

# EXPORT MARKET DEVELOPMENT GRANTS ADMINISTRATIVE GUIDELINES

## PART 4 – ELIGIBLE PRODUCTS

### SECTION 24 GUIDELINES

#### Eligible goods

Section 24 of the EMDG Act states that:

Goods are **eligible goods** if:

- a) *they are made in Australia; or*
- b) *the CEO of Austrade is satisfied, in accordance with guidelines determined under paragraph 101(1)(baa), that Australia will derive a significant net benefit from the sale of the goods outside Australia.*

**Note:** Decisions under this section are subject to guidelines determined by the Minister under section 101 of the EMDG Act.

**4.1.1** To determine if their goods are likely to be eligible, applicants should:

1. check to see if the goods qualify as 'made in Australia' by referring to the ministerial guidelines
  - if the goods qualify as made in Australia, they are eligible.
2. if the goods do not qualify as made in Australia, check to see if they are likely to qualify by referring to the 'significant net benefit' ministerial guidelines:
  - the applicant will need to attach extra information to the application to enable Austrade to make a determination on this issue.

**4.1.2** Goods that have not yet been made and/or are not available for sale are not eligible under section 24 of the EMDG Act.

**4.1.3 Goods 'made in Australia'**

The Export Market Development Grants (Made in Australia) Guidelines 2006 made by the Minister state that:



- (2) *Austrade must determine that the following goods are made in Australia:*
- (a) *Australian primary products, including products that are mined, harvested, raised or fished within Australia*
  - (b) *Goods that are made primarily from Australian primary products, including products mined, harvested, raised or fished within Australia*
  - (c) *Goods that are manufactured or assembled in Australia, partially or wholly from imported materials or components, if those materials or components undergo or are included in a process or operation which:*
    - (i) *results in the manufacture of a new product; or*
    - (ii) *substantially transforms the nature of the materials or components; or*
    - (iii) *represents an important stage of manufacture in an ultimate product which is produced from the exported product.*
- (3) *Austrade must not determine that goods are made in Australia if the goods are manufactured or assembled in Australia, partially or wholly from imported materials or components, if those materials or components undergo, or are included in, a process or operation which is:*
- (a) *designed to circumvent the correct origin or origins of the product; or*
  - (b) *only grading, packing or sorting of imported components.*

To qualify as goods that are 'made in Australia', goods must fall into one or more of the following categories:

(a) **Goods made in Australia – Australian primary products**

Examples of eligible products in this category include Australian seafood, meat, fruit, vegetables and livestock.

(b) **Goods made in Australia – Goods made primarily from Australian primary products**

Goods made primarily from Australian primary products will qualify as 'made in Australia', irrespective of whether they come into their final form inside or outside Australia.

Examples of products that may be eligible in this category include:

- wine bottled in Australia made from Australian grapes
- wine bottled overseas using Australian bulk wine exports
- packages of Australian dried fruit packed in Australia
- packages of Australian dried fruit packed overseas
- orange juice made overseas from Australian orange juice concentrate
- meat patties made overseas from exported Australian beef.

Products which contain some Australian primary products but which are not made primarily from Australian primary products will not qualify as 'made in Australia' under this category.

(c) **Goods made in Australia – Goods that are manufactured or assembled in Australia**

For goods to meet this criterion the Australian processes or operations used to make the goods must be real and significant. However, the inputs to the manufacturing process need not be Australian.

Goods qualifying as 'manufactured or assembled in Australia' may include those that are largely made or assembled in Australia but sent overseas for minor operations such as testing or packaging.

Goods which are refurbished in Australia may be taken to be made in Australia if the refurbishment adds significant value to the goods in question, irrespective of the origin of the goods.

Similarly, applicants promoting second-hand goods that have been refurbished in Australia or that have been processed in a significant way in Australia will be eligible.

'Goods' for the purpose of paragraph 24(a) of the EMDG Act may include component parts of final goods, if the applicant is promoting the sale of the components.

Final goods that are made overseas primarily from one or more components that are manufactured or assembled in Australia may also be assessed as 'made in Australia' under paragraph 24(a) of the EMDG Act.

#### **EXAMPLE – COMPONENTS**

*The applicant manufactures medical testing goods in Australia. The manufactured goods are not able to be operated in a hospital until some peripheral equipment and a computer is added to them. These goods have a value of approximately A\$100,000 per unit and are supplied to a US medical supplies company that adds the other peripheral equipment and computer to the Australian-made unit. The other components have a cost of approximately US\$5,000. The applicant contributes to the expenses of promoting the final unit.*

*Austrade would assess the final units to be made in Australia because they are primarily made from the components made in Australia.*

Goods made overseas that are sent to Australia for minor operations such as quality control, labelling and packaging will not be assessed to be made in Australia.

Goods which do not qualify as 'made in Australia' under paragraph 24(a) of the EMDG Act may be considered for eligibility under paragraph 24(b) of the EMDG Act and the *EMDG (Significant Net Benefit) Guidelines 2006*.

#### **4.1.4 Goods not 'made in Australia' but where a 'significant net benefit' is derived by Australia from the sale of the goods outside Australia**

Paragraph 24(b) of the EMDG Act and its guidelines apply to goods that are not 'made in Australia' under the *Export Market Development Grants (Made in Australia) Guidelines 2006* discussed above.

Paragraph 24(b) of the EMDG Act and the *Export Market Development Grants (Significant Net Benefit) Guidelines 2006* effectively recognise that many Australian manufacturers increasingly have their final manufacturing and assembly stages carried out overseas while carrying out their design, research and development and other 'knowledge' activities in Australia.

The *Export Market Development Grants (Significant Net Benefit) Guidelines 2006* state:

*In determining, for paragraph 24(b) of the Export Market Development Grants Act 1997, whether Australia will derive a significant net benefit, Austrade must comply with the following guidelines.*

*Austrade must consider whether:*

- a) the business assets which are used in making the goods ready for sale (other than assets used in manufacture) are primarily or substantially based in Australia; and*
- b) the activities (other than manufacture) which result in the goods being made ready for sale are primarily or substantially carried on in Australia; and*
- c) a significant proportion of the value of the goods is added within Australia; and*

- d) *any sale of the goods generates, or is reasonably likely in the foreseeable future to generate, economic benefits for Australia, including in the area of employment, that are substantial relative to the amount of the grant claimed by the applicant.*

To be eligible, goods not 'made in Australia' are not required to meet all of the four assessment criteria to be eligible under paragraph 24(b) of the EMDG Act. Where an applicant fails at least one of the assessment criteria but meets the other criteria in a convincing manner, Austrade may assess the goods to be eligible under paragraph 24(b) of the EMDG Act.

