



## **PDV Offset Rules 2008<sup>1</sup>**

*Income Tax Assessment Act 1997*

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I, PETER ROBERT GARRETT, Minister for the Environment, Heritage and the Arts, make these Rules under subsections 376-260 (2) and (3) of the *Income Tax Assessment Act 1997*.

Dated 2008

Minister for the Environment, Heritage and the Arts

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**Rule 1**

## **Part 1 Preliminary**

### **1 Name of Rules**

These Rules are the *PDV Offset Rules 2008*.

### **2 Commencement**

These Rules commence on the day after they are registered.

### **3 Objects of Rules**

The objects of these Rules are:

- (a) to provide for the issue of provisional certificates in relation to the PDV offset (see subsection 376-260 (2) of the Act); and
- (b) to specify how applications for certificates (including provisional certificates) in relation to the PDV offset are to be made (see subsection 376-260 (3) of the Act).

### **4 Definitions**

In these Rules:

*Act* means the *Income Tax Assessment Act 1997*.

*application for a certificate for the PDV offset* means an application made under subsection 376-230 (2) of the Act.

*Board* has the meaning given by rule 4 of the *Film Certification Advisory Board Rules 2008*.

*certificate for the PDV offset* means a certificate issued by the Arts Minister under section 376-45 of the Act.

*Department* means the Department of the Environment, Water, Heritage and the Arts.

*estimated qualifying Australian production expenditure* means an amount worked out having regard to the matters in Subdivision 376-C of the Act.

*independent line producer* means a person who:

- (a) has recent experience in large budget film production management; and
- (b) in the Board's opinion, is independent of the company in relation to whom he or she is asked, under subrule 9 (3) or 19 (3), to provide a report.

*PDV offset* means the tax offset mentioned in subsection 376-35 (1) of the Act.

*provisional certificate* means a certificate issued by the Board under rule 13.

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**Rule 4**

**registered company auditor** has the meaning given by section 9 of the *Corporations Act 2001*.

**related body corporate** has the meaning given by section 9 of the *Corporations Act 2001*.

**statutory declaration** means a statutory declaration made under the *Statutory Declarations Act 1959*.

*Note* Several other words and expressions used in these Rules have the meaning given by subsection 995-1 (1) of the Act. For example:

- arm's length
- arrangement
- Arts Minister
- associate
- Australian resident
- completed
- film
- permanent establishment
- production expenditure
- qualifying Australian production expenditure
- television series.

**Rule 5**

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**Part 2 Provisional certificates for PDV offset****5 Interpretation for Part 2**

(1) In this Part:

*applicant* means a company that has applied for a provisional certificate for the PDV offset in accordance with this Part.

(2) For this Part, if a company (the *incoming company*) takes over the post, digital and visual effects production for a film from another company (the *outgoing company*):

- (a) any of the activities that constitute post, digital and visual effects production for the film and that were carried out by the outgoing company are taken to have been carried out by the incoming company in relation to the film; and
- (b) any arrangements made, by the outgoing company, for the purposes of post, digital and visual effects production for the film are taken to have been made by the incoming company in relation to the film.

**6 Application for provisional certificate**

A company may apply to the Board for a provisional certificate, for a film, for the PDV offset if:

- (a) either:
  - (i) the company is an Australian resident; or
  - (ii) the company:
    - (A) is a foreign resident; and
    - (B) has a permanent establishment in Australia; and
    - (C) has an ABN; and
- (b) the company is the company that is carrying out, or is making the arrangements for the carrying out of, all the activities in Australia that are necessary for the post, digital and visual effects production for the film.

**7 Form of application for provisional certificate***Information in application*

- (1) An application for a provisional certificate for the PDV offset must:
  - (a) be made to the Board in writing; and
  - (b) include the information specified in Divisions 1 and 2 of Part A of Schedule 1; and
  - (c) be signed on behalf of the applicant.

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**Rule 9**

- (2) If any of the information specified in Division 3 of Part A of Schedule 1 is available and is relevant to the film, the application must also include that information.

