



Senate Economics Legislation Committee  
Parliament House  
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10 June 2018

Dear Committee Members,

**Inquiry into Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018 [Provisions]**

MEAA acknowledge your 4 June 2018 invitation to comment Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018 [Provisions] by 10 June 2018.

Treasury has asserted, inter alia, that:

*The amendment to the producer offset imposes an Australian residency requirement on individuals that perform services outside Australia through a company or permanent establishment if a film reasonably requires a foreign location to be used for principal photography. This ensures that the producer offset is used to support the Australian screen industry as intended.*

*Under the amendment expenditure that is incurred for a service from a company or permanent establishment with an ABN can only be qualifying Australian production expenditure if the service that is supplied is performed by an individual who is an Australian resident.*

*The amendment applies to expenditure incurred in relation to films that commenced principal photography on or after 1 July 2017.*

This amendment seeks to further restrict current qualifying Australian production expenditure (QAPE) when all three criteria applying to the 'Gallipoli' clause have been satisfied.<sup>1</sup>

MEAA is concerned that this measure has been developed without any apparent consultation with industry participants. We are also aware that the measure will have retrospective application. MEAA opposes changing the rules mid-stream. It is the epitome of bad faith and could only have a negative impact on affected projects.

As to the proposed amendment's merits, it will disqualify from QAPE eligibility expenditure on services provided by cast and crew where they do not satisfy the definition of 'Australian resident', even when they possess an Australian Business

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<sup>1</sup> i. The expenditure is remuneration of Australian residents or the purchase of goods or services from companies or permanent establishments that have an ABN, and ii. It is during principal photography for the film, and iii. where the subject matter of the film reasonably requires the use of the overseas location.

Number (ABN). To possess an ABN, the Australian Government advises that an ABN applicant ‘must be carrying on a business in Australia. This means that you must have started trading or have undertaken business-like activities towards the commencement of trading.’<sup>2</sup>

MEAA believe that drawing this distinction will damage the reputation and operations of the Australian film industry.

We can see no evidence for Treasury’s claims that the amendment will ensure that the producer offset is ‘better targeted at supporting the Australian film industry’ and that ‘[existing] expenditure does not directly support the Australian screen industry’. A proper process of consultation would enable all parties to test these assertions.

Notwithstanding the absence of such evidence, Treasury’s views defy the modern reality of the mobility of international film and television resources. Australian citizens who no longer qualify as Australian residents is an increasingly active cohort within Australian film and TV production.

The level at which these Australians perform their craft means that they often pursue more sustainable and profitable work opportunities outside of Australia. A consequence of this is the loss of Australian residency status; but this does not displace their commitment to the Australian film and television industry and it should in no circumstance equate to them facing new obstacles to the develop our sector.

In this respect MEAA note that many Australian actors capable of raising finance for Australian productions are non-residents. Under this change, where an actor is a non-resident Australian (i.e. living in the US or UK) and provides services on an offshore location, for the period of that shoot, the value of their services would be ineligible for the offset.

MEAA is also concerned about the implications for continuity if personnel changes are caused mid-production due to what can and cannot be claimed against QAPE, especially when budgets are limited.

Notwithstanding MEAA’s views on equalizing the producer offset for film and television productions, the producer offset is working and is a known quantity within the sector. Screen Australia’s November 2017 publication, *Skin in the game: The Producer Offset 10 years on*, makes this point. The report found that:

- 91% of surveyed production companies indicated that the PO was “critically important” to the operation of their businesses.
- 92% of respondents considered their equity stake in projects had increased since the introduction of the PO, with 61% indicating that it had “significantly increased.”
- 98% of companies working in the TV/ streaming sector retained all of their PO equity.

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<sup>2</sup>[https://abr.gov.au/uploadedFiles/Content/Download\\_Files/Getting\\_an\\_Australian\\_business\\_number.pdf](https://abr.gov.au/uploadedFiles/Content/Download_Files/Getting_an_Australian_business_number.pdf)

- Where equity in feature film projects was traded it was most commonly traded to Australian private investors (36%) followed by foreign private investors (15%) and local cast (15%).
- 87% of respondents said the PO contributed to their ability to consistently produce content.
- The Producer Offset has positively contributed to business revenue.

Notwithstanding MEAA's long-held views about equalising producer offset levels between television and film, it is clear that the producer offset as it stands is popular. We believe that imposing new rules will compromise current sensible compliance rules and make the offset less attractive.

The measure also conflicts with recent positive news for the film and television production sector: the four-year increase from 16.5% to 30% to the Location Offset rebate available to foreign productions in Australia over four years. The improvement to the Location Offset will benefit both domestic and non-Australian productions, but has been widely regarded as a boon for major offshore studios.

Adoption of this proposed taxation measure will see our sector left with the incongruous situation whereby non-resident wages on Australian locations are eligible for offsets, while non-resident wages incurred by Australian productions in offshore locations will not. This seems to punish Australian productions while providing a 'rails run' for major international studios. Some might rightly claim that this measure sends a message that the Australian government actively prefers foreign studios over innovative Australian producers.

The Australian production industry craves stable and constructive policy settings. This measure runs counter to this objective and, with respect, should progress no further.

Yours sincerely

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Media, Entertainment & Arts Alliance