



Australian Government

Department of Communications and the Arts



Location offset guidelines

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Incentive for large budget screen production in Australia

The Location Offset is part of the Australian Screen Production Incentive. The Australian Government supports film, television and other screen production in Australia through the Australian Screen Production Incentive in three streams, the:

1. Producer Offset, a 40 per cent rebate on the qualifying spend of qualifying Australian films and a 20 per cent rebate for other qualifying media
2. Post, Digital and Visual Effects (PDV) Offset, a 30 per cent rebate on the qualifying Australian expenditure related to PDV production (including for productions shot overseas), and
3. Location Offset, a 16.5 per cent rebate on Australian spend of large-budget productions (that do not satisfy the significant Australian content test for the Producer Offset).

The Department of Communications and the Arts (the Department) administers both the Location Offset and PDV Offset, these guidelines refer to the Location Offset.

PDV Offset guidelines are available at www.arts.gov.au. Please contact Screen Australia for information or to apply for the Producer Offset at www.screenaustralia.gov.au.

The three offsets available under the Australian Screen Production Incentive are mutually exclusive, so final certification of a production for the Location Offset will prohibit it from receiving certification for either the PDV or Producer Offsets.

1. Introduction

The Australian Government recognises the economic, employment and skills development opportunities large budget screen productions bring to Australia and to Australians working in the screen industry.

These guidelines have been prepared to assist with applications for certification for the Location Offset, one of the three refundable tax offsets available under the Australian Screen Production Incentive.

The Location Offset provides an incentive for large budget screen productions to film in Australia. It is designed to ensure Australia remains competitive in attracting large budget film and television productions, and is aimed at providing increased opportunities for Australian casts, crew and other screen production service providers to participate in these productions.

The legislation which governs the Location Offsets is Division 376 of the *Income Tax Assessment Act 1997*, as amended (ITAA97). These guidelines should be read in conjunction with the ITAA97 and the Location Offset Rules 2008, as amended (the Location Offset Rules), made pursuant to section 376-260 of the ITAA97. These legislative instruments are all available from the Australian Government Federal Register of Legislation at www.legislation.gov.au.

These guidelines are not a legal document. You are encouraged to:

- seek professional advice when preparing an application, for example from your lawyer and accountant, and
- consult Division 376 of the ITAA97 and the Location Offset Rules, if there is an inconsistency between the guidelines and the ITAA97 or the Location Offset Rules, the provisions in the ITAA97 or the Location Offset Rules prevail.

The guidelines should be read in conjunction with the Location Offset Glossary and the Application Form. Current versions of all documents are available at: www.arts.gov.au/film-tv.

Please note that the ITAA97 uses the term 'film' to refer to all eligible formats. These guidelines use the term 'production', unless directly quoting the ITAA97.

In these guidelines, unless the contrary intention appears, all references to dollars are references to Australian dollars.

Contact details for the Screen Industry Section of the Department are at www.arts.gov.au.

1.1. Overview of the Location Offset

The Location Offset is applied at a fixed rate of 16.5 per cent of Qualifying Australian Production Expenditure (QAPE) on an eligible film or television production that:

- commences principal photography on or after 10 May 2011, or
- is predominantly an animated production that commences production of the visual image on or after 10 May 2011.

For productions commencing on or after 8 May 2007 and prior to 10 May 2011, the Location Offset is applied at a fixed rate of 15 per cent. Please contact the Screen Industry Section of the Department if your production falls within this period to discuss eligibility requirements.

In order to access the Location Offset, an applicant must obtain a certificate from the Minister for the Arts (the Minister). These guidelines outline the required processes for obtaining a certificate.

A certificate will be issued by the Minister where a production meets the relevant requirements set out in Division 376 of the ITAA97. The Minister will also formally determine a production's QAPE and record the QAPE amount on the certificate.

Where a certificate is issued, the applicant company is able to claim the offset in its income tax return for the relevant income year.

The relevant year for the Location Offset is the year in which QAPE ceased being incurred.

