growing market: India is currently the largest producer of films globally, with one of the largest cinema admissions markets in the world. The Agreement will showcase our culture, landscapes and people to India and help boost tourism to Australia.
8. Treaty action will further strengthen bilateral relations between Australia and India by building upon existing interest between screen producers to open up new markets for jointly developed Australia-India screen projects. The Agreement will also create a larger distribution network for quality exportable film products in the domestic markets of both countries, as well as the international market.
9. The Agreement was agreed in-principle in the margins of the negotiations for Australia-India Economic Cooperation and Trade Agreement (ECTA), signed in April 2022. IT is considered a valuable outcome for the Australian screen industry.

### **Reasons for Australia to take the proposed treaty action**

10. This Agreement will be the fourteenth co-production arrangement that Australia has entered into under the auspices of Australia's International Co-production Program ('the Program'), the principal purpose of which is to foster industry development and cultural exchange between cooperating countries. Within this framework, co-production arrangements are negotiated bilaterally with the aim of sustaining and developing Australian creative resources and production. Australia is currently party to 11 bilateral film co-production treaties (with the United Kingdom, Canada, China, Italy, Ireland, Israel, Germany, Republic of Korea, Malaysia, Singapore and South Africa) and two Memoranda of Understanding (with France and New Zealand). Since the inception of the Program in 1986, 210 co-productions with a total budget of approximately AUD \$2.02 billion have either been completed or have commenced production (as at 1 March 2023).

11. The objective of the proposed Agreement with India is to facilitate co-productions which:
- increase the output of high-quality productions, by sharing equity investment with India;
  - open up new markets both in India and internationally for Australian film, television, animation and digital format productions;
  - share the risk (and cost) of screen production;
  - establish links with Indian production and distribution interests;
  - facilitate interchange between Australian and Indian screen professionals, particularly those in principal creative positions;
  - create employment opportunities for Australian industry personnel; and
  - strengthen existing diplomatic ties between Australia and India.
12. Official Australia-India co-productions will gain financial benefits under the Agreement. In Australia, the main benefits available for co-productions will be their eligibility to be treated as productions with significant Australian content that can therefore access the Australian Screen Production Incentive – Producer Offset under the *Income Tax Assessment Act 1997*, and eligibility to qualify as ‘Australian program content’ for the purposes of the Australian Content Standard for commercial television broadcasting. Official co-productions will also be able to access direct funding through Screen Australia. Similarly, in India an official co-production will be considered an Indian production for the purposes of official financial support and audiovisual regulations.
13. India is an attractive market for Australian co-productions due to the government-funded schemes in place to support local film production and the potential to reach a very large audience (population of 1.4 billion and over 9,000 cinemas nationwide). In 2021, the overall revenue raised by India’s film industry exceeded INR \$90 billion (AUD \$1.6 billion). India’s television industry is also substantial, with approximately 210 million television-holding households in 2020 and an estimated market size of INR \$1.2 trillion (AUD \$21.8 billion) in 2022.
14. The Agreement is underpinned by the notion of reciprocity, a principle applied to ensure that over time there is an overarching balance of financial and creative participation by both countries, and that the Agreement is of comparable benefit to both countries. This includes an overall balance in relation to respective production costs, studio and laboratory usage, and the employment of nationals of both Parties in major creative (i.e. directors, writers), performing, craft and technical positions related to screen co-productions made under the Agreement.
15. The Agreement will build on existing partnerships between Australian and Indian producers and provide the impetus to develop high-quality projects that may not otherwise have been undertaken.

