# ATTACHMENT 2: TAX INCENTIVES PROPOSAL

# LIVE THEATRE TAX OFFSET

PROPOSAL FOR CONSIDERATION

## 1. Purpose

The purpose of this document is to outline a proposal for live theatre tax incentives. The tax incentives would apply to pre-production costs of live theatre (commercial and not-for-profit) and be cost neutral when set between 25% and 40%.

## 2. Background and Context

### LPA HAS CONTINUOUSLY ADVOCATED FOR PRE-PRODUCTION TAX INCENTIVES

As outlined in LPA's Pre-Budget Submission (2024-2025), tax incentives are needed to attract the level of investment required to produce and stage world class shows, support more Australian jobs and drive industry growth.

LPA has advocated for live theatre tax incentives through Pre-Budget submissions since 2016. The time is right to adopt this proposal in 2024, to meet the significant aspirations of the National Cultural Policy - *Revive*.

The rationale for this proposal can be summarised as follows:

- It is increasingly challenging for Australian producers to finance new live productions, due to the high cost of pre-production and difficulties in attracting investment.
- Theatrical producers in Australia compete against other industries that offer tax incentives.
- Theatrical producers in Australia also compete for investors with international jurisdictions that offer significant tax incentives for live productions.

Due to the above, opportunities to develop new content with Australian-owned intellectual property and job creation have been lost.

### TAX INCENTIVES HAVE PROVED SUCCESSFUL IN AUSTRALIA AND OVERSEAS

Tax incentives offered within Australia and overseas are detailed under Section 3: Key Issues. They have proved extremely beneficial in terms of industry support, economic output and job creation.

For example, within Australia:

- Australia's package of screen offsets (location, producer, and post, digital and visual effects) generated **$16.5b in economic output** from 2018/19 to 2021/22, with 20,600 FTE jobs supported in 2021/22 alone.

- Of the 10 international production companies responsible for nearly 90% foreign production expenditure between 2018/19 and 2021/22, all indicated that they would **not** have undertaken their productions in Australia without the Location Incentive (grant and offset). [1]
- In reviewing the decade since Australia's Producer Offset was introduced, 91% of surveyed production companies indicated that the offset was critically important to the operation of their business and 87% said that it contributed to their ability to consistently produce content.[2]

# 3. Key Issues

Australian producers face the following key challenges:

### RISING COSTS AND DIFFICULTIES IN ATTRACTING INVESTMENT

Prior to the pandemic, a commercial musical typically required AU$10 million to $15 million to capitalise a show. Post-pandemic, capital costs have increased by at least 30% on average. Therefore, in order to raise enough funds to produce a show, producers either need to cast the net wider to find new investors or ask investors with whom they have existing relationships to dig deeper into their pockets. Future investment in Australia will be severely constrained if producers cannot offer incentives to compete with other industries and jurisdictions that offer attractive tax incentives to investors.

Case study examples of general costs and investment sources are provided at **Attachment A.**

### COMPETITION WITH OTHER AUSTRALIAN INDUSTRIES

In addition to dealing with rising costs, theatrical producers in Australia must compete for investors with industries that can offer tax incentives. This patchy approach to tax incentives in the arts hinders job and content creation. It would be more beneficial for the Australian economy if the arts were viewed more holistically, with tax incentives offered for multiple industries that can grow collectively.

The Federal Government currently offers a suite of three screen production incentives. Each film may be certified for only one of these three tax offsets. They can be combined with state and territory tax incentives (additional 10% to 20%) and grants. Australia also offers a tax offset for digital games development.

| Federal incentives | Details |
|---|---|
| Producer Offset | The Producer Offset provides a:<br>• **40% rebate** on the qualifying spend of feature projects for Australian productions and Official Co-productions.<br>• **30% rebate** for non-feature projects.<br>After Screen Australia issues a final Certificate, the tax rebate is paid to the applicant via the ATO within four weeks of lodgement. |

[1] Study on the Impact of Film and Television Production Incentives in Australia 2023 - MPA APAC (mpa-apac.org)
[2] Skin-in-the-game-producer-offset.pdf (screenaustralia.gov.au)

