Australian film industry incentives 2010

To help you complete your tax return for 1 July 2009 – 30 June 2010
To be used by taxpayers claiming a tax deduction or a tax offset in relation to Australian film production

WHAT'S NEW?

Change to eligibility

In the 2010–11 Budget the Government announced the intention to change the eligibility criteria for the film tax offsets. The proposed amendments will reduce the minimum qualifying expenditure threshold for the post, digital and visual effects (PDV) offset from $5 million to $500,000. The amendments will also remove the requirement for films with qualifying expenditure of between $15 million and $50 million to have at least 70% of the film's total production expenditure as qualifying Australian expenditure in order to qualify for the location offset.

At the time of printing these instructions the changes had not become law. For more information visit **www.ato.gov.au**

THE AUSTRALIAN SCREEN PRODUCTION INCENTIVE

Division 376 of the *Income Tax Assessment Act 1997* (ITAA 1997) provides three tax offsets for certain Australian production expenditure incurred by a production company in making a film where a minimum level of expenditure has been incurred. The company is only entitled to one of the three tax offsets in relation to a film. The company can claim the tax offset in its income tax return.

The three tax offsets are:

- A refundable tax offset for Australian expenditure in making a film, known as 'the location tax offset'. The amount of the location tax offset is 15% of the company's total qualifying Australian production expenditure (QAPE) on the film.
- A refundable tax offset for Australian expenditure in making Australian films, known as 'the producer tax offset'. The amount of the producer tax offset is 40% of the company's total QAPE on a feature film or 20% of the company's total QAPE on a film that is not a feature film.
- A refundable tax offset for Australian expenditure on post, digital and visual effects production for a film, known as 'the PDV tax offset'. The amount of the PDV tax offset is 15% of the company's total QAPE on the film that relates to post, digital and visual effects production for the film.

Where the production company has chosen to claim one of the three tax offsets for an eligible film, neither of the other two tax offsets is available in relation to the film. This means that a film may be certified for only one stream of the Australian screen production incentive. Additionally, a company is not entitled to any of the three tax offsets in relation to an eligible film if:

- the company, or anyone else has claimed a deduction under Division 10B of Part III of the ITAA 1936 in relation to copyright in the film; or
- a final certificate for the film has been issued at any time under Division 10BA of the ITAA 1936.

Further, a company is not entitled to the producer tax offset in relation to an eligible film in either of these additional circumstances:

- the company or anyone else has deducted money paid for shares in a film licensed investment company (FLIC) and the FLIC has invested in the film

NAT 0954-06.2010

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- anyone has received production assistance for the film (other than financial assistance towards the development costs for the film) from the Film Finance Corporation Australia Limited, the Australian Film Commission, Film Australia Limited or the Australian Film, Television & Radio School (AFTRS) prior to 1 July 2007.

> For further information regarding Division 10B and Division 10BA, see *Australian film industry incentives 2009*.

The producer tax offset

The producer tax offset is a refundable tax offset for Australian expenditure in making Australian films. The amount of the producer tax offset is:

- 40% of the company's total QAPE on a feature film
- 20% of the company's total QAPE on a film that is not a feature film.

The producer tax offset applies only to QAPE incurred:

- on or after 1 July 2007; and
- before 1 July 2007, to the extent that the QAPE is attributable to goods or services provided on or after 1 July 2007.

The producer tax offset is available to a company for the making of an Australian film when the following conditions are met:

- The 'film authority' (currently **Screen Australia**) has issued to the company a final certificate for the film in relation to the producer tax offset.
- The company claims the tax offset in its income tax return for the income year in which the film was completed.
- The company is either an Australian resident or a foreign resident with a permanent establishment in Australia and an Australian Business Number (ABN).

The issue by Screen Australia of a final certificate to a company for a film in relation to the producer tax offset is the central requirement for the company's entitlement to the producer tax offset in respect of the film. Screen Australia will issue such a final certificate to a company only where it is satisfied the criteria set out in Division 376 of the ITAA 1997 for the issue of such a certificate have been met.