## Obligations

16. Pursuant to Article 3, proposals for the making of co-productions must be submitted to the Competent Authorities of each Party (as required to be designated under Article 2) for provisional approval prior to the commencement of production. Paragraph 4 of Article 3 provides that, in considering the approval of proposed co-productions, the Competent Authorities may stipulate additional conditions of approval to ensure that individual projects meet minimum quality standards and an overall balance between the two countries (in accordance with Article 16.1). Where such approval is withheld by one of the Competent Authorities, paragraph 5 of Article 3 requires that the project not be approved as a co-production under the Agreement. Paragraph 6 of Article 3 provides that neither Party is bound to permit the public exhibition of a completed co-production. Screen Australia is designated as Australia's Competent Authority.
17. In approving co-productions, Article 4 requires the Competent Authorities to ensure that none of the co-producers are linked to one another, either directly or indirectly, by common management, ownership or control, unless the common management relates to the making of the co-production itself. Paragraph 4 of the Annex further requires the Competent Authorities to ensure that contractual arrangements between co-producers include certain details, such as the date of completion of the co-production, and is consistent with Article 6 (Entitlement to Benefits).
18. Once approved as a co-production between Australia and India, Article 6 requires that each co-production be entitled to all the benefits that are or may be accorded in Australia or India to national productions. Pursuant to paragraph 2 of Article 6, any subsidies, tax incentives or other financial incentives that may be granted to a film co-production shall accrue to the co-producer who is permitted to claim the benefits under the existing measures of that Party. Such benefits may not be assigned except pursuant to paragraph 3 of Article 6, to or for the benefit of:
  - a. a legal entity or national of that co-producer's country; or
  - b. an individual or legal entity of a third country, who is a third country co-producer consistent with Article 5 (a co-producer of a film under another film co-production agreement or other arrangement between that third country and India or Australia, so long as that production has been approved by the Competent Authorities as a co-production under this Agreement).
19. Article 7 obliges Australia, subject to its laws, to permit the import and re-export, free of import duties and taxes, of cinematographic and technical equipment for the making of co-productions. Article 7 also provides that Australia shall facilitate the entry and temporary stay in Australia of Indian nationals or nationals of the country of any third co-producer, for the purpose of producing the film. India is under the same obligations in corresponding circumstances (Article 7).
20. Article 13 requires that each Party satisfy itself that the working conditions in each of the countries of the participating co-producers are generally comparable and the working conditions for approved location filming in countries other than those of the co-producers are, in broad terms, comparable.

21. Article 14 sets out obligations and powers of each Party and their Competent Authority in relation to acknowledgement and credit requirements on each audiovisual co-production.
22. Article 15 obliges both Parties to apply their respective laws for the purposes of taxation, subject to the provisions of any tax convention between Australia and India.
23. Article 17 requires the competent authority of Australia to confirm any jointly determined modifications to the Annex in writing.
24. Pursuant to Article 19, any dispute concerning the interpretation or implementation of any of the provisions of the Agreement shall be settled amicably through mutual consultation and negotiations.
25. Pursuant to Article 6, in the event of termination, the Agreement shall continue as if in force in respect of any co-production approved by the Competent Authorities, but not yet completed prior to the termination.

## **Implementation**

26. No new legislative measures are required to implement the obligations under the Agreement.
27. The *Income Tax Assessment Act 1997* allows access to tax incentives for official co-productions (the Producer Offset), and the *Migration Act 1958* and its regulations allow for entry into Australia of co-production teams as envisaged by the Agreement.
28. Once in force, this Agreement will constitute a ‘relevant intergovernmental agreement’ for the purposes of both the Customs and Tax Acts. For goods that are the subject of a ‘relevant intergovernmental agreement’, the *Customs Act 1901* provides for their delivery into home consumption as goods temporarily imported, without the need for the goods to be entered for that purpose, or the payment of applicable duty, provided that a security or undertaking is established. Corresponding provisions in *A New Tax System (Goods and Services Tax) Act 1999* extend these arrangements to the otherwise applicable Goods and Services Tax. Consequently, no change is required in these Acts to allow for the temporary admission, free of duty and tax, upon the giving of a security or undertaking, of cinematographic and technical equipment for the making of a co-production as required by Article 7 of the Agreement.
29. The Agreement confirms that both Parties shall apply their domestic tax laws, subject to the provisions of any tax treaty in force between Australia and India (Article 15). The current tax treaty between Australia and India is the *Agreement between the Government of Australia and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, which was signed in Canberra on 25 July 1991 and entered into force on 30 December 1991 [1991] ATS 49. This tax treaty was amended by an Amending Protocol signed in New Delhi on 16 December 2011 with entry into force

