



Location Offset Rules 2008¹

Income Tax Assessment Act 1997

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 *Location 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 location offset (see subsection 376-260 (2) of the Act); and
- (b) to specify how applications for certificates (including provisional certificates) in relation to the location 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 location offset means an application made under subsection 376-230 (1) of the Act.

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

certificate for the location offset means a certificate issued by the Arts Minister under section 376-20 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 (4) or 19 (3), to provide a report.

location offset means the tax offset mentioned in subsection 376-10 (1) of the Act.

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

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

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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
- make
- permanent establishment
- production expenditure
- qualifying Australian production expenditure
- television series.

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Part 2 Provisional certificates for location offset

5 Interpretation for Part 2

- (1) In this Part:
applicant means a company that has applied for a provisional certificate for the location offset in accordance with this Part.
- (2) For this Part, if a company (the *incoming company*) takes over the making of a film from another company (the *outgoing company*), any activities carried out, or arrangements made, by the outgoing company in relation to the film are taken to have been carried out or made by the incoming company in relation to the film.

6 Application for provisional certificate

- (1) Subject to subrules (2) and (3), a company may apply to the Board for a provisional certificate, for a film, for the location offset if:
 - (a) the company is an Australian resident; or
 - (b) the company:
 - (i) is a foreign resident; and
 - (ii) has a permanent establishment in Australia; and
 - (iii) has an ABN.
- (2) If the estimated qualifying Australian production expenditure intended to be claimed by the company for the location offset is at least \$15 million and less than \$50 million, the company must also be the company that:
 - (a) is carrying out, or is making the arrangements for the carrying out of, all the activities that are necessary for the making of the film; or
 - (b) is developing the film prior to the establishment of a production company.
- (3) If the estimated qualifying Australian production expenditure intended to be claimed by the company for the location offset is at least \$50 million, the company must also be the company that:
 - (a) is carrying out, or is making the arrangements for the carrying out of, all the activities in Australia that are necessary for the making of the film; or
 - (b) is developing the film prior to the establishment of a production company.

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

- (1) An application for a provisional certificate for the location offset must:
 - (a) be made to the Board in writing; and
 - (b) include the information specified in clauses 1.1 to 2.14 of Part A of Schedule 1; and
 - (c) be signed on behalf of the applicant.
- (2) If the film is a television series, the application must also include the information specified in clauses 2.15 to 2.21 of Part A of Schedule 1.
- (3) 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

- (4) If the estimated qualifying Australian production expenditure claimed by the applicant for the location offset is at least \$15 million and less than \$50 million, 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 production expenditure and estimated qualifying Australian production expenditure on the film.
- (5) If the estimated qualifying Australian production expenditure claimed by the applicant for the location offset is at least \$50 million, 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.
- (6) If expenditure incurred in producing material for use in publicising or otherwise 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.

Nomination in application

- (7) An applicant may, in an application, nominate one individual in relation to whom:
 - (a) the remuneration and other benefits provided to the individual for the individual's service in relation to the making of the film; and

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- (b) travel and other costs associated with the services the individual has provided, or will provide, in relation to the making of the film; are to be disregarded.

Note A similar nomination in relation to a certificate is described in section 376-25 of the Act.

8 Delivery of application for provisional certificate

An application for a provisional certificate for the location 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 location 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 (4) 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.
- (3) If the applicant has nominated an individual under subrule 7 (7), the Board must disregard the matters mentioned in subrule 7 (7) in relation to that individual.
- (4) 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 376-20 (2), (3) or (5) of the Act will be met or is likely to be met.
- (5) A report under subrule (4) may include advice about any of the following matters:
- (a) whether the applicant's expenditure statement is commercially reasonable;

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- (b) whether specific items claimed in the applicant's expenditure statement are reasonably attributable to the production expenditure or estimated qualifying Australian production expenditure on 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.
- (6) 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 location offset to an applicant, the Board must give the applicant reasonable opportunity to comment on the substance of that information or advice.
- (7) If the Board asks an independent line producer to provide the Board with a written report under subrule (4), 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 location 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).
- (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).