Broadly, Screen Australia must be satisfied of the following:

- the film is completed
- the film has 'significant Australian content' or it is an official co-production between Australia and another country
- the film is of an eligible format and genre
- the applicant company has either carried out, or made the arrangements for carrying out, all the activities necessary for the making of the film
- that company's total QAPE on the film meets or exceeds relevant thresholds.

For further information on the producer tax offset certification, including QAPE thresholds, and what is 'significant Australian content' and an eligible format and genre, go to **www.screenaustralia.gov.au/producer_offset/**

As part of the process of assessing an application for the final certificate, Screen Australia will formally determine the company's total QAPE on the film for the purposes of the producer tax offset. For a full discussion on what constitutes QAPE, go to **www.screenaustralia.gov.au/producer_offset/qual_expenditure.asp**

Screen Australia will also provide a copy of the final certificate and its determination of the company's total QAPE on the film to us to enable us to verify claims. We will not reconsider that determination or aspects of Screen Australia's final certification process.

Once the company claims the producer tax offset in its income tax return for the income year in which the film was completed, we will calculate the company's producer tax offset based on the final certificate issued by Screen Australia and its determination of the company's total QAPE on the film. We will then apply that tax offset against the company's Australian tax liability for the income year in which the film was completed, and refund any remainder to the company.

> For further information about producer tax offset certification, see **www.screenaustralia.gov.au/producer_offset/final_certification.asp**

The location tax offset

The location tax offset is calculated at 15% of the company's total QAPE on a film. The location tax offset is available for films that do not satisfy the significant Australian content test required for the producer tax offset.

The location tax offset applies to films commencing principal photography or production of the animated image on or after 8 May 2007.

The location tax offset is available to a company for the making of a film when the following conditions are met:

- The Minister for Environment Protection, Heritage and the Arts (the Arts Minister) has issued to the company a final certificate for the film in relation to the location offset.
- If the company's total QAPE on the film is less than $50 million - the company claims the tax offset in its income tax return for the income year in which the company's 'production expenditure' on the film ceased.
- If the company's total QAPE on the film is $50 million or more - the company claims the tax offset in its income tax return for the income year in which the company's QAPE on the film ceased.

- The company is either an Australian resident or a foreign resident with a permanent establishment in Australia and an ABN.

The issue by the Arts Minister of a final certificate to a company for a film in relation to the location tax offset is the central requirement for the company's entitlement to the location tax offset in respect of the film.

An application to the Arts Minister for such a final certificate is considered by the Film Certification Advisory Board, comprising industry representatives and a senior official from the Department of the Environment, Water, Heritage and the Arts, which advises the Minister on whether to issue a final certificate.

Broadly, the Arts Minister must be satisfied of the following:

- The film is of an eligible format and genre.
- The company's total QAPE on the film is at least $15 million.
- If the company's total QAPE on the film is less than $50 million - that total QAPE must be at least 70% of the company's total 'production expenditure' on the film and the company has either carried out, or made the arrangements for carrying out, all the activities worldwide necessary for the making of the film.
- If the company's total QAPE on the film is at least $50 million - the company has either carried out, or made the arrangements for carrying out, all the activities in Australia necessary for the making of the film.

Further details of the application process for provisional and final certification, guidelines and eligibility criteria are available on the Department of the Environment, Water, Heritage and the Arts website at **www.arts.gov.au/film/production-incentive**

Like with the producer tax offset, the company's total QAPE on the film is determined as part of the final certification process for the location tax offset and that information along with a copy of the final certificate is provided to us to enable us to verify claims and process payment of the location tax offset.

The post, digital and visual effects (PDV) tax offset

The PDV tax offset applies to the production of PDV for a film that commences on or after 1 July 2007. It is designed to attract post-production, digital and visual effects production to Australia, no matter where the film is shot.