Applicants wishing to have their goods assessed for eligibility under paragraph 24(b) of the EMDG Act must provide a detailed factual submission with their grant application. If required, applicants must also be able to provide relevant documents which substantiate any claims made in their submission.

### **EXAMPLE 1 – GOODS ELIGIBLE UNDER PARAGRAPH 24(b)**

*An Australian book publisher promotes exports of books printed in Hong Kong. The applicant believes that Australia derives a significant net benefit from the sales of its books outside Australia. The book publisher pays its Australian staff and other Australian suppliers for the following business activities:*

- *Australian author's royalties*
- *editorial expenses*
- *book design and layout work*
- *illustrations, art and photography*
- *typesetting and proof reading*
- *colour separation.*

*The applicant uses the Austrade template to provide a detailed and factual submission to Austrade. This shows that the applicant:*

- a) *primarily uses Australian-based business assets – rents office and warehouse in Australia, computer publishing equipment, owns a brand of significant value*
- b) *primarily carries out activities in Australia which result in the goods being made ready for sale – all activities except printing*
- c) *adds a significant proportion of the value of the goods in Australia – all value added takes place in Australia except printing*
- d) *generates substantial economic benefits for Australia, including employment from its sales – employs staff including editors and designers, engages authors, photographers, artists and provides the opportunity for showing Australian creativity in foreign markets*

*Austrade assesses that this applicant's overseas-made goods are eligible under paragraph 24(b) of the EMDG Act.*

### **EXAMPLE 2 – GOODS ELIGIBLE UNDER PARAGRAPH 24(b)**

*The applicant promotes fashion garments made in China. These garments are sold at the upper price range in retail outlets in Japan and the USA. All its products are made to designs developed in Australia by the applicant's employees.*

*All work associated with design, sourcing raw materials, product promotion, warehousing and freight is carried out by the applicant's eight staff and four contractors in Australia.*

*The applicant owns an office and valuable business equipment in Sydney and rents retail outlets in Sydney and Melbourne.*

*The brand is well established and has 'cult status' in the younger age group, enabling its profit margin to be three times the cost of manufacture;*

*Sales income was \$1.5 million in the grant year and has been increasing by about 20 per cent per annum over recent years. The applicant was profitable for the first time in the grant year.*

*The applicant uses the Austrade template to provide a detailed and factual submission to Austrade. This shows that the applicant:*

- a) primarily uses Australian-based business assets – applicant's brand, office, business equipment, retail outlet;*
- b) primarily carries out activities in Australia which result in the goods being made ready for sale – all activities except final manufacture are carried out in Australia;*
- c) adds a significant proportion of the value of the goods in Australia – all value in the goods is added in Australia except for the final manufacture;*
- d) generates substantial economic benefits for Australia, including employment from its sales – employees, contractors, sales income.*

*Austrade assesses that this applicant's overseas-made goods are eligible under paragraph 24(b) of the EMDG Act.*

Each of the four assessment criteria in the *Export Market Development Grants (Significant Net Benefit) Guidelines 2006* will now be looked at in turn:

#### **1. The business assets which are used in making the goods ready for sale (other than assets used in manufacture) are primarily or substantially based in Australia**

Austrade will consider the assets used in all stages of making the goods ready for sale (apart from the actual manufacturing) from the product development stage to the post-sales stage. Applicants should describe how and where the various stages are carried out and where the business assets used in carrying out these stages are located.

Business assets might include:

- real property – land, buildings owned or leased to carry out the non-manufacturing activities
- intellectual property, know-how, or brands
- plant and equipment to make components, or moulds or machinery used to make the goods
- plant and equipment to design components or goods
- equipment used to carry out post-sales and administrative work
- equipment used to transport components and goods.

### **EXAMPLE – BUSINESS ASSETS CRITERION**

*The Applicant promotes novelty toy products made overseas. The company's Australian employees devise broad concepts for novelty toy products. The applicant then seeks out foreign manufacturers to design and produce these products competitively for the Australian and USA markets.*

*The only Australian business assets used are the applicant's office, office equipment and cars for staff. The applicant's brand has no real worth according to its financial statements. The applicant would **not** meet this 'assets' assessment requirement because the business assets used in making the goods ready for sale are not primarily and substantially located in Australia.*

## **2. The activities (other than manufacture) which result in the goods being made ready for sale are primarily or substantially carried on in Australia**

These activities might include:

- design
- research and development
- sourcing components
- design and manufacture of machinery to make goods, moulds, tools etc
- marketing
- administration, legal and accounting
- distribution and logistics
- recycling
- management of any of the above activities and of the overseas manufacture and assembly.

### **EXAMPLE – ACTIVITIES CRITERION**

*The applicant promotes high value fashion scarves that are designed by its own employees and by contract designers. Its head office is in Australia and its staff provide all administration, marketing, quality control and management services. It has a manufacturing branch in China that manufactures to Australian head office instructions using raw materials acquired by head office. The head office conducts marketing activities.*

*This applicant **would** meet this 'activities' assessment requirement.*

## **3. A significant proportion of the value of the goods is added within Australia**

Applicants should be able to cost and describe the types of Australian value added work. This may include the factors listed at (2) above.

### **EXAMPLE (A) – VALUE ADDED CRITERION**

*The applicant is an Australian-owned t-shirt and casual fashion gear manufacturer set up in 2010. It pays fees to a contract manufacturer in India for the sourcing of materials, manufacture and in some cases design.*

*The applicant spends little time or money on design in Australia. The designs have mainly been made by the applicant's two owners who have drawn no salary since the applicant company commenced operations. Other designs have been sourced from the Indian manufacturer and its associates. The applicant plans to recruit some design staff in the near future.*

*The applicant carries out some administrative, marketing and management work associated with sourcing and selling the goods. Its sales margin is 60 per cent.*

*This applicant would **not** meet this 'value added' assessment requirement. The Australian value added work is not a significant proportion of the value of the goods. Rather, a significant proportion of the value of the goods is added in India by way of designing goods and the machinery used to manufacture them, sourcing raw materials, administration and shipping.*

### **EXAMPLE (B) – VALUE ADDED CRITERION**

*The applicant promotes scientific testing equipment made in USA but based on its Australian-developed intellectual property and design work.*

*The applicant pays the USA manufacturer \$20 per unit and sells the finished product for \$100 per unit. It can show that its \$80 margin is based on:*

- *payment for salaries of design staff and research scientists*
- *payments for office and research laboratory premises, computers, communications equipment etc*
- *production of die in Australia designed by applicant's staff and supplied to the USA manufacturer*
- *payment for salaries of applicant's marketing and administrative staff and contractors.*

*The applicant is able to cost its value-added work and to demonstrate that a significant proportion of the value of its goods is added in Australia, with the value of its Australian value-added work exceeding the value added to the goods outside Australia.*

*The applicant **would** meet this 'value added' assessment requirement.*

#### **4. The sale of the goods generates, or is reasonably likely in the foreseeable future to generate, economic benefits for Australia, including in the area of employment, that are substantial relative to the amount of the grant claimed by the applicant**

Economic benefits might include income creation, introduction of new technologies and value-added operations, creation of new and higher value jobs, profits or increased productivity and firm competitiveness.