The Australian Taxation Office (ATO) will provide a refund of a tax offset where the amount exceeds the amount of any tax liabilities owed by the applicant company. The ATO will not usually review either the requirements for the issue of a certificate or the determined amount of QAPE. However, if the ATO, in the course of its assessment of an applicant's tax return, finds evidence of fraud or serious misrepresentation, the ATO will advise the Minister, who may then revoke the certificate.

Provisional certification

You may apply for a provisional certificate for a production before it commences or during production. A provisional certificate provides an indication of whether the production is likely to be eligible for the Location Offset, based on the information provided at that stage. The assessment of a provisional application may also provide information on the extent to which projected expenditure on a production may be counted towards QAPE.

Applying for a provisional certificate is entirely at your choice and is an optional exercise.

A provisional certificate is not a guarantee that the Minister will issue a certificate for the Location Offset and does not prevent a decision by the Minister to refuse to grant a certificate. A provisional certificate is not required as part of the process for final certification.

An application for final certification is made once QAPE has ceased to be incurred or when the production is completed in order to claim the Offset benefit. The assessment of projected QAPE at the

provisional stage does not bind a decision regarding eligibility for final certification as all details of a final application will be assessed based on the information presented at the final certificate stage. A decision not to issue a provisional certificate for a project does not prevent a production company from applying for a final certificate in relation to that production.

Final certification

In order to claim the Location Offset as a tax rebate, you must be issued with a certificate by the Minister. A certificate will be issued if the production meets the requirements set out in Division 376 of the ITAA97.

The eligibility criteria, detailed in these Guidelines, are:

- the applicant is an eligible entity
 - the applicant company must be an Australian resident or, if they are a foreign resident, have a permanent establishment in Australia and an Australian Business Number (ABN). The applicant must be an eligible entity when it incurs QAPE, when it lodges its income tax return and when the offset is due to be credited to the applicant company (ITAA97 section 376-10)
 - the applicant must be the company that carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the production (ITAA97 section 376-20)
- the production must be of an eligible format and meet relevant production timeframes (ITAA97 section 376-20)
 - format (feature film or film of like nature e.g. telemovie, mini-series of television drama or television series)
 - must have commenced principal photography or production of the animated image on or after 8 May 2007 and, if a television series, meet commencement and completion timeframes
- QAPE must meet or exceed the threshold:
 - currently \$15 million (ITAA97 section 376-20), and
 - where applicable, a television series must meet the QAPE per hour threshold, currently \$1 million.
- the production must not have accessed other Australian Government film tax incentives—the film tax offsets are mutually exclusive, therefore final certification of a production for either the PDV or Producer Offsets will prohibit access to the Location Offset (ITAA97 section 376-10). A production will also be ineligible if they claimed certain deductions or were issued a final certificate under the previous film tax incentive, under the former Division 10B of Part III of the *Income Tax Assessment Act 1936*.

The certificate will state the determination of QAPE. You then claim the Location Offset in your tax return for the income year in which the final QAPE is expended. The ATO will credit the Location Offset against any existing income tax liabilities and refund the remainder.

Tax secrecy

The information provided by applicants under the Division 376 of the ITAA97 is protected by Division 355 of Schedule 1 to the *Taxation Administration Act 1953*, as amended. All information provided to the Department in regard to an application will be held on a confidential basis and dealt with as protected information, in accordance with Division 355.

2. Location Offset eligibility

2.1. Eligible applicants

2.1.1 The company

To be eligible for the Location Offset, a company must:

- have an Australian Business Number (ABN), and
- be an Australian resident company or a foreign resident company that is operating through a permanent establishment in Australia.

This applies when:

- QAPE is incurred
- the company lodges its income tax return, and
- the Location Offset is due to be credited.

If the applicant company is a foreign resident, without both a permanent establishment in Australia and ABN, the production will not be eligible. In addition, if the applicant company did not meet these requirements for any period/s of production in Australia then expenditure at that time is not considered to be QAPE.