*Documents attached to application*

- (3) The following documents must be attached to the application:
- (a) the documents specified in Part B of Schedule 1;
  - (b) an expenditure statement, prepared in accordance with rule 23, for the estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film.
- (4) If expenditure incurred in producing material for use in publicising or promoting the film is claimed as estimated qualifying Australian production expenditure by the applicant under item 3 of the table in subsection 376-150 (1) of the Act, evidence that the copyright in the material is held by an Australian resident must also be attached to the application.

## **8 Delivery of application for provisional certificate**

An application for a provisional certificate for the PDV offset must be delivered to the Department.

## **9 Board to consider application for provisional certificate**

- (1) On receiving an application for a provisional certificate for the PDV offset, the Board must:
- (a) consider the application; and
  - (b) decide whether or not to issue a provisional certificate to the applicant.

*Note* See rule 13.

- (2) For paragraph (1) (a), in considering the application, the Board:
- (a) may seek information or advice from any person or source; and
  - (b) may take into account the knowledge and experience of its members; and
  - (c) must consider all relevant information, including the following information:
    - (i) the application and attached documents;
    - (ii) any written report requested by the Board under subrule (3) and any written submission made by the applicant in response to that report;
    - (iii) any additional information provided by the applicant under rule 10;
    - (iv) any other relevant information or advice obtained by the Board.

**Rule 10**

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- (3) Without limiting paragraph (2) (a), the Board may ask an independent line producer to provide a written report to the Board about any matter that is relevant to whether a condition set out in subsection 376-45 (2), (3) or (5) of the Act will be met or is likely to be met.
- (4) A report under subsection (3) may include advice about any of the following matters:
  - (a) whether the applicant's expenditure statement is commercially reasonable;
  - (b) whether specific items claimed in the applicant's expenditure statement are reasonably attributable to the estimated qualifying Australian production expenditure on the film (to the extent that the estimated qualifying Australian production expenditure relates to post, digital and visual effects production for the film);
  - (c) whether costs that are charged for specific items indicate that the parties to the transaction will be dealing with each other at arm's length.
- (5) If the Board intends to use information or advice from a third party to support a decision to refuse to issue a provisional certificate for the PDV offset to an applicant, the Board must give the applicant reasonable opportunity to comment on the substance of that information or advice.
- (6) If the Board asks an independent line producer to provide the Board with a written report under subrule (3), the Board must:
  - (a) give a copy of the report to the applicant to whom it relates as soon as practicable; and
  - (b) give the applicant reasonable opportunity to make a written submission to the Board in response to the report.

**10 Board may request additional information from applicant**

- (1) If, in the opinion of the Board, it requires additional information in order to decide whether or not to issue a provisional certificate for the PDV offset to an applicant, the Board may ask the applicant, in writing, to provide that information to the Board.
- (2) The request must specify:
  - (a) the information required by the Board (the *additional information*); and
  - (b) the period within which the information must be provided to the Board (the *notification period*).
- (3) An applicant may request that the Board extend the notification period.
- (4) A request under subrule (3) must be made:
  - (a) in writing; and
  - (b) within 28 days of the applicant's receipt of the written request given under subrule (1).

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- (5) If a request is made by an applicant under subrule (3), the Board may extend the notification period.
- (6) If an applicant does not provide the additional information within the notification period, or within the notification period as extended under subrule (5), the Board may refuse to issue a provisional certificate to the applicant.

**11 Refusal to issue provisional certificate**

- (1) This rule applies in addition to subrule 10 (6).
- (2) The Board may refuse to issue a provisional certificate for the PDV offset for a film if it is not satisfied that the conditions set out in subsections 376-45 (2), (3) and (5) of the Act will be met, or are likely to be met, if the post, digital and visual effect production for the film is completed in accordance with the information supplied in the application.