Applicants should be able to show that these or other economic benefits accrue to Australia.

### **EXAMPLE – ECONOMIC BENEFITS CRITERION**

*The applicant is an Australian-owned and operated business and promotes biotech products made in the USA. Its products are cancer treatments and it is developing new products in response to its medical and scientific research. It conducts most research and development activities in Australia. The products are made by a USA manufacturer who is paid a manufacturing fee. Finished products are shipped directly from the USA to the export customer. The applicant sources raw materials and arranges for these to be transported to the manufacturer. It has an international profile and a well-established 'brand', enabling it to earn a high margin on sales.*

*The applicant shows that Australia derives substantial economic benefits from the sales of its products from:*

- *creation of research jobs in Australia*
- *creation of management and administrative jobs in Australia*
- *profits earned*
- *higher international profile for Australia from 'brand' and the applicant's demonstrated medical and scientific expertise.*

*The applicant **would** meet this 'economic benefits' assessment requirement.*

#### **4.1.5 Applicants promoting goods made outside Australia that are based on research and development or design work carried out by other businesses**

Applicants that are wholesalers or merchants promoting goods made outside Australia will also need to be able to demonstrate that Australia would derive a significant net benefit from the sale of the goods outside Australia by providing the same type of detailed factual submission. In practice, this will require these applicants to obtain relevant information from its product suppliers.

Similarly, applicants that promote and sell overseas made goods as a result of their knowledge and overseas contacts, e.g. they make product sales by marketing their ability to source particular goods for clients, must also provide the same type of detailed factual submission to Austrade.

## **SECTION 25 GUIDELINES**

### **Eligible services**

**4.2.1** Under EMDG rules, services will be eligible (subject to general eligibility requirements of section 25 of the EMDG Act) as follows:

- tourism services – all services that fall within the meaning of Schedule 1 of *Export Market Development Grants Regulations 2008* (EMDG Regulations)
- all non-tourism services except those listed in Schedule 2 of the EMDG Regulations.

### **Internet selling of goods**

Applicants promoting products via the internet will be assessed to be selling goods where the price that is paid is tied to the value of the goods received. Although some applicants might tailor their product offering with advice and creativity, where the applicant's key deliverable to their customers is the goods, any tailoring type services will be assessed as incidental to goods delivery.



Applicants promoting goods via the internet will be subject to the goods eligibility rules at 4.1.1 – 5 of these guidelines.

**Services – Australian inputs must be sufficient to ensure that Australia will derive a significant net benefit from the supply of the services (section 25(4) of EMDG Act refers).**

**4.2.2** In assessing the eligibility of services, Austrade will take into account:

- the value of the project
- the value of the Australian inputs compared with overseas inputs
- the nature of the inputs, such as professional staff compared to labourers
- the underlying intellectual property or know how involved
- employment generated in Australia
- net foreign exchange earnings
- any other notable factors.

### **Tourism services and non-tourism services**

**4.2.3** Applicants promoting tourism services are subject to specific scheme rules, i.e. for principal status requirements (see paragraph 37(1)(da) of the EMDG Act) and export earnings rules measurement (see items 5, 6 and 7 of the section 2.1 (2) table in the *Export Market Development Grants (Export Performance Requirements) Determination 2008* (Export Performance Determination)).

Some applicants may promote some services that are tourism services and others that are eligible under the non-tourism services category. It is expected that in a small number of cases, these applicants will be required to claim expenses and export earnings under different scheme rules.

#### **EXAMPLE**

*The applicant promotes accommodation to foreign residents who variously holiday, study and work in Australia.*

- *When sold to foreign residents who holiday in Australia, accommodation will be eligible as a tourism service product – applicant will be subject to specific tourism principal status and export earnings measurement rules.*
- *When sold to foreign residents who work in but are not studying in Australia, accommodation is eligible as a non-tourism service – applicant will be subject to general EMDG principal status and claims export earnings as per Item 3 of the 2.1 (2) table in the Export Performance Determination.*
- *When sold to foreign resident students studying or working in Australia, accommodation will not be eligible for EMDG support.*

### **Tourism services**

**4.2.4** Refer to specified tourism services at Schedule 1 of the EMDG Regulations.

Applicants promoting services to foreign resident tourists in Australia may only receive EMDG support for the promotion of tourism services – refer 1(j) in Schedule 2 of the EMDG Regulations ‘Services that are not non-tourism services’.

Some applicants including wholesalers selling to ‘backpacker’ tourists may also promote services that are not listed in the Tourism Services Schedule of the EMDG Regulations as part of their packages. These services might include things like insurance services, visa services, mail forwarding services, luggage holding services, internet access. These services be not be eligible for EMDG support under the general service rules.

### **EXAMPLE**

*The applicant promotes wedding services to foreign resident couples. A marriage celebrant and church hire service in themselves will not be eligible tourism services.*

### **EXAMPLE**

*Applicant promotes its night club and restaurant amenities to foreign resident tourists in Australia. The restaurant amenity is an eligible tourism service. The night club is not an eligible tourism service. The applicant can only receive EMDG support for the promotion of its restaurant.*

Applicants providing training and education courses (such as language and diving courses) to foreign residents visiting Australia may be eligible for EMDG support even where the students are visiting Australia on a tourist visa. Austrade will consider these course attendees to be students and not tourists for the purposes of the *EMDG Regulations 2008*. These courses may also be assessable as eligible 'tours' where the students receive a complete tour package.

## **Tourism Services – Key Eligibility Rules**

**4.2.5** Section 25 of the EMDG Act provides that tourism services will be eligible if the service:

- is supplied in Australia (whether or not through a resident of Australia)
- contains sufficient Australian input to ensure that Australia will derive a significant net benefit from the supply of the service
- is listed in Schedule 1 of the EMDG Regulations.