Resident in Australia

A company is defined as being resident in Australia under subsection 6(1) of the *Income Tax Assessment Act 1936*, as amended (ITAA36) if:

- the company is incorporated in Australia; or
- if not incorporated in Australia, it carries on business in Australia and either its central management and control are in Australia, or its voting power is controlled by shareholders who are residents of Australia.

Taxation Rule TR 2017/D2 provides the ATO's interpretation of residency where the company is not incorporated in Australia (as at the date of publication).

The term 'permanent establishment' is also defined in subsection 6(1) of the ITAA36 which refers to 'a place at or through which [a] person carries on any business'. The ITAA36 includes examples of a permanent establishment. Taxation Ruling TR 2002/5 (including the amendments created by TR2002/5A—Addendum) provides the ATO's interpretation of the meaning of the phrase 'a place at or through which [a] person carries on any business' in the definition of 'permanent establishment'. The ruling provides guidance to a non-resident who carries on business in Australia as to whether they have a place for the purposes of the definition of 'permanent establishment'.

For information about taxation and the other obligations of companies commencing business in Australia, such as registering for an ABN, residency tests including whether they are modified by any Double Tax Agreement with any other countries, or filing business activity statements and annual income tax returns you should contact the ATO to seek advice (and ensure you are relying on the most current guidance).

2.1.2 Responsible company

The applicant company must be the company that either carried out, or was responsible for making the arrangements for the carrying out of, all the activities that were necessary for the making of the production in Australia.

The applicant company is usually the company that incurs all the expenditure or through which all transactions are channelled. For example, the expenditure incurred directly or in sub-contracting crew payroll may both qualify as QAPE as long as the applicant company is able to account for these costs in its audited expenditure statement.

In some cases the applicant company is a special purpose vehicle (SPV) incorporated to make the production. The use of an SPV is not a requirement, and ongoing companies may be an eligible applicant.

There is no requirement that a provisional certificate and a final certificate for the same production are issued to the same entity.

Information on company structures is best sought from your legal and accounting advisers. The Department does not provide advice on company structures beyond eligibility requirements.

Multiple companies involved in a production

Although there may be a number of entities that carry out activities necessary for making a production, only one company can apply for the Location Offset for a particular production. The applicant must be a company that meets the requirements of both Australian company registration and responsibility for Australian production activities.

Expenditure by prior companies

An application should be made by the production company that completes an eligible production (or completes the activity undertaken in Australia). If the making of the production has been taken over from another company, then the new production company is taken to have incurred the production expenditure of the previous company or companies. Relevant legal agreements need to be provided to substantiate the claim, and the costs that relate to the previous company/ies clearly identified in the audited expenditure statements.

Any costs incurred by the production company in the takeover of the production are not eligible in the calculation of QAPE.

For example, one company may initiate the development of a production and a second production company is then incorporated to actually make and complete the production. In this situation the first company's expenditure in developing the production becomes the production expenditure of the second. However, a fee paid by the second company to take over the production would not be considered QAPE.

In addition, for expenditure of a prior company to be considered QAPE it must have been incurred by a company that meets the requirements of the ITAA97, for example must be a company with an ABN, not acting in the capacity of a trust and not be expenditure by a sole trader.

2.2. Eligible formats and distribution

Eligible formats for the Location Offset are:

- feature films or films of a like nature (e.g. telemovies), including direct-to-video, direct-to-DVD, video on demand or a streaming service (unless a documentary)
- miniseries of television drama
- television series (including a documentary)—see below.

The following formats are ineligible for the Location Offset:

- a series or mini-series that is not distributed by way of television broadcasting (including series solely intended for distribution via a streaming platform, video on demand or DVD)
- short films
- documentary features (documentary television series are eligible, see below)
- advertising programs or commercials
- discussion, quiz, game, panel or variety programs, or a program of a like nature
- a film of a public event
- training films
- computer games (defined by the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act)—see below).