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- (2) The Board may refuse to issue a provisional certificate for the location offset for a film if it is not satisfied that the conditions set out in subsections 376-20 (2), (3) and (5) of the Act will be met, or are likely to be met, if 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 location 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 376-20 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 location offset for a film to the applicant if it is satisfied that the conditions set out in subsections 376-20 (2), (3) and (5) of the Act will be met, or are likely to be met, if 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 376-20 (2), (3) and (5) of the Act will be met, or are likely to be met, if the film is completed in accordance with:
 - (a) the information supplied in the application; and
 - (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 376-20 of the Act.

Rule 15**15 Effect of provisional certificate**

A provisional certificate for the location 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 376-20 of the Act.

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Part 3 Certificates for location offset

16 Definition for Part 3

In this Part:

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

17 Form of application for certificate for the location offset

Information in application

- (1) An application for a certificate for the location offset must:
 - (a) be made to the Arts Minister in writing; and
 - (b) include the information specified in clauses 1.1 to 2.18 and Division 3 of Part A of Schedule 2; and
 - (c) be signed on behalf of the applicant.
- (2) If the film is a television series, the application must also include the information specified in clauses 2.19 to 2.25 of Part A of Schedule 2.

Documents attached to application

- (3) If the estimated qualifying Australian production expenditure claimed by the applicant for the location offset is at least \$15 million and less than \$50 million, the following documents must be attached to the application:
 - (a) the documents specified in Part B of Schedule 2;
 - (b) any agreement relating to the responsibility of the applicant for all the activities that were necessary for the making of the film (including all the activities, if any, outside Australia);
 - (c) an expenditure statement, prepared in accordance with rule 24, for the production expenditure and the estimated qualifying Australian production expenditure on the film;
 - (d) 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;
 - (e) 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 9 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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- (4) If the estimated qualifying Australian production expenditure claimed by the applicant for the location offset is at least \$50 million, the following documents must be attached to the application:
- (a) the documents specified in Part B of Schedule 2;
 - (b) any agreement relating to the responsibility of the applicant for all the activities in Australia that were necessary for the making of the film;
 - (c) an expenditure statement, prepared in accordance with rule 24, for the estimated qualifying Australian production expenditure on the film;
 - (d) 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;
 - (e) 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 9 or 9B of the table in subsection 960-50 (6) of the Act — a foreign currency statement, prepared in accordance with rule 25.
- (5) 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).
- (6) 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.
- (7) 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;

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- (b) evidence that the expenditure was incurred in Australia prior to the completion of the film.

18 Delivery of application for certificate for the location offset

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

19 Board to consider application for certificate for the location offset and other information

- (1) If the Arts Minister asks the Board to advise him or her about an application for a certificate for the location 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;
 - (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 376-20 (2), (3) or (5) of the Act has been met.
- (4) A report under subrule (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 or estimated qualifying Australian production expenditure on 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.

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- (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 location 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.
- (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).
- (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 location 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 subsections 376-20 (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

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- (ii) the Board had determined the qualifying Australian production expenditure on the film; and
 - (b) whether or not to issue a certificate for the location 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 376-20 of the Act is met in relation to an application; or
 - (b) not to issue a certificate for the location 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*).

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 location offset.

23 Expenditure statements for provisional certificates

- (1) For paragraphs 7 (4) (b) and (5) (b), an expenditure statement for a provisional certificate for the location offset must comply with subrules (2) to (9).
- (2) An expenditure statement must:
 - (a) distinguish expenditure that has been, or will be, incurred on film production activity carried out in Australia from expenditure that has been, or will be, incurred on film production activity carried out outside Australia; and
 - (b) specify any estimated qualifying Australian production expenditure 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
 - (c) if an individual has been nominated by the applicant under subrule 7 (7) — specify:
 - (i) the name, title and role in the production of that individual; and
 - (ii) the total amount of remuneration and other benefits, and travel and other costs, that is to be disregarded; and
 - (d) specify any expenditure incurred by an outgoing company.