**12 Notice of refusal to issue provisional certificate**

- (1) If the Board decides not to issue a provisional certificate for the PDV offset for a film, the Board must give the applicant written notice of the decision.
- (2) The written notice must set out each condition specified in section 376-45 of the Act that the Board was not satisfied would be met, or likely to be met, if the film was completed in accordance with the information supplied in the application.
- (3) The Board must give the written notice to the applicant no later than 28 days after the Board's decision not to issue the provisional certificate.

**13 Issue of provisional certificate**

- (1) The Board must issue a provisional certificate for the PDV offset for a film to the applicant if it is satisfied that the conditions set out in subsections 376-45 (2), (3) and (5) of the Act will be met, or are likely to be met, if the post, digital and visual effects production for the film is completed in accordance with the information supplied in the application.
- (2) A provisional certificate is subject to any condition specified by the Board in the certificate.

**14 Content of provisional certificate**

- (1) This rule applies in addition to subrule 13 (2).
- (2) A provisional certificate must state that the Board is satisfied that the conditions set out in subsections 376-45 (2), (3) and (5) of the Act will be met, or are likely to be met, if the post, digital and visual effects production for the film is completed in accordance with:
  - (a) the information supplied in the application; and

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- (b) the conditions (if any) specified in the provisional certificate.
- (3) A provisional certificate must also state that it:
  - (a) does not entitle an applicant to claim a tax offset under Division 376 of the Act; and
  - (b) does not prevent a decision by the Arts Minister to refuse to grant a certificate under Division 376 of the Act; and
  - (c) is not a guarantee that the Arts Minister will issue a certificate to the applicant under section 376-45 of the Act.

**15 Effect of provisional certificate**

A provisional certificate for the PDV offset:

- (a) does not entitle an applicant to claim a tax offset under Division 376 of the Act; and
- (b) does not prevent a decision by the Arts Minister to refuse to grant a certificate under Division 376 of the Act; and
- (c) is not a guarantee that the Arts Minister will issue a certificate to the applicant under section 376-45 of the Act.

## Part 3 Certificates for PDV offset

### 16 Definition for Part 3

In this Part:

*applicant* means a company that has applied for a certificate for the PDV offset in accordance with this Part.

### 17 Form of application for certificate for the PDV offset

#### *Information in application*

- (1) An application for a certificate for the PDV offset must:
  - (a) be made to the Arts Minister in writing; and
  - (b) include the information specified in Divisions 1 to 3 of Part A of Schedule 2; and
  - (c) be signed on behalf of the applicant.

#### *Documents attached to application*

- (2) The following documents must be attached to the application:
  - (a) the documents specified in Part B of Schedule 2;
  - (b) an expenditure statement, prepared in accordance with rule 24, for the estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film;
  - (c) an auditor's statement that is:
    - (i) in the form specified in Schedule 3; and
    - (ii) is signed by a person who:
      - (A) is a registered company auditor; and
      - (B) is not an officer, employee or partner of the applicant or of a body corporate that is a related body corporate in relation to the applicant;
  - (d) if the expenditure statement contains an amount of estimated qualifying Australian production expenditure that has been translated into Australian currency using the special translation rule in item 9A or 9B of the table in subsection 960-50 (6) of the Act, a foreign currency statement, prepared in accordance with rule 25.

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- (3) If expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the film is claimed, by the applicant, as estimated qualifying Australian production expenditure under item 2 of the table in subsection 376-150 (1) of the Act, the following documents must also be attached to the application:
  - (a) evidence that the copyright is held by an Australian resident;
  - (b) proof of the acquisition of the copyright or a licence in relation to the copyright (including any agreement in relation to the acquisition).
- (4) If expenditure is claimed, by the applicant, as estimated qualifying Australian production expenditure under item 3 of the table in subsection 376-150 (1) of the Act because it was incurred in producing material for use in publicising or otherwise promoting the film, the following documents must also be attached to the application:
  - (a) evidence that the copyright in the material is held by an Australian resident;
  - (b) evidence that the expenditure was so incurred.
- (5) If expenditure is claimed, by the applicant, as estimated qualifying Australian production expenditure under item 4 of the table in subsection 376-150 (1) of the Act because it was incurred in producing audio or visual content for the film, the following documents must also be attached to the application:
  - (a) evidence that the content was produced otherwise than for use in the first copy of the film;
  - (b) evidence that the expenditure was incurred in Australia prior to the completion of the film.