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| Location Offset | The Location Offset is a **20% rebate** to encourage large-budget film and television projects to film in Australia.<br>As part of the 2023/24 Budget, the Australian Government announced that the rebate rate would increase from 16.5% to 20% from 1 July 2023 – subject to legislative amendments.<br>A tax rebate is usually paid to the applicant within four weeks of lodgement with the ATO. |
| Post, Digital and Visual Effects (PDV) Offset | The PDV Offset is a **30% rebate** to support work on post-production, digital and visual effects production in Australia. This includes productions shot overseas.<br>A tax rebate is usually paid to the applicant within four weeks of lodgement with the ATO. |
| Digital Games Tax Offset (DGTO) | The DGTO is not part of the official suite of screen incentives above but does relate to screen.<br>It provides eligible game developers with a **30% rebate** for qualifying development expenditure from 1 July 2022. It is capped at $20m per company per income year. |

## COMPETITION WITH INTERNATIONAL JURISDICTIONS

Over 80% of investment capital for commercial theatre in Australia is from offshore investors. This creates a highly competitive environment for Australian producers to secure capital to stage new productions. In this context, Australia is well behind other jurisdictions that offer tax incentives for live productions.

### United Kingdom

The UK has 8 creative tax reliefs, including 3 “cultural reliefs” for theatre, orchestra and museums/galleries. The others are for film, animation, high-end television, video games and children’s television.

In 2021 the cultural relief rates were raised to aid post-pandemic recovery.[3] On 15 March 2023 it was announced that the higher rates would be extended until April 2025. This responds to the positive impact that the incentives have had in attracting audiences and producing world-class performances.[4]

[3] Two year extension of higher rates for theatre, orchestra, and museums and galleries exhibition tax reliefs - GOV.UK (www.gov.uk)
[4] Theatre leaders hail 'game-changing' extension to Theatre Tax Relief (thestage.co.uk)

| UK Tax incentive | Details |
|---|---|
| [Theatre Tax Relief (TTR)] | Introduced 1 September 2014 via the Finance Act 2014. Production companies can claim qualifying pre-production costs for non-touring and touring productions on their company tax return.<br>**Rates**<br>Increased to **45%** for non-touring productions and **50%** for touring shows in 2021.<br>1 April 2025: Will taper down to 30% (non-touring) and 35% (touring).<br>1 April 2026: Will return to original 20% (non-touring) and 25% (touring).<br>**Eligibility**<br>Plays, operas, musical, ballet or other dramatic pieces that tell a story through live performances/playing roles. High proportion of performances must be for paying members of the public or educational purposes.<br>At least 25% of core costs must be used within the UK or European Economic Area. |
| Orchestra Tax Relief (OTR) | Introduced 1 April 2016.<br>**Rates**<br>Currently set at **50%.** Will decrease to 35% from 1 April 2025, and to 25% from 1 April 2026.<br>**Eligibility**<br>Only Orchestral Production Companies (OPCs) are eligible. Can claim European core expenditure on a concert or series of concerts intended to be performed live before paying members of the public or provided for educational purposes.<br>At least 25% of the total core expenditure must be European core expenditure. |

**United States of America**

The USA has live performance tax incentives at both federal and state levels.[5]

| USA Tax incentive | Details ($USD) |
|---|---|
| Federal | In December 2015, US federal legislation established tax treatment for live theatrical productions equal to that provided for screen. Allows investors to recoup their investments prior to taxes being assessed on profits earned.<br>**Rates**<br>**100%** deduction for live performance investment from the taxpayer's income that year. May not exceed **$15m, or $20m** for productions in low income or isolated areas.<br>**Eligibility** |

[5] Live Theater Tax Credits (ct.gov)