Note *Outgoing company* is explained in subrule 5 (2).
- (3) If the estimated qualifying Australian production expenditure claimed by the applicant for the location offset is at least \$15 million and less than \$50 million, the expenditure statement must include a statement of the estimated qualifying Australian production expenditure, and the production expenditure, on the film.
- (4) If the estimated qualifying Australian production expenditure claimed by the applicant for the location offset is at least \$50 million, the expenditure statement must include a statement of the estimated qualifying Australian production expenditure on the film.
- (5) The expenditure statement must also include:
 - (a) a description of each budget item; and

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- (b) the amount of projected expenditure on each budget item; and
 - (c) details of each service provider by budget item; and
 - (d) details of the location in which, and the period over which, each service or good has been, or will be, provided; and
 - (e) details of the location of any land to be used in making the film, and the period of use of the land.
- (6) An amount in an expenditure statement must be expressed in Australian currency.
- (7) For the purposes of an expenditure statement, an amount in foreign currency that is relevant for a purpose mentioned in column 2 of item 9 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 principal photography or the production of animated images (as applicable) has not commenced at the time that the expenditure statement is prepared — a reference to the exchange rate applicable at the time when principal photography commences or production of the animated image commences is a reference to an exchange rate estimated by the applicant.
- (8) If an expenditure statement includes an amount in foreign currency that has been translated into Australian currency using the special translation rule in item 9 of the table in subsection 960-50 (6) of the Act, as applied in accordance with subrule (7), 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 location offset

- (1) For paragraphs 17 (3) (c) and (4) (c), an expenditure statement for a certificate for the location offset must comply with subrules (2) to (7).
- (2) An expenditure statement must:
- (a) distinguish expenditure incurred on film production activity carried out in Australia from expenditure incurred on film production activity carried out outside Australia; and
 - (b) specify any estimated qualifying Australian production expenditure 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;
 - (c) if an individual has been nominated by the applicant as an individual whose remuneration is to be disregarded under subsection 376-25 (2) of the Act — specify:
 - (i) the name, title and role in the production of that individual; and

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- (ii) the total amount of remuneration and other benefits, and travel and other costs, that is to be disregarded; and
- (d) specify any expenditure incurred by an outgoing company.

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

- (3) If the estimated qualifying Australian production expenditure claimed by the applicant for the location offset is at least \$15 million and less than \$50 million, the expenditure statement must include a statement of the estimated qualifying Australian production expenditure, and the production expenditure, on the film.
- (4) If the estimated qualifying Australian production expenditure claimed by the applicant for the location offset is at least \$50 million, the expenditure statement must include a statement of the estimated qualifying Australian production expenditure on the film.
- (5) The expenditure statement must also include:
 - (a) a description of each budget item; and
 - (b) the amount of expenditure on each budget item; and
 - (c) details of each service provider by budget item; and
 - (d) details of the location in which, and the period over which, each service or good was provided; and
 - (e) details of the location of any land used in making the film, and the period of use of the land.
- (6) An amount in an expenditure statement must be expressed in Australian currency.
- (7) For the purposes of an expenditure statement, an amount in foreign currency that is relevant for a purpose mentioned in column 2 of item 9 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 location offset

For paragraphs 17 (3) (e) and (4) (e), a foreign currency statement for a certificate for the location 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 9 of the table in subsection 960-50 (6) of the Act, as applied in accordance with subrule 24 (7) (an **item 9 foreign expenditure amount**):
 - (i) the amount, expressed in Australian currency; and

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- (ii) the sum of all of the item 9 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 (7) (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.

Part 5 Audit requirements

26 Conduct of audit

A company that has applied, or that intends to apply, for a certificate for the location offset must ensure that an audit that is conducted for paragraph 17 (3) (d) or (4) (d) is conducted in accordance with all applicable accounting standards, including any standards relating to the independence of auditors.

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 the making of the film.

Note 1 If the total of the applicant's estimated qualifying Australian production expenditure on the film is at least A\$15 million and less than A\$50 million, the Board must be satisfied that the applicant will, or is likely to, carry out, or make the arrangements for the carrying out of, all the activities that were necessary for the making of the film (see subrule 13 (1) and subparagraph 376-20 (5) (b) (ii) of the Act).