**18 Delivery of application for certificate for the PDV offset**

An application for a certificate for the PDV offset must be delivered to the Department.

**19 Board to consider application for certificate for the PDV offset**

- (1) If the Arts Minister asks the Board to advise him or her about an application for a certificate for the PDV offset, the Board must:
  - (a) consider the application; and
  - (b) advise the Arts Minister as requested.
- (2) For paragraph (1) (a), in considering the application, the Board:
  - (a) may seek information or advice from any person or source; and
  - (b) may take into account the knowledge and experience of its members; and
  - (c) must consider all relevant information, including the following information:
    - (i) the application and attached documents;

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- (ii) any written report requested by the Board under subrule (3) and any written submission made by the applicant in response to that report;
  - (iii) any additional information provided by the applicant under rule 20;
  - (iv) any other relevant information or advice obtained by the Board.
- (3) Without limiting paragraph (2) (a), the Board may ask an independent line producer to provide a written report to the Board about any matter that is relevant to whether a condition set out in subsection 376-45 (2), (3) or (5) of the Act has been met.
- (4) A report under subsection (3) may include advice about any of the following matters:
- (a) whether the applicant's expenditure statement is commercially reasonable;
  - (b) whether specific items claimed in the applicant's expenditure statement are reasonably attributable to the production expenditure on the film or to the estimated qualifying Australian production expenditure on the film (to the extent that the estimated qualifying Australian production expenditure relates to post, digital and visual effects production for the film);
  - (c) whether costs that are charged for specific items indicate that the parties to the transaction were dealing with each other at arm's length.
- (5) If the Board intends to use information or advice from a third party to support advice to the Arts Minister not to issue a certificate for the PDV offset to an applicant, the Board must give the applicant reasonable opportunity to comment on the substance of that information or advice.
- (6) If the Board asks an independent line producer to provide the Board with a written report under subrule (3), the Board must:
- (a) give a copy of the report to the applicant to whom it relates as soon as practicable; and
  - (b) give the applicant reasonable opportunity to make a written submission to the Board in response to the report.

**20 Board may request additional information from applicant**

- (1) If, in the opinion of the Board, it requires additional information in order to provide advice to the Arts Minister about an application, the Board may ask the applicant, in writing, to provide that information to the Board.

*Example*

The Board may ask an applicant, in writing, to provide an audit opinion on the production expenditure on the film.

- (2) The request must specify:
- (a) the information required by the Board (the *additional information*); and

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- (b) the period within which the information must be provided to the Board (the *notification period*).
- (3) An applicant may request that the Board extend the notification period.
- (4) A request under subrule (3) must be made:
  - (a) in writing; and
  - (b) within 28 days of the applicant's receipt of the written request given under subrule (1).
- (5) If a request is made by an applicant under subrule (3), the Board may extend the notification period.
- (6) If an applicant does not provide the additional information within the notification period, or within the notification period as extended under subrule (5), the Board may proceed to advise the Arts Minister in accordance with rule 21.

**21 Board to advise Arts Minister**

- (1) For paragraph 19 (1) (b), if the Arts Minister has asked the Board to advise him or her whether to issue a certificate for the PDV offset to an applicant, the Board must advise the Arts Minister, in writing:
  - (a) whether the Board is satisfied that the conditions set out in subsection 376-45 (2), (3) and (5) of the Act are met in relation to the application, assuming, as far as is practicable, that:
    - (i) the Board were acting under Division 376 of the Act; and
    - (ii) the Board had determined the qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film; and
  - (b) whether or not to issue a certificate for the PDV offset, for the film, to the applicant.
- (2) If the Board advises the Arts Minister:
  - (a) that it is not satisfied that a condition set out in section 376-45 of the Act is met in relation to an application; or
  - (b) not to issue a certificate for the PDV offset for a film to an applicant; the Board's written advice to the Arts Minister must include a reason for that advice.