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| | Live staged productions of a play (with or without music) derived from a book or script. Produced/presented by a taxable entity in a venue with a maximum capacity of 3000. |
| New York Empire State Musical and Theatrical Production Tax Credit Program | $300m program that aims to attract productions to Upstate New York venues.<br>**Rates**<br>Credit of **25%** for pre-tour production costs, wages up to a total of $200,000pw, and technical/crew production costs such as equipment. No per-project caps.<br>**Eligibility**<br>Corporation, partnership, limited partnership, or other entity/individual principally engaged in the production of a for-profit live, dramatic stage presentation in a qualified production facility. Includes touring productions.<br>There are 8 qualified facilities (eg the Auditorium Theatre and the Stanley Theatre). |
| Illinois Live Theatre Production Tax Credit Program | **Rates**<br>Transferrable credit of **20%** for all qualified Illinois expenditures, including resident salaries up to $100,000 per worker. **Additional 15%** credit for labour expenses paid to residents in high unemployment areas. Limited to $500,000 per production per tax year.<br>**Eligibility**<br>A theatre producer, owner, licensee, operator or presenter with a minimum production spend of $100,000 for Illinois labour and marketing expenditures.<br>Theatres must have a minimum capacity of 1200. Productions must be long-runs (minimum 8 weeks and 6 performances pw), pre-Broadway, or Commercial Broadway Touring (plays in more than 2 other North American markets within one year). |
| Louisiana Live Performance Production Incentive Program | Statutorily known as the Musical and Theatrical Production Income Tax Credit.<br>**Rates**<br>Cap of $10m pa, with $5m (50%) reserved for non-profit organisations. Credit values range from:<br>• **7%** for expenditures between $100,000 and $300,000<br>• **14%** for $300,000 to $1m<br>• **18%** for over $1m<br>An **additional 7%** tax credit applies for payroll expenditures to Louisiana residents.<br>**Eligibility**<br>Concert, theatrical and other live productions that originate or debut in Louisiana. Minimum of $100,000 in state expenditure.<br>Non-profit organisations can be issued credits in the form of a refund of overpayment. |
| Rhode Island Musical and Theatrical | Credit available under Rhode Island's General Laws (Ch44 Taxation). For tax years 2022-24, the cap for total motion picture and/or musical and theatrical production tax credits issued is $40m. Previously $20m (2020-21) and $15m (2008-19). |

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| Production Tax Credit | **Rates**<br>**30%** for total production, performance and transportation expenditures. Cannot exceed $5m and is limited to costs within the State.<br>**Eligibility**<br>For-profit live stage presentations that are either a pre- or post-Broadway production, with a minimum production budget of $100,000. Must be presented in a Rhode Island production facility with at least 1000 seats.<br>On 16 May 2023 the Senate passed a Bill making national touring productions eligible. |
| Maryland Theatrical Production Tax Credit | **Rates**<br>Credit of **25%** against State income tax. Maximum award of $2m for a single production.<br>**Eligibility**<br>Applies to for-profit national touring (minimum two public performances, then performed for at least four weeks in four cities outside the State) or pre-Broadway live stage theatrical productions. Estimated total production costs incurred in Maryland must exceed $100,000. |
| Ohio Motion Picture Tax Credit | Introduced in 2009 and extended to live theatre productions in 2020.<br>**Rates**<br>Credit of **30%**, capped at $40m per year for all motion picture and Broadway productions.<br>**Eligibility**<br>Broadway theatrical production with minimum spend of $300,000 per production in Ohio. Covers all goods/services purchased in the State for production activities. |

### Mexico and Spain

Mexico and Spain also offer tax credits for live performances. However, the legislative frameworks for these countries will be less applicable to Australia than the UK and USA.

| Country | Details |
|---|---|
| Mexico | From 2011, Mexico has offered tax credits for investments in national theatre projects.<br>**Rates:** Capped at **10%** of the income tax payable the year prior, provided certain requirements are met.[6] |
| Spain | Under Article 36(3) of Law 27/2014 on Corporation Tax, Spain offers deductions for investments in live shows of performing arts and music.[7] |

[6] Film Financing and Television Programming - A Taxation Guide (kpmg.com) (p.3)

[7] BOE-A-2014-12328 Law 27/2014, of 27 November, on Corporation Tax.

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|---|---|
| | **<u>Rates:</u> 20%** tax credit for expenses incurred for producing and performing live performing arts and musical shows. Credit must not exceed EUR500,000 per taxpayer. |

# 4. Live Theatre Tax Offset

### THE ISSUES ARE BEST ADDRESSED THROUGH TAX INCENTIVES

This approach has been assessed against other options, including grants/funding, removing GST for live performance tickets and tax deductions for individuals investing in live performances.

It was found that tax incentives for pre-production costs of live theatre will be **most effective** in addressing key issues. They will also prove **cost neutral** for government when tax incentives are set between 25% to 40% and can **mirror existing tax incentive schemes** to avoid resource-intensive system changes.

### WHO WILL BE ELIGIBLE?

Access to the pre-production tax incentives should be open to commercial and not-for-profit theatrical producers.