Note 2 If the total of the applicant's estimated qualifying Australian production expenditure on the film at least A\$50 million, the Board must be satisfied that the applicant will, or is likely to, carry out, or make the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film (see subrule 13 (1) and paragraph 376-20 (5) (c) of the Act).

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 commencement of:
(a) for an animated film — the production of animated images; or
(b) otherwise — principal photography on the film.
- 2.6 Estimated date of completion of the film.

Financial information

- 2.7 Category of estimated qualifying Australian production expenditure on the film, either:
(a) at least A\$15 million and less than A\$50 million; or
(b) at least A\$50 million.
- 2.8 Estimated dates for:
(a) the start of estimated qualifying Australian production expenditure on the film; and
(b) the end of estimated qualifying Australian production expenditure on 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 PDV offset for the film under subsection 376-230 (2) of the Act; or
(ii) a certificate for the producer offset for the film under subsection 376-230 (3) of the Act; or

- (iii) a certificate for the refundable tax offset for the film under section 376-75 of the Act as in force immediately before 25 September 2007; or
 - (b) a certificate for the film has been issued at any time (whether or not the certificate is still in force) under:
 - (i) section 376-45 of the Act (a certificate for the PDV offset); or
 - (ii) section 376-65 of the Act (a certificate for the producer offset); or
 - (iii) Division 376 of the Act as in force immediately before 25 September 2007.
- 2.13 Whether the applicant is likely to incur expenditure on 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 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.

Further information required if the film is a television series

- 2.15 Whether or not the television series is predominantly a digital animation or other animation.
- 2.16 Estimated length of time, in months, that it will take for:
 - (a) for a television series that is predominantly a digital animation or other animation — the series to be made, excluding pre-production activities; or
 - (b) otherwise — principal photography to take place.
- 2.17 Estimated number of episodes in the series.
- 2.18 Estimated duration of the series, in hours.
- 2.19 Estimated qualifying Australian production expenditure for the series.
- 2.20 Estimated qualifying Australian production expenditure on the series (in Australian dollars) divided by the estimated running time of the series (in hours).
- 2.21 Details of any expenditure for the pilot episode (if any) that is estimated qualifying Australian production expenditure.

Division 3 Other information

- 3.1 Details of the production company for the film, including the following details:
 - registered name of the production company;

-
- ABN of the production company;
 - registered address of the production company;
 - 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 location offset

(rule 17)

Part A Information to be included in an application for a certificate for the location 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 the making of the film.

Note 1 If the total of the applicant's estimated qualifying Australian production expenditure on the film is at least A\$15 million and less than A\$50 million, the Arts Minister must be satisfied that the applicant either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the film (see subparagraph 376-20 (5) (b) (ii) of the Act).

Note 2 If the total of the applicant's estimated qualifying Australian production expenditure on the film at least A\$50 million, the Arts Minister must be satisfied that the applicant either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film (see paragraph 376-20 (5) (c) of the Act).

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 commencement of:
(a) for an animated film — the production of animated images; or
(b) otherwise — principal photography on the film.
- 2.6 Date of completion of the film.
- 2.7 A list of all cast and crew who are not Australian citizens and who worked on the film in Australia, and details of the capacity in which they worked on the film.

Financial information

- 2.8 Category of estimated qualifying Australian production expenditure on the film, either:
(a) at least A\$15 million and less than A\$50 million; or
(b) at least A\$50 million.
- 2.9 Dates for:
(a) the start of estimated qualifying Australian production expenditure on the film; and
(b) the end of estimated qualifying Australian production expenditure on the film.
- 2.10 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.
- 2.11 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).