*Note* The Board's written advice to the Arts Minister may need to include additional information (see subrule 14 (4) of the *Film Certification Advisory Board Rules 2008*).

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## Part 4 Expenditure statements and foreign currency statements

### 22 Definition for Part 4

In this Part:

*applicant* means a company that has applied, or that intends to apply, for a provisional certificate, or a certificate, for the PDV offset.

### 23 Expenditure statements for provisional certificates

- (1) For paragraph 7 (3) (b), an expenditure statement for a provisional certificate for the PDV offset must comply with subrules (2) to (6).
- (2) An expenditure statement must:
  - (a) specify any estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film, claimed under:
    - (i) item 4 of the table in subsection 376-150 (1) of the Act (expenditure incurred in producing additional content); or
    - (ii) an item of the table in subsection 376-165 (1) of the Act; and
  - (b) specify any expenditure incurred by an outgoing company.

*Note* *Outgoing company* is explained in subrule 5 (2).

- (3) The expenditure statement must also include:
  - (a) a statement of the estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film; and
  - (b) a description of each budget item; and
  - (c) the amount of projected expenditure on each budget item; and
  - (d) details of each service provider by budget item; and
  - (e) details of the location in which, and the period over which, each service or good has been, or will be, provided; and
  - (f) details of the location of any land to be used in making the film, and the period of use of the land.

*Note* The estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film, must be at least A\$5 million (see paragraph 376-45 (5) (a) of the Act).

- (4) An amount in an expenditure statement must be expressed in Australian currency.

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- (5) For the purposes of an expenditure statement, an amount in foreign currency that is relevant for a purpose mentioned in column 2 of item 9A of the table in subsection 960-50 (6) of the Act must be translated into Australian currency using the special translation rule in that item as if:
- (a) a reference in that item to qualifying Australian production expenditure were a reference to estimated qualifying Australian production expenditure; and
  - (b) if post, digital and visual effects production for the film has not commenced at the time that the expenditure statement is prepared — a reference to the exchange rate applicable when post, digital and visual effects production for the film commences is a reference to an exchange rate estimated by the applicant.
- (6) If an expenditure statement includes an amount in foreign currency that has been translated into Australian currency using the special translation rule in item 9A of the table in subsection 960-50 (6) of the Act, as applied in accordance with subrule (5), the expenditure statement must also include the exchange rate, or estimated exchange rate, used to translate the amount.

**24 Expenditure statements for certificates for the PDV offset**

- (1) For paragraph 17 (2) (b), an expenditure statement for a certificate for the PDV offset must comply with subrules (2) to (5).
- (2) An expenditure statement must:
- (a) specify any estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film, claimed under:
    - (i) item 4 of the table in subsection 376-150 (1) of the Act (expenditure incurred in producing additional content); or
    - (ii) an item of the table in subsection 376-165 (1) of the Act; and
  - (b) specify any expenditure incurred by an outgoing company.
- Note* **Outgoing company** is explained in subsection 376-180 (1) of the Act.
- (3) The expenditure statement must also include:
- (a) a statement of the estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film; and
  - (b) a description of each budget item; and
  - (c) the amount of projected expenditure on each budget item; and
  - (d) details of each service provider by budget item; and
  - (e) details of the location in which, and the period over which, each service or good has been, or will be, provided; and

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- (f) details of the location of any land to be used in making the film, and the period of use of the land.

*Note* The estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film, must be at least A\$5 million (see paragraph 376-45 (5) (a) of the Act).

- (4) An amount in an expenditure statement must be expressed in Australian currency.
- (5) For the purposes of an expenditure statement, an amount in foreign currency that is relevant for a purpose mentioned in column 2 of item 9A or 9B of the table in subsection 960-50 (6) of the Act must be translated into Australian currency using the special translation rule in the relevant item as if a reference in that item to qualifying Australian production expenditure were a reference to estimated qualifying Australian production expenditure.