Key types of tourism services eligible for EMDG support:

- a) transport services by land, water or air will be eligible. However, applicants promoting a land transfer service will not be eligible for EMDG support.

A transfer service is a transport service between the tourist's point of arrival and a place of accommodation; or one between a place of accommodation and the person's point of departure from Australia.

- b) accommodation – must be for supply to foreign resident tourists in Australia.

Accommodation supplied to foreign residents looking to work in Australia is not eligible as a tourism service but is a service eligible for EMDG support under the non-tourism service eligibility rules.

Accommodation for supply to foreign resident students studying or working in Australia is not eligible for EMDG support.

Applicants promoting an accommodation amenity as a tourism service are required to supply the amenity in Australia (whether or not through an Australian resident inbound tour operator) to a foreign resident. Applicants promoting accommodation amenities are not technically required to own the accommodation that is being promoted. Some applicants such as hotels can be eligible for EMDG support where there is an agreement in place that provides for owners to grant them a licence to supply accommodation as principal. Management companies, however, cannot receive grants if they promote accommodation on behalf of owners in an agency capacity – refer to guideline 5.10.11. Austrade will closely examine relevant agreements between owners and applicants to determine principal status.

- c) tours – see guideline 4.2.4.

d) admission for a fee to tourist attractions as follows:

- a place that has one or more outstanding natural features or is of historical interest
- a park, nature reserve or botanical garden
- a wildlife sanctuary or zoological garden
- a museum, art gallery or craft centre
- a place that is, or provides, an amenity appropriate to tourists.

e) admission for a fee to an event, unless there is an event promoter engaged to promote the event.

Event holders or owners can qualify for EMDG support where they promote attendance at their events held in Australia unless they have engaged an event promoter to promote the event.

There are specific EMDG rules enabling event promoters to qualify for EMDG support – refer to guidelines 4.2.7 – 16.

To prevent double-dipping, Austrade will require applicants promoting events held in Australia as event holder or owner to declare that they have not engaged an event promoter for the event.

#### **EXAMPLE**

*A trade show organisation plans and organises regular trade shows in Australia. It promotes a 2014 automotive trade show to potential automotive industry exhibitors from around the world. Once it secures exhibitors for the planned show, it intends to promote the event to potential attendees. As long as the business does not engage or intend to engage an events promoter to promote the show, its services of seeking both exhibitors as well as attendees will be eligible under this tourism services category.*

f) rental of space at a convention or exhibition centre

g) restaurant

h) casinos licensed under Australian law.

### **Other services eligible for EMDG support (non-tourism services)**

**4.2.6** Under section 25 of the EMDG Act, non-tourism services must:

- be supplied (whether in or outside Australia) to a person who is not a resident of Australia
- contain sufficient Australian input to ensure that Australia will derive a significant net benefit from the supply of the service.

Subject to these requirements, all services apart from those listed in the tourism services schedule are eligible unless they are listed in Schedule 2 of the EMDG Regulations (services that are not non-tourism services).

Schedule 2 of the Regulations lists those non-tourism services that are **ineligible** for EMDG support. The rationale for these service suppliers being ineligible is that they generally compete with other Australian service providers for export business rather than with foreign suppliers.

Key service types ineligible for EMDG support:

(a) services relating to migration to Australia

Ineligible services will be those that are supplied to foreign residents who consume them as part of the process of migrating to Australia permanently or temporarily or as part of deciding whether to migrate to Australia. These services will commonly be supplied or promoted by the following types of service providers to migrants:

- migration and visa permits and arrangements, including legal services
- financial advice
- freight forwarding
- careers advice.

#### **EXAMPLE**

*Applicant supplies advisory service in respect of careers opportunities, visa arrangements and financial rules e.g. taxation rates to potential employees in a particular industry. The focus of the advisory services is on encouraging the potential foreign resident clients to migrate to Australia for extended periods. Austrade will assess these services to be related to migration and therefore ineligible.*

N.B. Legal services in relation to migration to Australia will also be excluded by e) below.

(b) services relating to family law matters

(c) services relating to the identification, procurement, lease, sale or purchase of assets in Australia (whether tangible or intangible), including cash, real estate, stocks, options or shares

This exclusion means that services provided to foreign residents relating to a range of transactions involved with assets held in Australia will not be eligible for EMDG support. Assets for the purpose of this exclusion will include but not be limited to real estate, cash, stocks, shares, related financial products and collectable items.

The word “held” limits the exclusion to assets held in Australia on an ongoing basis rather than to assets brought to Australia for one-off or short term reasons, e.g. this exclusion will not apply to collectables brought to Australia to be auctioned.

This exclusion applies to service providers who promote sales related to transacting in assets held or to be held in Australia. It does not prevent grants being paid to exporters of physical assets that incur expenses of promoting goods assessed as eligible under section 24 of the EMDG Act and who meet the Act’s principal status requirements.

#### **EXAMPLES OF EXCLUSIONS**

- *stockbroking and real estate agency services related to transactions involving Australian assets*
- *services including auctioneering services related to selling Australian assets*
- *advisory services related to selling Australian assets to foreign residents.*

d) services relating to protecting, operating or maintaining assets held in Australia

This exclusion applies to services supplied to foreign resident clients for providing any services in relation to any assets held in Australia.

### **EXAMPLES OF EXCLUSIONS**

- *services supplied to foreign resident owner of an Australian mine*
- *property management and insurance management services for foreign resident owners of property in Australia*
- *financial services relating to managing Australian investment funds with portfolios of cash, stocks and shares*
- *training thoroughbred horses owned by foreign residents for racing in Australia.*

The word “held” limits the exclusion to assets held in Australia on an ongoing basis rather than to assets brought to Australia for one-off or short term reasons, e.g. this exclusion will not apply to:

- foreign-owned assets brought to Australia just for repair
- management and insurance arrangements for works of art that are sent to Australia for exhibition.

e) services relating to compliance with the laws of Australia (includes state and territory laws)

This exclusion applies to services supplied to foreign resident clients that relate to the clients’ Australian reporting obligations or any other compliance with Australian laws.