on 2 April 2013 [2013] ATS 2. The tax treaty applies to Australian and Indian income tax and includes rules which allocate taxing rights over various types of income, as well as rules for reducing any double taxation where both countries exercise their right to tax. Further, Australia is Party to the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (OECD MLI) which further modifies Australia's tax treaty obligations. Provisions of the OECD MLI apply to Australia's tax treaty with India.

30. The Agreement will be administered by Screen Australia on behalf of the Australian Government as part of Australia's International Co-production Program.

### **Costs**

31. While there will be some costs associated with the administration of the proposed Agreement, these costs will be absorbed by Screen Australia.
32. Direct agency funding of Australia-India co-productions through Screen Australia will be provided from existing funds. Production under the Agreement is estimated to incur claims under the Producer Offset in Division 376 of the *Income Tax Assessment Act 1997*. This was considered in the broader context of the AI-ECTA Agreement, as the co-production agreement was finalised in the margins of that mechanism.

### **Future treaty action**

33. Article 18 specifies that revisions, modifications and amendments to the Agreement can be made with the mutual agreement of both Parties. A revision, modification or amendment would enter into force once the Parties have notified each other that their respective domestic requirements for entry into force of the revision, modification or amendment have been completed. A revision, modification or amendment of the Agreement would be subject to Australia's domestic treaty-making requirements, including tabling and consideration by the Joint Standing Committee on Treaties (JSCOT).

### **Withdrawal or denunciation**

34. Article 21 specifies that the Agreement shall remain in force initially for three years from the date of its entry into force, and shall thereafter be renewed automatically for further successive periods of three years.
35. Pursuant to Article 21, either Party may terminate the Agreement at the conclusion of a three-year period by giving six months prior notice in writing through diplomatic channels. Termination by Australia would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

### **Contact Details**

Digital Games and Business Development Section  
Office for the Arts  
Department of Infrastructure, Transport, Regional Development, Communications and  
the Arts



## **ATTACHMENT ON CONSULTATION**

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#### **CONSULTATION**

36. Negotiation of the Agreement commenced in 2010 with the then Department of Environment, Water, Heritage and the Arts (DEWHA) ('Department') taking the lead role.

37. The Trade and Co-production Forum (TCF) – an industry consultative group convened by the Department – was consulted at ad hoc meetings during the formative stages of negotiations to ensure that the Agreement was in line with current industry practice and would provide potential benefits to the Australian industry. The industry bodies involved in the TCF are national organisations that consult widely across all States and Territories. No issues were raised in these consultations, and the TCF noted increased interest in the Indian market from the sector. The text of the Agreement was developed with advice from Screen Australia, as the Competent Authority for all of Australia's co-production agreements, using the co-production agreement template that had been developed in consultation with the TCF. The TCF comprised representatives of the peak film and digital content industry bodies, including:

- Ausfilm;
- Austrade;
- Australian Broadcasting Corporation;
- Australian Cinema Exhibitors Coalition;
- Australian Communications and Media Authority;
- Australian Directors' Guild;
- Australian Guild of Screen Composers;
- Australian Interactive Media Industry Association;
- Australian Writers' Guild;
- Games Developers Association of Australia;
- Independent Cinemas Association of Australia;
- Interactive Games and Entertainment Association;
- Interactive Entertainment Association of Australia;
- Media, Entertainment and Arts Alliance;
- Motion Picture Distributors Association of Australia; and
- Screen Producers Association of Australia.