### WHAT COSTS SHOULD BE ELIGIBLE?

The exact scope of eligible expenditure should be determined in consultation with industry stakeholders.

As an example, the United Kingdom’s Theatre Tax Relief covers theatrical productions where at least 25% of the core expenditure is incurred on goods or services provided from within the United Kingdom or European Economic Area (EEA).

**Theatrical productions** are defined as:

- A ballet, play, opera, musical or other dramatic piece that tells a story, where the performances are live and the performers give their performances wholly or mainly through the playing of roles.
- All or a high proportion of the performances must be for paying members of the general public or provided for educational purposes.
- May be touring (6 or more separate premises or at least two separate premises with at least 14 performances) or non-touring.
- Productions are ineligible if (a) the main purpose is to advertise, make a recording or train and/or (b) performances include a competition, contest, wild animal or are of a sexual nature.

**Core costs** include:

Amount spent on producing and closing the theatrical production (eg casting, rehearsals, costume design, set construction and dismantling).

Includes exceptional running costs, such as costs for substantial recasting or set redesign if incurred on or after the first performance date.

Includes expenditure on rights to use a story/book as the basis of a production that progresses beyond the development phase, or to use music, songs or stock footage in the production.

Does not include development costs (eg speculation and initial script writing), non-producing or ordinary running activities (eg finance, marketing, legal services and storage), or exploiting the production.

### HOW WILL THE TAX INCENTIVES WORK?

**The model could mirror Australia's Digital Games Tax Offset**

The most resource-effective way to introduce tax incentives for live entertainment would be to mirror existing schemes such as Australia's Digital Games Tax Offset (DGTO) or Producer Offset.

As noted in Section 3: Key Issues, the DGTO provides a 30% refundable tax offset for qualifying Australian development expenditure and is capped at $20 million per company per income year.

This offset can be claimed when the Australian resident company or foreign resident company with an Australian business number (ABN) lodges a tax return.

Not-for-profit theatrical producers would be eligible, as under the UK's TTR. TTR eligibility extends to not-for-profit companies, including charitable companies and community interest companies. Under this scheme, each production is set up as a separate theatrical trade, separate to the company's other trades. This means that charities would set up a separate trading subsidiary to claim tax incentives.

The United States also provide some examples that could be referred to when determining how this could work in Australia. For example, not-for-profit companies can apply to Louisiana's Live Performance Production Program. "Although it is necessary to establish taxable liability with the State of Louisiana, it is not necessary to owe taxes. Not-for-profit organizations are issued credits in the form of a "refund of overpayment" by the Louisiana Department of Revenue. 50% or $5 million of the issuance cap is reserved for not-for-profit organizations."[8]

## 5. Key Benefits

As outlined in Section 2, tax incentives have proven successful both in Australia and internationally.

LPA's Members have noted that tax incentives would likely be used to produce new Australian or licenced work or stage additional shows for pre-existing productions. Benefits of this include:

- stimulates direct and indirect economic activity
- encourages producers to put on more shows due to reduced financial risk
- creates licensing and export opportunities
- provides employment and skills development opportunities
- improves producers' equity share and builds sustainable businesses
- contributes to cultural vibrancy and choice for Australian audiences
- supports affordable ticket prices
- improves social cohesion and wellbeing through community participation and attendance
- encourages a greater culture of investing within Australia
- strengthens Australia's international reputation and attractiveness for overseas investors.

The level of economic activity generated will increase as the level of investment incentive increases. EY analysis demonstrates that a Live Theatre Tax Offset could increase the number of new

[8] Incentives (louisianaentertainment.gov)

productions in Australia by up to 73%, with up to 54% additional industry output, 53% additional industry value add and 59% additional employment. This economic modelling is outlined below.[9]

| Outputs | 10% tax incentive | 25% tax incentive | 40% tax incentive |
|---|---|---|---|
| Number of new productions | 22 | 347 | 555 |
| Total output (industry turnover) | $229.5m | $760.6m | $1,216.9m |
| Total Value Add (wealth generation) | $100.1m | $337.2m | $540.1m |
| Total Employment (FTE) | 863 | 2,906 | 4,650 |

[9] EY (2016), *Investment support for the live performance industry, Report for Live Performance Australia*, *August 2016*