### **EXAMPLES OF EXCLUSIONS**

- *accounting services supplied to foreign resident clients for the clients’ Australian businesses that enable these businesses to comply with Australian laws*
- *legal services supplied to foreign residents e.g. advice about business laws for prospective or existing Australian business activities.*

f) a service relating to prostitution

g) a service relating to pornographic material, including pornographic material in publications, films, computer games or accessible on the Internet

This exclusion complements sections 57, 57A, 57B and 57C of the EMDG Act

h) a service relating to illegal activities or illegal products

This exclusion complements section 56 of the EMDG Act that provides for excluding expenses incurred in respect of an eligible promotional activity. This exclusion makes it explicit that applicants promoting services that are illegal in the market in which they are offered for sale or that claim expenses that relate to illegal activities or products in that market will not be supported.

i) a gambling service provided by a service provider not licensed under an Australian law

j) a service not mentioned in Schedule 1 (tourism services) that is provided to a foreign resident tourist in Australia

Applicants promoting services to foreign resident tourists in Australia may only receive EMDG support for the promotion of tourism services – refer 1(j) in Schedule 2 ‘Services that are not non-tourism services’.

k) services provided to foreign students in Australia that are related to:

- providing accommodation
- selecting or recruiting these students to work in Australia.

n.b. Some school or college EMDG applicants have accommodation for boarders. Where these applicants claim expenses for promoting their education services, the provision of accommodation to their students will be taken to be an ancillary service. Generally, apportionment of claimed expenses between eligible education and ineligible accommodation services will not be required.

## SECTION 25A GUIDELINES

### Eligible events – event promoters

**4.2.7** Section 25A of the EMDG Act states:

- (1) Subject to subsection (2), an event is an **eligible event** if:
  - a) the event is held in Australia; and
  - b) there is an events promoter for the event; and
  - c) the events promoter is not, in Austrade's opinion, closely related to the event holder; and
  - d) the event is not an event of a kind prescribed by the regulations for the purposes of this paragraph.
- (2) Despite subsection (1), a particular event that, apart from this subsection, would be an eligible event, is not such an event if Austrade determines, in writing, having regard to all the facts available to it, that the Australian input in the event is not sufficient to ensure that Australia will derive a significant net benefit from the holding of the event.

Relevant definitions found at section 107 of the EMDG Act:

**event** includes a conference, a meeting, a convention, an exhibition and a sporting, cultural or entertainment event.

**event holder**, in relation to an event, means the person holding the event.

**events promoter**, for an event, means a person that markets the event, under a written contract between the person and the event holder, to persons outside Australia.

**(Note:** Austrade's decisions on whether events promoters are not closely related to events holders are subject to guidelines determined by the Minister under section 101 of the EMDG Act.)

### **4.2.8** *What type of events can be promoted by events promoters?*

The EMDG Act defines the term *event* as including a conference, a meeting, a convention, exhibition, sporting cultural or entertainment event.

This means that all events are eligible as long as they are held in Australia unless:

- they are illegal
- there is inadequate Australian input so that Australia derives insufficient net benefit as a result of the event being held in Australia
- a regulation has been made to exclude them (there are no such regulations currently in existence).

### **4.2.9** *Can an event be eligible even if it is free?*

There is no requirement that there be an admission price charged for an event to be eligible for EMDG support.

The aim of the EMDG events promoters' provisions is to maximise foreign residents' attendance at Australian events together with their consequential spending on accommodation, tours etc. However, the event should be the drawcard that provides the main reason for the foreign resident to visit Australia.

The claim may be assessed under the general EMDG tourism rules if an applicant is mainly promoting general tourism services under the heading of promoting an event.

#### **4.2.10 *What happens if an event is cancelled after an events promoter has spent money promoting it?***

Grants will be paid as long as the event in question:

- is expected to proceed at a future date
- was expected to proceed at the time the expenditure was incurred, but was subsequently cancelled.

#### **4.2.11 *What arrangements should be in place between events promoters and their clients, the event holders?***

The event holder must operate at arms-length from the events promoter applying for EMDG.

There must be a written contract between the event holder and the events promoter requiring the events promoter to market the event to persons outside Australia.

#### **4.2.12 *Can there be more than one events promoter for any one event?***

There may be occasions when more than one events promoter is appointed for the one event.

This should not generally be an issue for EMDG purposes. Each promoter should be able to claim their expenses in their own right.

#### **4.2.13 *Does the event holder need to be resident in Australia?***

The event holder is not required to be an Australian resident. For example, an overseas association may decide to hold an event in Australia and the association may appoint an Australian events promoter to maximise attendances by people other than Australians.

#### **4.2.14 *Can there be more than one event holder for an event?***

Austrade would expect that in most cases there would be only one event holder for each event. This would normally be the organisation that has decided to stage an event and that has the authority to engage an events promoter, hire a venue, organise dates, arrange for speakers etc.

However, there may be occasions where there is some overlap between an organisation holding an event and, say, a committee set up to arrange for putting on the event. Similarly, there may be a foreign organisation with an Australian affiliate where both bodies have authority to enter into contractual arrangements relating to the event.

Austrade would handle such cases on a case-by-case basis.

**(Note:** Refer also to guideline 5.10.14 for details on expense eligibility rules for events promoters.)

#### **4.2.15 *Are activities related to attracting foreign exhibitors to an event eligible?***

Some events may include exhibition opportunities for attendees, but in most cases the exhibition component would merely be an adjunct to the event. In such cases, as long as expenses claimed are primarily incurred for the purposes of boosting the number of foreign attendees, they will as a general rule be eligible. Where the expenses claimed are mainly about attracting exhibitors (i.e. filling the space) rather than attracting foreign attendees, they will not be eligible.

**4.2.16** From 1 July 2008 (2008–09 grant year) applicants promoting events that they hold or own will be eligible under the EMDG Regulations 2008 as long as they do not engage an events promoter to promote the particular event. Refer also to guideline 4.2.5.

## SECTION 26 GUIDELINES

### Eligible intellectual property

**4.3.1** Intellectual property is referred to at section 107 of the EMDG Act and is defined to be things other than rights relating to know-how.

**4.3.2** Eligible intellectual property is defined at section 26 of the EMDG Act. It is divided into two broad categories:

- Where the rights relate to a trade mark, that trade mark must have been first used in Australia or it must have increased in significance or value because of its use in Australia.
- Where the rights relate to any other thing, that thing resulted to a substantial extent from research or work done in Australia.

### Eligible expenses and intellectual property

**4.3.3** The EMDG Act requires that applicants must own and must intend to dispose of their eligible intellectual property. Applicants holding intellectual property on exclusive licence are taken to meet this ownership requirement. However, Paragraph 37(1)(f) of the EMDG Act states that approved bodies can claim expenses in relation to eligible intellectual property owned by another person and which the other person intends to dispose of to a foreign resident. In addition applicants that are companies can also receive EMDG support where their related entities own the eligible intellectual property and intend to dispose of it to a foreign resident – refer to guideline 5.10.8.