Section 5A of the Classification Act defines a computer game as a:

- computer program and any associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows the playing of an interactive game, or
- computer program, data associated with a computer program or a computer program and any associated data that is:
 - capable of generating new elements or additional levels into a game (the original game) that is a computer game under subsection 5A(1) of the Classification Act and
 - contained in a device separate from that containing the original game.

2.2.1 Eligible television series

For the purposes of the Location Offset, a television series means a narrative series such as a drama or comedy, a documentary or a reality series (see below). Each season of a series is treated as a different 'film' under the Location Offset and should be the subject of a separate application.

Under the ITAA97, a television series must be made up of two or more episodes that:

- are produced wholly or principally for public exhibition on television under a single title, and
- have a common theme or themes, and
- contain dramatic elements that form a narrative structure, and
- are produced for exhibition together in a national market or markets.

These television series requirements apply to productions for both free-to-air (broadcast network) and subscription television.

Different series which were produced to be shown in different markets, or different seasons of a series, cannot be grouped together to reach the minimum \$15 million QAPE threshold.

There is no cap on the number of commercial hours for one series or for multiple seasons of a series.

2.2.2 Distribution of TV series and miniseries

Series and miniseries that are only distributed online or direct to DVD are not eligible under the Location Offset. The relevant provisions of the ITAA97 only support television series and mini-series of television drama that are broadcast on traditional or subscription/cable television (which does not encompass streaming series or direct to DVD). However, subscription television and traditional television broadcasting in any territory are eligible under the definition.

If a series is intended for broadcast via a traditional television broadcaster (including subscription and cable) and a streaming service then it may be eligible.

Please note that feature films that are distributed via a streaming service or direct to DVD are eligible.

2.2.3 Commencement, completion and timeframes

In order to qualify for the Location Offset, the production must have:

- commenced principal photography in Australia on, or after, 8 May 2007; or
- for a predominantly animated production, commenced production of the visual image in Australia on, or after, 8 May 2007.

Timeframe requirements for television series

Qualifying television series must be completed within a given timeframe. The length of this timeframe depends on whether the series is predominantly an animation or a live action series.

If a television series is predominantly a digital animation or other animation:

- the making of the series must be completed within 36 months (3 years)
- this period does not include preproduction activities but otherwise commences when production expenditure, as defined in the legislation, begins to be incurred
- the timeframe requirement does not include any production expenditure for a pilot for the television series.

If a television series is predominately a live action or other television series that is not predominantly an animation:

- principal photography for the series must be completed within 12 months
- the timeframe excludes the photography of a pilot episode and does not include any second-unit photography.

2.3. Production Expenditure, QAPE and thresholds

The Location Offset is an expenditure-based incentive. A number of criteria for qualifying for the Offset and the basis for calculating the refund amount are established by the amount spent by the applicant company on goods and services provided in Australia and the use of land located in Australia.

The Location Offset has two concepts of expenditure. They are:

- 'Production Expenditure', which is expenditure, by the applicant company, incurred both inside and outside Australia for the purposes of making the production, and
- QAPE, which is expenditure incurred inside Australia for the purposes of making the production.

Both types of expenditure are subject to specific legislative inclusions and exclusions. The Location Offset Glossary is an A-Z of screen industry terminology. Applicants should refer to the Glossary for further advice on the treatment of specific QAPE items.

2.3.1 Production Expenditure

A company's Production Expenditure is defined by section 376-125 of the ITAA97 as:

- the expenditure incurred in, or in relation to, the making of the production
- or expenditure that is reasonably attributable to the use of equipment, other facilities or activities undertaken in the making of the production.

The making of the production includes pre-production, production and post-production activities and any other activities undertaken inside and outside of Australia that are necessary to bring the first copy

of a production to the state that it is ready to be distributed, broadcast or exhibited to the general public.

An applicant company may incur Production Expenditure in the income year for which an offset is sought or in earlier income years.