The PDV tax offset is available to a company in respect of a film when the following conditions are met:

- The Minister for Environment Protection, Heritage and the Arts (the Arts Minister) has issued to the company a final certificate for the film in relation to the PDV tax offset.
- The company claims the PDV tax offset in its income tax return for the income year in which the company ceased incurring QAPE related to PDV production for the film.
- The company is either an Australian resident or a foreign resident with a permanent establishment in Australia and an ABN.

The PDV tax offset is 15% of the company's total QAPE that relates to PDV production for the film which is, broadly, expenditure on PDV production work undertaken in Australia. It is available to productions which do not necessarily shoot in Australia.

The issue by the Arts Minister of a final certificate to a company for a film in relation to the PDV tax offset is the central requirement for the company's entitlement to the PDV tax offset in respect of the film.

An application to the Arts Minister for such a final certificate is considered by the Film Certification Advisory Board, comprising industry representatives and a senior official from the Department of the Environment, Water, Heritage and the Arts, which advises the Minister on whether to issue a final certificate.

Broadly, the Arts Minister must be satisfied of the following:

- The film is of an eligible format and genre.
- The company's total QAPE related to PDV production for the film is at least $5 million.
- The company has either carried out, or made the arrangements for carrying out, all the activities in Australia necessary for the PDV production for the film.

PDV production for a film is:

- the creation of audio or visual elements (other than principal photography, pick-ups or the creation of physical elements such as sets, props or costumes) for the film
- the manipulation of audio or visual elements (other than pick-ups or physical elements such as sets, props or costumes) for the film
- activities that are reasonably related to the activities mentioned above.

This includes expenditure on VFX, 2D and 3D animation, audio post, editing, green-screen photography and miniatures undertaken in Australia. See **www.arts.gov.au/film/production-incentive** for a more extensive list of activities and further details of the application process for certification, guidelines and eligibility criteria.

The company's total QAPE related to PDV production for the film is determined as part of the final certification process for the PDV tax offset and that information along with a copy of the final certificate is provided to us to enable us to verify claims and process payment of the PDV tax offset.

The Minister (and Screen Australia in relation to the producer tax offset) has the power to revoke certificates in cases of fraud or serious misrepresentation. In such a case a revocation would require a full repayment of any film tax offset given. Decisions not to issue or to revoke a certificate previously issued are reviewable in the Administrative Appeals Tribunal.

For further information about location and PDV tax offsets, including certification, go to the Department of the Environment, Water, Heritage and the Arts' website at **www.arts.gov.au/film/australian_screen_production_incentive**

Investment in a film licensed investment company (FLIC)

Under Subdivision 375-H of the ITAA 1997 taxpayers are able to claim deductions for amounts paid by them for shares in a company which has been granted a license to raise concessional capital under the *Film Licensed Investment Company Act 2005.* Deductions are not available for shares issued after 30 June 2007. Further, Division 375 will be repealed with effect from 1 July 2010.

The FLIC tax concession allows certain returns of concessional capital (that is, capital invested in a FLIC during its licence period) to be treated as franked dividends. If you are an investor in a FLIC, you may have received a notice from the company advising that it is returning to you an amount of concessional capital that is, for tax purposes, a franked dividend. The FLIC will advise you of the amount of your dividend and the franking credit.

Where do I claim a tax offset on my tax return under division 376?

Companies must use the *Company tax return 2010* (NAT 0656). All film tax offsets should be claimed at **Z** on the calculation statement on page 8 of the company tax return.

NOTE

To provide greater certainty for investors, we provide 'product rulings'. Promoters of an investment can apply to us for a ruling on the availability of the tax benefits claimed by the investment. Potential investors may wish to approach their film promoter for details of any applicable product ruling.

For more information see *Product Ruling PR 2007/71 – Income tax and fringe benefits tax: Product Rulings system*.

MORE INFORMATION

To get any publication referred to in this fact sheet:

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- phone our Publications Distribution Service on **1300 720 092**, or
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PUBLISHED BY

Australian Taxation Office
Canberra
June 2010

JS 14668