- 2.12 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.
- 2.13 Whether:
- (a) the applicant, or another person, has applied for:
 - (i) a certificate for the PDV offset for the film under subsection 376-230 (2) of the Act; or
 - (ii) a certificate for the producer offset for the film under subsection 376-230 (3) of the Act; or
 - (iii) a certificate for the refundable tax offset for the film under section 376-75 of the Act as in force immediately before 25 September 2007; or
 - (b) a certificate for the film has been issued at any time (whether or not the certificate is still in force) under:
 - (i) section 376-45 of the Act (a certificate for the PDV offset); or
 - (ii) section 376-65 of the Act (a certificate for the producer offset); or
 - (iii) Division 376 of the Act as in force immediately before 25 September 2007.
- 2.14 Whether any State or Territory government film incentive has been applied for, or received, in relation to the film and, if so:
- (a) the type of incentive; and
 - (b) the name of the administering State or Territory government department; and
 - (c) the name and contact details of any relevant State or Territory government officer involved in administering the incentive in relation to the film.
- 2.15 Whether any grant or assistance (whether financial or otherwise) has been applied for, or received, from a Commonwealth government department or agency in relation to the film and, if so:
- (a) the type of grant or assistance; and
 - (b) the name of the administering Commonwealth government department or agency; and
 - (c) the name and contact details of any person involved in administering the grant or assistance on behalf of the Commonwealth in relation to the film.
- 2.16 Details of any expenditure claimed as estimated qualifying Australian production expenditure by the applicant under item 4 of the table in subsection 376-150 (1) of the Act.
- 2.17 Whether the applicant incurred expenditure on the film as a foreign resident.
- 2.18 For any expenditure described in clause 2.17:
- (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.

Further information required if the film is a television series

- 2.19 Whether or not the television series is predominantly a digital animation or other animation.
- 2.20 Length of time, in months, that it took for:
 - (a) for a television series that is predominantly a digital animation or other animation — the series to be made, excluding pre-production activities; or
 - (b) otherwise — principal photography to take place.
- 2.21 Number of episodes in the series.
- 2.22 Duration of the series, in hours.
- 2.23 Estimated qualifying Australian production expenditure for the series.
- 2.24 Estimated qualifying Australian production expenditure (in Australian dollars) divided by the running time of the series (in hours).
- 2.25 Details of any expenditure for the pilot episode (if any) that is estimated qualifying Australian production expenditure.

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 for the location offset

- 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 location offset; and

(ii) each document attached to the application:
is correct and true in every particular.

1.2 Details of:

- (a) fees; and
- (b) advances that are not recoverable from the payee; and
- (c) residuals that are:
 - (i) paid out to cast before the film's completion; and
 - (ii) included in the production expenditure claimed by the applicant for the location offset.

1.3 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.

1.4 Any agreement relating to:

- (a) the establishment of the applicant company; or
- (b) the transfer of any film production responsibility from an outgoing company to the applicant; or
- (c) 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.

Schedule 3 Form of auditor's statement

(subparagraphs 17 (3) (d) (i) and (4) (d) (i))

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

[For films with an estimated qualifying Australian production expenditure of at least A\$15 million and less than A\$50 million — use the following paragraph]

We have examined the attached statement of estimated qualifying Australian production expenditure and production expenditure on the film entitled _____ ('the schedule').

[For films with an estimated qualifying Australian production expenditure of at least A\$50 million — use the following paragraph]

We have examined the attached statement of estimated qualifying Australian production expenditure 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 production expenditure (as defined in subsection 995-1 (1) of the Act) and estimated qualifying Australian production expenditure (as defined in rule 4 of the *Location Offset Rules 2008*).

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

[For films with an estimated qualifying Australian production expenditure of at least A\$15 million and less than A\$50 million — use the following paragraphs]

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 is Aus \$ _____, and that this amount represents at least 70% of the production expenditure on the film.

In our opinion, the statement presents fairly, in all material respects, the estimated qualifying Australian production expenditure and the production expenditure on the film entitled _____ for the period ended _____ in accordance with generally accepted accounting principles.

[For films with an estimated qualifying Australian production expenditure of at least A\$50 million — use the following paragraphs]

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 is Aus \$ _____.

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 _____ in accordance with generally accepted accounting principles.

[Signed by partner]

[for Auditor]

[Dated]

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>.