Grant income tax concessions to investors in Australian film productions being:-

- deduction for capital expenditure
- exemption from tax on film proceeds

Background

The Bill gives effect to promises contained in the Prime Minister's policy speech for the 1980 election to assist the growth of the Australian Film Industry by way of income tax concessions for investors in Australian films.

The concessions contained in the Bill are in addition to previous less generous and stringent tax concessions available to investors in Australian films which allowed for capital expenditure to be written off over a period of two years from the film first being used to produce assessable income (Division 10B). These concessions will continue to apply if so elected by a taxpayer (section 124ZAE).

This Bill introduces wider concessions than previously available, namely 150% of capital expenditure (previously 100%) to be written off in one year (previously over two years) and exempts from income tax proceeds from a certified film up to a maximum of 50% of the eligible capital expenditure incurred in the production of the film.

The Treasurer announced in his Second Reading Speech that the deduction for capital expenditure would not be allowed until the year in which a film was first used to produce assessable income, rather than in the year in which capital was contributed, as originally envisaged by the Government. However, this announcement led to concern being expressed by the Film Industry that the timing of the deduction would result in poor quality films made in haste, especially by interests associated with the tax avoidance
industry who benefit from the earliest timing of the
deduction. Consequently, the Treasurer announced on 3 June
1981 that the Bill was to be amended to allow, as a
transitional measure, a deduction in the year in which
capital is contributed where the contribution is made under
a contract entered into during the period 1 October 1980 to
27 May 1981 to films certified prior to 28 May 1981.

Main Provisions

The concessions will apply to contracts entered
into on or after 1 October 1980, with transitional
provisions applying in respect of contracts entered into
between 1 October 1980 and 27 May 1981.

Expenditure Deductions - Clause 13 - Division 10BA

Clause 13 inserts section 124ZAA in the Income Tax
Assessment Act 1936 specifying the conditions to be met
before the Minister for Home Affairs and Environment issues
the required certification that a film is an "Australian
Film" and consequently eligible for the concessions.

Australian resident taxpayers subscribing capital
towards the production of qualifying films in respect of
which they become first owners of the copyright may be
eligible for a deduction equal to 150 per cent of their
capital contribution. (new section 124ZAF).

As introduced new section 124ZAF allowed a
deduction in the year in which the film copyright is first
used to produce assessable income.

However the Bill was amended in Committee on 9 June
1981 such that subsections (1) and (2) of the proposed new
section 124ZAF are amended and new subsections (2A) to (2D)
are added.

The effect of the amendment is that a deduction
will be allowable for expenditure incurred under a contract
entered into on or after 28 May 1981 in the year of income
in which film copyright is first used for producing
assessable income (new sub-sections 124ZAF (1)-(2)) and that
in respect of expenditure incurred under a contract entered
into on or after 1 October 1980 and on or before 27 May 1981
the amount shall be allowable as a deduction in the year of
income in which it was incurred. (new sub-section 124ZF
(2A)).

New sections inserted by clause 13 designed to
prevent abuse of the legislation in relation to the amount
of expenditure eligible for deduction include section 124ZAG
capital contributed must be expended on production of the film; section 124ZAJ, costs incurred in the production of the film must be at arm's length; section 124ZAK, expenditure eligible for deduction is reduced by an appropriate amount where assets acquired for use in the production of the film are subsequently disposed of or used for other purposes; section 124ZAL where future copyright is partially assigned to another; section 124ZAM expenditure must actually be "at-risk" of loss in the production of the film.

Clause 10 introduces necessary amendments to section 124K(2) of the Principal Act to ensure that expenditure allowed under the new provisions and expenditure which would not be deductible pursuant to the abovementioned safeguarding provisions, other than section 124ZAM "at-risk", will not be allowed as a deduction under the existing Divisions 10B 2 years write-off provisions. Expenditure disallowed as not being "at-risk" may, in certain cases continue to be deductible under the existing 2 year write off provisions (section 124K(2A)).