The Location Offset Glossary provides detailed information on Production Expenditure under the ITAA97. In summary Production Expenditure **does not** include:

- most aspects of financing
- developing the proposal for the production (e.g. pitching, production of teaser trailers and sizzle reels for purposes of financing, attendance at overseas markets for purposes of financing)
- foreign development expenditure
- foreign held copyright acquisition
- marketing, publicity and promotion (except where the expenditure relates to either producing material for use in publicising or promoting the film where the copyright in the material is held by an individual or a company that is an Australian resident at the time of application; or incurred in producing audio or visual content for the film otherwise than for use in the first copy of the film prior to the completion of the film)
- distribution
- deferment and profit participation, residuals, advances
- acquisition of depreciating assets
- foreign pilot expenditure (for a television series).

Applicants are encouraged to track expenditure relating to production activity as early as possible, and to record the difference between total Production Expenditure and QAPE.

Under the Location Offset, total Production Expenditure only needs to be provided when a General Business Overheads QAPE claim is being made (see the Location Offset Glossary for more information on General Business Overheads). In addition, when Production Expenditure information is provided it only needs to be shown at a summary level to demonstrate that it is in accordance with the definition within the ITAA97.

Where necessary further information may be sought during the assessment.

2.3.2 Qualifying Australian Production Expenditure (QAPE)

QAPE is defined by section 376-145 of the ITAA97 as the company's production expenditure on the film or television project to the extent that it is incurred for, or is reasonably attributable to:

- goods and services provided in Australia,
- the use of land located in Australia, or
- the use of goods that are located in Australia at the time they are used in the making of the production.

QAPE has a dual role for the purposes of the Location Offset. It:

- is the basis for determining whether the minimum Australian expenditure threshold has been reached, and
- provides the basis of the Location Offset itself, as the amount of the rebate is 16.5 per cent of QAPE.

QAPE may be incurred in any year prior to and including the year in which QAPE ceased to be incurred (up to the year in which the Offset is claimed).

The following expenditure or part thereof, may be regarded as QAPE for the Location Offset:

- Australian development expenditure
- Australian-held copyright acquisition
- insurance
- general business overheads
- some aspects of publicity and promotion expenditure, including in some cases additional audio-visual content
- depreciation of assets, to the extent they are used in the making of the production
- pilot expenditure in Australia (only for a television series)
- legal expenses (except as they relate to some aspects of development)
- travel to Australia
- freighting an item to Australia
- travel and freight within Australia
- Fringe Benefits Tax (FBT) and state payroll tax
- remuneration other than by salary and some types of residuals
- prizes and prize money.

The following are specifically excluded from QAPE:

- expenditure while the applicant company is a foreign resident without a permanent establishment in Australia and an ABN
- costs of overseas services embodied in goods
- GST input credits (for productions commencing on or after 10 May 2011)
- gratuities and entertainment expenses
- crew members' (including producers and executive producers) whether Australia or non-Australian residents, travel and stay in Australia for less than two consecutive weeks.

The Location Offset Glossary provides detailed information on the treatment of specific QAPE matters, including:

- apportionment of services provided inside and outside of Australia (for example where a service provider's contract does not specifically distinguish the difference)
- arm's length expenditure rules to ensure that amounts charged between the applicant company and any interested parties (for example, parent and subsidiary companies and directors and employees of these companies) for the provision of goods/services are commercially reasonable
- accrual basis of expenditure
- depreciating assets.

2.3.3 Currency exchange

All production expenditure and QAPE incurred in foreign currencies must be converted into Australian dollars. For the purposes of applying for the Location Offset this must be done in two ways, as provided under section 960-50 of the ITAA97:

- For the purposes of meeting the expenditure thresholds, expenditure must be converted using the foreign exchange rate for the day on which principal photography or production of the animated image commenced.
- For the purposes of calculating the final QAPE figure upon which the rebate is based, the exchange rate used for expenditure on foreign currency must be averaged across the period in which QAPE was incurred.

Official published exchange rates are available from the Reserve Bank of Australia at www.rba.gov.au.

2.3.4 QAPE treatment of pilot episodes

Under the ITAA97, a pilot (if there is one) is considered to be part of the television series. However, overseas expenditure on a pilot is excluded from being production expenditure as it is not QAPE (section 376-140 of the ITAA97).