## **25 Foreign currency statement for certificates for the PDV offset**

For paragraph 17 (2) (d), a foreign currency statement for a certificate for the PDV offset must set out:

- (a) each amount, expressed in the relevant foreign currency, of estimated qualifying Australian production expenditure that has been expended in a foreign currency (the *foreign expenditure amount*); and
- (b) for a foreign expenditure amount that is to be translated into Australian currency using the special translation rule in item 9A of the table in subsection 960-50 (6) of the Act, as applied in accordance with subrule 24 (5) (an *item 9A foreign expenditure amount*):
- (i) the amount, expressed in Australian currency; and
  - (ii) the sum of all of the item 9A foreign expenditure amounts, expressed in Australian currency; and
- (c) for a foreign expenditure amount that is to be translated into Australian currency in accordance with the special translation rule in item 9B of the table in subsection 960-50 (6) of the Act, as applied in accordance with subrule 24 (5) (an *item 9B foreign expenditure amount*):
- (i) the amount, expressed in Australian currency; and
  - (ii) the sum of all of the item 9B foreign expenditure amounts, expressed in Australian currency.

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**Part 5                      Audit requirements****26                      Conduct of audit**

A company that has applied, or that intends to apply, for a certificate for the PDV offset must ensure that an audit that is conducted for paragraph 17 (2) (c) is conducted in accordance with all applicable accounting standards, including any standards relating to the independence of auditors.

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## **Schedule 1      Information and documents for an application for a provisional certificate**

(rule 7)

### **Part A      Information to be included in an application for a provisional certificate**

#### **Division 1      Information about the applicant**

- 1.1 Registered name of the company.
- 1.2 ABN of the company.
- 1.3 For a company that is incorporated in a State or Territory — the State or Territory in which the company is incorporated.
- 1.4 For a company that is not incorporated in a State or Territory — the place in which the company is incorporated.
- 1.5 Registered address of the company.
- 1.6 For a company that is a foreign resident — details of the company's permanent establishment in Australia.
- 1.7 Names and addresses of company directors.
- 1.8 Details of the contact person for the application, including the following details:
  - name
  - office or title
  - telephone
  - business address
  - mobile
  - facsimile
  - email.
- 1.9 The applicant's level of responsibility for carrying out, or making the arrangements for the carrying out of, all the activities in Australia that were necessary for the post, digital and visual effects production for the film.

#### **Division 2      Information about the film**

##### *General information*

- 2.1 Working title of the film.

2.2 Format of the film.

*Note* See paragraph 376-20 (2) (c) of the Act.

2.3 Synopsis of the film.

*Note* If the film is a television series, a synopsis of the series must be provided.

2.4 Estimated running time of the film.

2.5 Estimated date of completion of the film.

*Details of post, digital and visual effects production for the film*

2.6 An outline of the proposed post, digital and visual effects production for the film that has been, or that will be, carried out in Australia.

*Financial information*

2.7 Estimated dates for:

- (a) the start of estimated qualifying Australian production expenditure on post, digital and visual effects production for the film; and
- (b) the end of estimated qualifying Australian production expenditure on post, digital and visual effects production for the film.

2.8 Whether a deduction has been claimed under Division 10B of Part III of the *Income Tax Assessment Act 1936* in relation to a unit of industrial property that relates to copyright in the film.

2.9 Whether a provisional certificate, or a final certificate, has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film (whether or not the certificate is still in force).

2.10 Whether a deduction has been claimed, or will be claimed, under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film.

2.11 Whether:

- (a) the applicant, or another person, has applied, or will apply, for:
  - (i) a certificate for the location offset for the film under subsection 376-230 (1) of the Act; or
  - (ii) a certificate for the producer offset for the film under subsection 376-230 (3) of the Act; or
- (b) a certificate for the film has been issued at any time under section 376-20 of the Act (a certificate for the location offset) or under section 376-65 of the Act (a certificate for the producer offset) (whether or not the certificate is still in force).

2.12 Whether the applicant is likely to incur expenditure on post, digital and visual effects production for the film as a foreign resident.