**4.3.4** Guideline deleted.

**4.3.5** Guideline deleted.

### What is meant by disposal of eligible intellectual property?

**4.3.6** *Disposal* is defined at section 107 of the EMDG Act. Disposal, in relation to intellectual property or know-how, includes sale, grant, assignment or supply.

**4.3.7** *Disposal of eligible intellectual property or eligible know-how* is defined at section 111 of the EMDG Act. It states that ‘a person is taken to dispose of eligible intellectual property or eligible know-how only if Austrade is satisfied that the property or know-how (as the case may be) is disposed of for reward to a person that is not a resident of Australia, for use or enjoyment outside Australia.’

### Australian content and eligible intellectual property

**4.3.8** Eligible intellectual property must have a satisfactory level of Australian input. In the case of trade marks a satisfactory level of input can be established by first use in Australia or by an increase in significance or value through use in Australia. In the case of things other than trademarks, eligibility will be established by considering the extent of creative research or work done in Australia.

### Ownership of intellectual property

**4.3.9** Paragraph 37(1)(e) of the EMDG Act states that eligible intellectual property must be owned by the applicant. An applicant is entitled to receive EMDG support where it or its specified related entities own the eligible intellectual property – refer guideline 5.10.8.



4.3.10 Guideline deleted.

## SECTION 27 GUIDELINES

### Eligible know-how

4.4.1 Know-how is defined at subsection 27(2) of the EMDG Act as private knowledge, information or expertise relating to commercial or industrial operations that: (a) is of commercial value; and (b) is imparted for the purpose of enabling the recipient to carry out a particular activity.

4.4.2 Subsection 27(1) of the EMDG Act provides that *know-how* is *eligible know-how* if Austrade is satisfied that it resulted to a substantial extent from research or work done in Australia in terms of subsection 27(1).

4.4.3 Know-how should involve the provision of something in written, tangible or material form such as a manual or computer software. Austrade will closely check the eligibility of know-how where it includes a services component. Eligible know-how can include some element of service in its one-off delivery to overseas users but it will primarily be the passing on of knowledge to allow the recipient itself to deliver the service in question. Know-how will not be considered eligible where it is primarily the provision of on-going management services to an overseas client.

4.4.4 In determining the eligibility of know-how, it should be noted that it is the knowledge or information disposed of which must have the requisite Australian content rather than the method of disposing of the know-how.

### Eligible expenses and eligible know-how

4.4.5 The EMDG Act requires that applicants must own and must intend to dispose of their eligible know-how. However, Paragraph 37(1)(f) of the EMDG Act states that Approved Bodies can claim expenses in relation to eligible know-how owned by another person and which the other person intends to dispose of to a foreign resident. In addition, applicants that are companies can also receive EMDG support where their related entities own the eligible know-how and intend to dispose of it to a foreign resident (refer guideline 5.10.8).

4.4.6 Paragraph 37(1)(f) states that Approved Bodies can claim expenses in relation to eligible know-how owned by another person and that the other person intends to dispose of.

4.4.7 Guideline deleted.

### What is disposal of eligible know-how?

4.4.8 *Disposal* is defined at section 107 of the EMDG Act. Disposal, in relation to intellectual property or know-how, includes sale, grant, assignment or supply.

4.4.9 *Disposal of eligible intellectual property or eligible know-how* is defined at section 111 of the EMDG Act. It states that a person is taken to dispose of eligible intellectual property or eligible know-how only if Austrade is satisfied that the property or know-how (as the case may be) is disposed of for reward to a person that is not a resident of Australia, for use or enjoyment outside Australia.

### Distinction between eligible know-how and other product categories

4.4.10 (1) eligible know-how and goods

The distinction will be in the method of disposal. If the know-how is embodied in a good which (even though covered by copyright) is sold to the end user without any formal contract relating to retention of the claimant's rights in this know-how, it is likely to be a sale of a good. Examples would be the treatment of film and music CDs sold to the general public.

(2) eligible know-how and services

For something to be considered as know-how, it should impart knowledge to enable the recipient to undertake its own work. This is different to services where the actual work is undertaken by the provider of the services.

## Product eligibility guidelines for particular industries

### Computer software

**4.5.1** Computer software will be assessed as one of, or a combination of, goods, intellectual property (IP) and/or know-how.

**4.5.2** The basic eligibility requirements for each of these three categories are stated at 4.1, 4.3 and 4.4 of these Guidelines.

**4.5.3** It should be noted that although software is covered by copyright, this alone is insufficient to categorise it as either a good or an intellectual property right. What is needed is evidence of the 'thing' that is being promoted and purchased in overseas markets.

**4.5.4** The method of determining which category the software fits into will be largely based on what, if any, rights the buyer acquires when purchasing the software. This distinction will often not be clear-cut because of the nature of software. However, as an indication, sales of discs for retail and similar distribution would generally be regarded as the sale of a good whilst the sale of rights to a licensee (on a worldwide, country or territory basis) and similar activities would constitute a disposal of IP or know-how.

**4.5.5** The distinction between goods and know-how may be seen in the method of disposal. If the know-how is embodied in a good which (even though covered by copyright) is sold to the end user without any formal contract relating to the retention of the applicant's rights in this know-how, it is likely that the subject of the sale is the good, not the know-how. Such goods will then be assessed to ensure they meet the Australian content requirements. An example of such a treatment would be video and music CDs sold to the general public.

**4.5.6** Guideline deleted.

**4.5.7** Where rights are involved, it will generally not be necessary to categorically determine whether the software is either an IP or know-how as the same basic eligibility criteria apply to both types of activity.

**4.5.8** Software exporters granting distribution licences to overseas territories may continue to incur promotional expenses in that territory as a means of increasing royalty or licence fee income. Such expenses may be claimable as promotional expenses in terms of section 38 of the Act.

However, where an applicant has licensed eligible rights to an overseas resident and the contract between the parties requires that the applicant/licensor continues to undertake promotional activities in the licensed territories, such expenses would be regarded as a cost of sale and not as eligible promotional expenses.

**4.5.9** Computer software and programming services would generally be claimable as eligible external services subject to satisfying the requirements of guideline 4.2.16.

### Music industry applicants

**4.6.1** Applicants will generally be promoting the following products:

- goods (such as CDs)
- intellectual property rights (copyright in songs, music or recordings)
- to increase royalty income
- services (concert performances).

