

Draft Taxation Ruling 2004/D12
The Board of Taxation
c/- Eric Pepicelli
GPO Box 800
ADELAIDE SA 5001

Re: Draft Taxation Ruling 2004/D12 – Income tax: carrying on business as a professional artist

The draft taxation ruling 2004/D12 – *Income tax: carrying on a business as a professional artist* is of particular relevance to Australia’s filmmaking community as a majority of filmmakers operate in a freelance and self-employed capacity, sometimes working two or three jobs.

The Australian Film Commission (AFC) has supported prior submissions by the Arts Law Centre seeking a public ruling which provides guidance whether a person is carrying on a “business” as a professional practising artist for the purposes of the *Income Tax Assessment Act 1997* (‘the 1997 Act’).

The AFC believes that the DR2004/D12 will clarify the status of artists under the 1997 Act. It appropriately recognises the difficulties facing artists and their need to earn income from sources, other than from their main business.

The AFC supports the factor test as detailed in paragraphs 9 through 47. In relation to the indicator “*Activities of the same kind and carried on in the manner characteristic of the relevant industry,*” we point out that all AFC Guidelines for Film Development funding have eligibility criteria. The current guidelines are attached and can be found at: <http://www.afc.gov.au/downloads/pubs/afcfguide.pdf>. Many of the strands require that the applicant or applicants have previous credits on films in their chosen fields, within nominated time periods, and/or require the applicant/s to be working on a slate of projects. Other information commonly required includes financing plans, budget breakdowns, business plans, marketing plans, producer statements as well as creative planning documents such as script development notes, and director’s notes. The AFC believes that these documents are commonly used business tools in the film industry and point to an intention to run their enterprise in a professional and business-like manner.

The AFC also endorses the submission made by the Media Entertainment and Arts Alliance and its comments relating to the Activity Test, and its appropriateness as a factor to be considered under paragraph 36.

Yours sincerely,

Kim Dalton
Chief Executive
Australian Film Commission
28 September 2004