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- 2.13 For any expenditure described in clause 2.12:
- (a) the estimated total amount of the expenditure; and
  - (b) the period or periods during which the expenditure is likely to be incurred; and
  - (c) whether, during the whole or a part of a period mentioned in paragraph (b), the applicant will not have, or is likely not to have, a permanent establishment in Australia or an ABN.

### **Division 3 Other information**

- 3.1 Details of the production company for the film, including the following details:
- (a) registered name of the production company;
  - (b) ABN of the production company;
  - (c) registered address of the production company;
  - (d) names and addresses of directors of the production company.
- 3.2 For any provider of goods or services that will be used in the making of the film who is:
- (a) an associate of the applicant; or
  - (b) an associate of a company that is an associate of the applicant;
- the details of the provider.
- 3.3 Details of any company that is an outgoing company.
- Note* **Outgoing company** is explained in subrule 5 (2).

## **Part B Documents to be attached to an application for a provisional certificate**

- 1.1 A statutory declaration stating:
- (a) that it is made for rule 7; and
  - (b) that:
    - (i) the information contained in the application for the provisional certificate; and
    - (ii) each document attached to the application;
- is correct and true in every particular.
- 1.2 Evidence, if it is available, that:
- (a) for an applicant that is an Australian resident — the applicant is an Australian resident; or
  - (b) for an applicant that is not an Australian resident — the applicant has:
    - (i) a permanent establishment in Australia; and
    - (ii) an ABN.

## **Schedule 2      Information and documents for an application for a certificate for the PDV offset**

(rule 17)

### **Part A      Information to be included in an application for a certificate for the PDV offset**

#### **Division 1      Information about the applicant**

- 1.1 Registered name of the company.
- 1.2 ABN of the company.
- 1.3 For a company that is incorporated in a State or Territory — the State or Territory in which the company is incorporated.
- 1.4 For a company that is not incorporated in a State or Territory — the place in which the company is incorporated.
- 1.5 Registered address of the company.
- 1.6 For a company that is a foreign resident — details of the company's permanent establishment in Australia.
- 1.7 Names and addresses of company directors.
- 1.8 Details of the contact person for the application, including the following details:
  - name
  - office or title
  - telephone
  - business address
  - mobile
  - facsimile
  - email.
- 1.9 The applicant's level of responsibility for carrying out, or making the arrangements for the carrying out of, all the activities in Australia that were necessary for the post, digital and visual effects production for the film.

*Note* The Arts Minister must be satisfied that that applicant either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the post, digital and visual production for the film — see paragraph 376-45 (5) (b) of the Act.

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## Division 2 Information about the film

### *General information*

2.1 Title of the film.

2.2 Format of the film.

*Note* See paragraph 376-20 (2) (c) of the Act.

2.3 Synopsis of the film.

*Note* If the film is a television series, a synopsis of the series must be provided.

2.4 Running time of the film.

2.5 Date of completion of the film.

### *Details of post, digital and visual effects production for the film*

2.6 An outline of the post, digital and visual effects production for the film that was carried out in Australia.

2.7 The names of the companies or individuals that undertook the post, digital and visual effects production that was carried out in Australia for the film.

### *Financial information*

2.8 Dates for:

- (a) the start of estimated qualifying Australian production expenditure on post, digital and visual effects production for the film; and
- (b) the end of estimated qualifying Australian production expenditure on post, digital and visual effects production for the film.

2.9 Whether a deduction has been claimed under Division 10B of Part III of the *Income Tax Assessment Act 1936* in relation to a unit of industrial property that relates to copyright in the film.

2.10 Whether a provisional certificate, or a final certificate, has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film (whether or not the certificate is still in force).

2.11 Whether a deduction has been claimed, or will be claimed, under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film.