## Goods

**4.6.2** These must satisfy general Australian content requirements as outlined at guideline 4.1.1

An applicant owning the rights to a master tape may incur expenses in promoting products made overseas from this tape. These promotional activities may be eligible in terms of section 38 of the EMDG Act but only where such activities are not a condition of any licensing agreement with an overseas resident.

## Intellectual property

**4.6.3** Copyright (and associated rights) in music are eligible intellectual property rights only where the recordings, songs etc have resulted wholly or substantially from work performed in Australia. All stages in the production of music are taken into account when determining its Australian content.

**4.6.4** In respect of music rights, applicants (and in some cases their related entities – see guideline 5.10.8) must also hold the exclusive rights to do one or more of the following acts (as specified in sections 85, 87 and 88 of the *Copyright Act 1968*):

- make a copy of the sound recording
- cause the recording to be heard in public
- broadcast the recording
- in the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds, to make a recording of the broadcast, or a copy of such a sound recording.
- in the case of a television broadcast or of a sound broadcast, to re-broadcast it
- in relation to a published edition of a musical work, the exclusive right to make, by means that includes a photographic process, a reproduction of the edition.

**4.6.5** The exclusive rights to these things can be held as owner, assignee or licensee, but not as agent.

**4.6.6** Applicants who are granted an exclusive licence to a particular market territory in respect of a particular medium or media (e.g. radio, television) will be regarded as having satisfied the requirements detailed above and can claim expenses of promoting the music rights to that market territory for that medium or media.

**4.6.7** Music industry applicants promoting royalty income by performing and showcasing in overseas markets may be subject to the provisions of section 46 of the EMDG Act which deals with “reimbursements” of expenses. Please refer to the guidelines at 5.18.

## Services

**4.6.8** Applicants performing overseas will generally be regarded as providing eligible external services. Refer also to guidelines at 5.18 for assessment rules applying where applicants receive income in relation to their promotional activities.

## Film industry guidelines

### Background

**4.7.1** Film rights, for the purposes of the EMDG scheme, are regarded as intellectual property.

**4.7.2** Grants are payable only in respect of the disposal, or intended disposal, of eligible intellectual property, for reward.

**4.7.3** Copyright (and associated rights) in a film are eligible intellectual property only where the film has resulted wholly or substantially from work performed in Australia.

All stages in the production of a film are taken into account when determining its Australian content.

**4.7.4** For promotional expenditure to qualify for grant entitlement, it must be of an allowable type and be incurred for the purpose of creating or increasing demand for the disposal of copyright (and associated rights) in the film to persons resident outside Australia for use and enjoyment outside Australia. Disposal is defined as including the sale, grant, assignment or supply (section 107 of the Act) and also must be for reward (section 111 of the EMDG Act refers).

**4.7.5** Film industry applicants promoting intellectual property must demonstrate that they are promoting the disposal of intellectual property in the form of copyright.

The law of copyright is governed by the *Copyright Act 1968*. Apart from certain crown prerogative rights, no copyright exists in Australia in subject matters except under the Copyright Act.

Copyright exists in:

- a) works – original literary, dramatic, musical or artistic works whether published or unpublished
- b) subject matter other than works – sound recordings, cinematograph films, television and sound broadcasts and published editions of works.

These two categories are not exclusive. For example, copyright may exist in a cinematograph film as a whole, but may also exist in relation to each of the works the film is comprised of: the script (a dramatic work), drawings in an animated film (an artistic work), the music composed for the soundtrack (a musical work).

There are three types of licence in copyright:

- an “ordinary”, “bare” or “non-exclusive” licence – this is permission to the licensee to do something which would otherwise be an infringement of copyright. The licensor may still do the act himself and may grant licences to other persons to do the act
- a “sole licence” under which only the licensee and the licensor may do the act
- an “exclusive licence” permission to do the act is exclusive for the licensee and not even the licensor may do the act.

Only an exclusive licensee (or an assignee) may pursue an infringement action. A bare licensee or a sole licensee may not pursue an infringement action.

To be eligible for an EMDG grant in terms of subparagraph 37(1)(e)(i) of the EMDG Act, film industry applicants must demonstrate that they are promoting the disposal of rights in relation to work or things set out in the *Copyright Act 1968* where they (or in some case their related entities – refer guideline 5.10.8) either:

- a) own the copyright or
- b) have an exclusive licence to undertake any of the acts of copyright in relation to a particular territory.

**4.7.6** Film industry applicants must own the copyright or hold the exclusive right to do one or more of the following acts (as specified in section 86 of the *Copyright Act 1968*):

- a) make a copy of the film
- b) cause the film to be seen or heard in public
- c) communicate the film to the public.

**4.7.7** This exclusive right can be held as owner, assignee or licensee, but not as agent.

## Disposal of Eligible Film Rights

**4.7.8** In general terms rights can only be disposed of to those persons who will further exploit these rights (eg film distributors, television networks, video distributors). The screening of a film to the general public (e.g. cinema or television audiences), including four walling activities, does not constitute disposal of film rights.

**4.7.9** The granting to non-Australian residents of any of the following rights (on an exclusive basis) to market territories other than Australia for either a specified or indefinite period would constitute disposal of rights in terms of the EMDG legislation:

- a) cable and other pay television
- b) television distribution
- c) theatrical distribution
- d) non-theatrical distribution
- e) video cassette
- f) DVD and laser discs
- g) the right to enter into agreements with distributors of the above mentioned rights.

**4.7.10** The granting of ancillary rights in a film to a non-Australian resident (on an exclusive basis) in certain circumstances may also constitute an allowable disposal of rights.

**4.7.11** Although film industry applicants (or in some cases their related entities – refer guideline 5.10.8) must own or hold an exclusive licence for copyright, they are not required to promote the disposal of exclusive licences. It is sufficient to assign part of intellectual property rights to third parties (e.g. assign partially as to place, time).

**4.7.12** A holder of eligible rights who grants a licence to an overseas resident may continue to incur eligible expenditure in respect of that territory for that film in relation to the promotion of increased royalties from those rights. (Refer to section 38 of the EMDG Act and guidelines 5.11.1 – 13).

### Key principles to be applied in assessing film industry applications where expenses are claimed for the promotion of disposals of intellectual property in the form of copyright

#### 4.7.13

1. What work or thing does the application relate to, and what are the acts of copyright in relation to that work or thing set out in the Copyright Act? For a film industry applicant, these rights, as outlined at section 86 of the Copyright Act, include the right:

- a) to make a copy of the film
- b) to cause the film to be seen or heard in public
- c) to communicate the film to the public.