**Income Exemption**

Clause 3 introduces new section 23H into the Principal Act allowing the exemption from income tax of "net assessable income" up to a total of 50 per cent of eligible capital expenditure. "Net assessable income" for the purposes of new section 23H is defined in new sub-section 23H(3) to be film proceeds less the deduction for revenue expenses allowable by new section 124ZAO.

Film proceeds are those proceeds from the use of or disposal of film copyright as would be included in assessable income by new sub-section 26AG (see clause 4 below).

Pursuant to new section 124ZAO the deduction in any year for revenue expenses incurred in relation to a film and the gaining or producing of film proceeds cannot exceed film proceeds of the year (new sub-section 124ZAO (2)). However, new sub-section 124ZAO (3) provides that the excess can be carried forward to the next succeeding year to be offset by future film proceeds.

Where net assessable income in the first year does not exceed the maximum exemption of 50 per cent of eligible capital expenditure, the balance is carried forward to succeeding years until the full income exemption is achieved (new sub-sections 23H(1)-(2)).
Clause 4 which introduces new section 26AG includes as assessable income, amounts derived both from the use of the film copyright and its disposal. Both classes of income are eligible for the income exemptions. In the case of disposals of the copyright the expenses of disposal are to be taken into account in determining the proceeds of disposal and such disposals must be for arm's length consideration.

Tax Losses

Clauses 6, 7 and 8 introduce amendments which relate to the carried forward tax loss provisions of the Principal Act. Clause 6 amends section 80, clause 7 introduces new section 80AAA and clause 8 amends sections 80AB and 80AC. The clauses are complex and explained in detail in the Explanatory Memorandum on pages 13 to 23.

However, their broad affect is that where in any one year, allowable film deductions exceed assessable film income a "film loss" is incurred. If such a "film loss" results in an overall tax loss by a taxpayer the lesser of the "film loss", total loss or where primary production losses are incurred total loss less primary production loss can only be recouped by the production of future film income, subject to a seven year limitation, and not by income from other sources.

Partnerships

Clauses 4, 11 and 13 contain provisions applicable to film investments by partnerships.

New sections 124KA (inserted by clause 11) and 124ZAP (inserted by clause 13) provide that capital expenditure, and section 26AG that income from the use of film copyrights, are to be apportioned between each individual partner in accordance with their respective entitlements. Each partner may exercise his option under new section 124ZAE that the concessions not apply.

New section 26AG provides (in new sub-section 3) that where upon the formulation, dissolution or variation in the constitution of a partnership a change occurs in ownership of the copyright a disposal is deemed, the consideration for which is to be included in the assessable film income of the partner retiring or reducing an interest.

Double Taxation

Clause 4, inserts new section 26AG(7) which provides that income from "film exhibition" derived and
taxed overseas will be exempt from Australian tax. Non-film exhibition income derived overseas is not exempt, however a tax credit against Australian tax for overseas tax paid will be available to prevent double taxation (section 160AGA).

Non-residents previously entitled to qualifying expenditure deductions, which are lost on becoming a non-resident, are not exempt from tax on film income, (section 26AG(8)), however, a tax credit against Australian tax for overseas tax paid is available.

The above amendments allowing the tax credits are contained in clauses 14 and 15 of the Bill.

Amendment of Assessments

Clause 16 of the Bill amends sub-section 170(10) of the Principal Act to enable the Commissioner of Taxation to amend assessments at any time to disallow deductions previously allowed for capital expenditure. The amendment is required to overcome time limitations imposed by section 170 for the amendment of assessments. This protects the Commissioner should facts relating to safeguarding provisions emerge after the normal statutory time limits for the amendment of assessments.

Provisional Tax

Clause 17 amends section 221YA of the Principal Act and provides that for the purposes of determining provisional tax, deductions allowed in respect of film concessions will not be taken into account.

For further information, if required, contact:

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