2.12 Whether:

- (a) the applicant, or another person, has applied for:
  - (i) a certificate for the location offset for the film under subsection 376-230 (1) of the Act; or
  - (ii) a certificate for the producer offset for the film under subsection 376-230 (3) of the Act; or

- (b) a certificate for the film has been issued at any time under section 376-20 of the Act (a certificate for the location offset) or under section 376-65 of the Act (a certificate for the producer offset) (whether or not the certificate is still in force).
- 2.13 Whether the applicant incurred expenditure on post, digital and visual effects production for the film as a foreign resident.
- 2.14 For any expenditure described in clause 2.13:
- (a) the estimated total amount of the expenditure; and
  - (b) the period or periods during which the expenditure was incurred; and
  - (c) whether, during the whole or a part of a period mentioned in paragraph (b), the applicant did not have a permanent establishment in Australia or an ABN.

### **Division 3 Other information**

- 3.1 For any provider of goods or services that are used in the making of the film who is:
- (a) an associate of the applicant; or
  - (b) an associate of a company that is an associate of the applicant; the details of the provider.
- 3.2 Details of any company that is an outgoing company.
- Note* **Outgoing company** is explained in subsection 376-180 (1) of the Act.

## **Part B Documents to be attached to an application for a certificate**

- 1.1 A statutory declaration stating:
- (a) that it is made for rule 17; and
  - (b) that:
    - (i) the information contained in the application for the certificate for the PDV offset; and
    - (ii) each document attached to the application:is correct and true in every particular.
- 1.2 Evidence that:
- (a) for an applicant that is an Australian resident — the applicant is an Australian resident; or
  - (b) for an applicant that is not an Australian resident — the applicant has:
    - (i) a permanent establishment in Australia; and
    - (ii) an ABN.
- 1.3 Any agreement relating to:
- (a) the establishment of the applicant company; or

- 
- (b) the responsibility of the applicant for post, digital and visual effects production for the film; or
  - (c) the transfer of any responsibility for post, digital and visual effects production for the film from an outgoing company to the applicant; or
  - (d) the distribution or exhibition of the completed film.

*Examples for paragraph (c)*

- 1 A deal memorandum.
- 2 A letter of confirmation, on official letterhead, from the distributor.

*Note* **Outgoing company** is explained in subsection 376-180 (1) of the Act.

- 1.4 Written confirmation from the production company for the film, or from the person that commissioned the applicant's services in relation to the film, that the applicant is the company that either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the post, digital and visual effects production for the film.

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## Schedule 3 Form of auditor's statement

(paragraph 17 (2) (c))

The Program Manager  
Location and PDV Offsets  
Department of the Environment, Water, Heritage and the Arts  
GPO Box 787  
CANBERRA ACT 2601

We have examined the attached expenditure statement of estimated qualifying Australian production expenditure (to the extent that relates to post, digital and visual effects production) on the film entitled \_\_\_\_\_ ('the schedule').

We confirm that the auditor responsible for the preparation of this statement is a registered company auditor within the meaning of the *Corporations Act 2001* and is not an officer, employee or partner of the applicant, or of a related body corporate of the applicant.

The applicant is responsible for the preparation of the expenditure statement. It is our responsibility to form an independent opinion, based on our examination, on the expenditure statement and to report our opinion to you.

**Basis of opinion:** We conducted our audit in accordance with the Australian Auditing Standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial information is free of material misstatement.

We have received all the information and documents necessary to enable us to ascertain the amount of estimated qualifying Australian production expenditure (as defined in rule 4 of the *PDV Offset Rules 2008*), to the extent that it relates to post, digital and visual effects production for the film.

Our work included examining, on a test basis, evidence supporting the amounts and disclosures in the expenditure statement, and the presentation of that statement.

**On the basis of such examination, we report that in our opinion the total of the company's estimated qualifying Australian production expenditure on the film, to the extent that it relates to post, digital and visual effects production for the film, is Aus \$ \_\_\_\_\_.**

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In our opinion, the statement presents fairly, in all material respects, the estimated qualifying Australian production expenditure on the film entitled \_\_\_\_\_ for the period ended \_\_\_\_\_, to the extent that it relates to post, digital and visual effects production for the film, in accordance with generally accepted accounting principles.

[Signed by partner]

[for Auditor]

[Dated]

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### Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.