2. Does the applicant (or in some cases their related entities – refer guideline 5.10.8):

- a) own the copyright
- b) have an exclusive licence to undertake any of the acts of copyright in relation to a particular territory.

3. Does the applicant (or in some cases their related entities – refer to guideline 5.10.8) have the ability to dispose of that copyright and propose to dispose of the copyright in an overseas market?
  - a) disposal meaning the sale, grant, assignment or supply (section 107 EMDG Act)
  - b) disposal can include either the granting to a third party of an exclusive sublicense or the granting of part of the intellectual property rights (e.g. assignment partially as to place, time).
4. Has the applicant incurred eligible expenses?
  - a) Under an agreement with a film distributor, this will only occur where a producer meets/reimburses expenses of the distributor;
  - b) This will not be satisfied if the applicant has been paid or is entitled to be paid any consideration for the expenses – refer to subsection 46 (1) of the EMDG Act;
  - c) This will not be satisfied if the applicant is acting as an agent.

#### **Arrangements between film producers and film distributors**

**4.7.14** Film production companies will either promote their product directly or they will use an Australian or overseas distribution company to do the promotion.

In either case the producer must have assigned to it the copyright ownership from the film's investors so as to enable the producer to be able to promote the copyright.

Where producers promote directly they will be entitled to claim promotional expenses.

Where a producer's product is promoted through a distribution company (often termed distributor or distribution agent) there are likely to be some arrangements between the two parties that are relevant for determining the eligibility for EMDG grants.

The agency agreement between the producer (applicant) and the distributor should be obtained so as to be able to understand the relationship between the two parties.

Arrangements between a producer and a distributor generally involve the producer transferring or allocating some rights to the film to the distributor. These rights are commonly termed "marketing" rights but they may not give the distributor the exclusive rights to do acts of copyright. Rather, such rights often give the distributor the commercial rights to exploit the film or to promote the film so that overseas third parties can enter into contracts with the producer to themselves do acts of copyright (e.g. showing the film to the public overseas).

Distributors acquiring this type of limited right from the producers are not entitled to receive EMDG grants. The EMDG entitlement remains with the film producer.

For all claims received from film industry applicants, Austrade will examine, where relevant, the distribution agreements between producer and distributor to confirm that applicants (or in some case their related entities – refer guideline 5.10.8) satisfy the requirements of subparagraph 37(1)(e)(i) of the EMDG Act, that is, own (or are an exclusive licensee for) the copyright.

#### **Film production applicants claiming for distributors' promotional activities**

**4.7.15** The distributor will often agree to pay the producer an advance on future sales. This is commonly referred to as a 'distribution advance' or as a 'distribution guarantee'. No future payments will be made from sales to the applicant until the advance is fully recovered out of sales proceeds from the film.

The distributor then promotes the film and, commonly, many of its promotional expenses will be reimbursable by the producer (hence the producer potentially becomes entitled to an EMDG grant).

Promotional costs spent by a distributor may be claimable by the producer applicant where they are for activities eligible under section 33 of the EMDG Act and where they are acquitted in the applicant's accounts.

Acquittal of expenses for a production company claiming EMDG grants will usually occur by offsetting eligible export earnings against the expenses owed to the film distributor. The date of acquittal will be the date that the applicant receives the relevant royalty statement.

#### **EXAMPLE**

*A film producer receives its first royalty statement from its distributor in September 2013. The royalty statement shows sales achieved and recoverable marketing costs relating to the film. The period of the statement was March to June 2013.*

*The expenses are claimable in the 2013–14 grant year, i.e. when the applicant first recognised the revenues and costs.*

#### **Both distributor and production company claiming EMDG grants in relation to same film**

**4.7.16** Each distribution agreement will need to be analysed to determine which entity holds copyright or an exclusive licence in respect of a film.

Where a claim is received from any party (producer, distributor) in relation to a particular film, Austrade will identify any other parties that have claimed or intend to claim a grant in relation to the film. This may necessitate waiting until all claims for the year in question have been received so that Austrade can be certain that grants are only paid to the owner (or exclusive licensee) of the copyright.

**4.7.17** If the distributor does acquire all or some share of the film's copyright then it may be able to claim EMDG grants in its own right as a business that owns and promotes intellectual property. They could claim relevant promotional costs incurred where these costs have not been on-charged to the producer in the royalty statement.

#### **Pre-Selling Expenditure**

**4.7.18** Expenditure incurred by the owner or owners of copyright in a screenplay (to a yet to be produced film) will be eligible provided it can be substantiated that:

- a) the expenditure was incurred by way of promotional activities that fall within the EMDG Act's section 33 table
- b) the expenditure was incurred for the purpose of promoting the disposal of eligible intellectual property (see above guidelines and especially 4.7.13)
- c) it can be satisfactorily demonstrated that a film was proposed to be made
- d) the film was intended to be based upon that screenplay
- e) the screenplay resulted, wholly or substantially, from work performed in Australia
- f) the film is also intended to have the requisite Australian based work inputs
- g) the expenditure must be considered reasonable in relation to the nature and purpose for which it was incurred.

**4.7.19** In addition, the person(s) incurring the expenditure must:

- a) hold ownership of copyright in the screenplay (either from the outset or by way of assignment), or
- b) hold an exclusive licence to exploit the screenplay.

### **Promotional Films and Trailers**

**4.7.20** The eligibility of costs associated with the production of promotional films is dependent upon:

- a) the purpose(s) for which the film has been produced, and
- b) the nature of the expenditure. Specific guidelines are as follows:

**4.7.21** Such films must have been produced to promote the disposal of eligible intellectual property (see above guidelines and especially 4.7.13).

**4.7.22** Production costs are allowable expenditure only to the extent of bought-in costs incurred by the claimant.

**4.7.23** This guideline has been deleted.

**4.7.24** Costs of freight, projection and other costs associated with promotional films meeting the above criteria are eligible.

**4.7.25** Production costs are ineligible where the promotional film:

- a) was produced primarily for the purpose of attracting investment
- b) is disposed of for reward in its own right or as part of the ultimate film or series
- c) is intended to be used in the final production of the film or series
- d) has been taken from an existing film, except for the additional costs incurred in incorporating it into the promotional state.

**4.7.26** Where a promotional film or trailer is used to promote a film series, production costs are ineligible unless the claimant can clearly demonstrate that the pilot film has not been used to attract investment and that it is not intended to form part of the film series.

**4.7.27** The costs of producing trailers for supply with films are ineligible – however the cost of film trailers and the like to promote the disposal of eligible film rights and increased royalty income in terms of section 38 of the EMDG Act may be eligible.