The exchange rate used to convert expenditure made in a foreign currency for the purposes of meeting the eligibility threshold is taken from the day on which principal photography commences. This means that it may be from the day a pilot commences shooting if the shooting of a pilot is part of principal photography.

The time period used to calculate the average exchange rate to convert expenditure made in a foreign currency for the purposes of calculating the QAPE only includes the time taken to make a pilot, if expenditure on the pilot is treated as QAPE.

2.3.5 Expenditure threshold

A production must spend QAPE of at least \$15 million (as determined by the Minister) to be eligible for the Location Offset.

The Location Offset is based on expenditure incurred by the applicant company, not by any other party, but also refer to Part 2 of these guidelines and the Location Offset Glossary for further information on expenditure by prior companies.

QAPE per hour requirements for television series

In addition to the total QAPE expenditure requirement of \$15 million, to qualify for the Location Offset a television series must also have an average of at least \$1 million QAPE per hour.

The average QAPE per hour is calculated by dividing the total QAPE by the duration of the series measured in hours.

The actual length of the completed production, rather than 'commercial hours' must be used (for example, the total duration of a series is the number of episodes multiplied by the actual duration of each episode).

$$\text{Total QAPE} / \text{Duration of series in hours} = \text{average per hour QAPE}$$

Other formats, such as television miniseries or telemovies are not required to meet the QAPE per hour threshold.

2.3.6 Auditor's statement

An independent auditor's statement, verifying the particulars of the production expenditure detailed in your application, is required when you apply for the Location Offset.

The audit must be prepared by a person who is:

- a registered company auditor under the *Corporations Act 2001*, and
- not an officer, partner or employee of the applicant company or a related body corporate of the applicant company (but may be contracted by them from time-to-time on a non-permanent basis). A related body corporate of an applicant company would be a subsidiary of an applicant company, the holding company of an applicant company or a subsidiary of the holding company of the applicant company

The auditor's statement is provided at the applicant's expense with the name of the auditor and auditor's company or firm, qualifications and contact details provided in the relevant section of the Application Form.

2.4. Exclusion of access to other Australian Government incentives

The Location, PDV and Producer Offsets are mutually exclusive. Therefore, a production company is not eligible to claim the Location Offset if, in respect of the production:

- it has received a final certificate for the PDV Offset
- it has received a final certificate for the Producer Offset
- the applicant, or anyone else has claimed a deduction for the production under Division 10B of Part III the ITAA36
- it has been granted a final certificate at any time under Division 10BA of Part III of the ITAA36.

A provisional certificate does not limit eligibility for another offset.

If you have raised any finance with a provisional 10BA certificate and the production is certified for the Location Offset, investors will be unable to claim a deduction under Division 10BA and your Location Offset certificate may be revoked on the grounds of ineligibility.

The Department will confirm the production has not received a certificate under the other tax incentives by cross referencing with Division 10B and 10BA records, and by consulting with Screen Australia regarding the Producer Offset.

2.4.1 Access to other incentives (such as state and territory government support)

Funding from other Australian Government programs, from Screen Australia (excluding the Producer Offset) and from state and territory incentives does not impact on the production's eligibility for the Location Offset.

Various Australian states and territories provide incentives in the forms of tax offsets and direct financial support to encourage productions to locate to those jurisdictions. A production that accesses any state and territory incentives may also apply for the Location Offset.

Most state and territory government support measures are provided as production investment, as grants or rebates and do not impact on a production's QAPE. However, QAPE must only include expenditure that has been 'incurred', so if a state government incentive means that you incur less production expenditure, it reduces your QAPE.

For example, where a state provides an incentive via a payroll tax rebate (e.g. where the expenditure is incurred for the payroll tax and then a rebate is provided to the company) the QAPE includes the incurred costs including the state payroll tax and the rebate has no effect on the QAPE claim. However, if the state provides a payroll tax exemption then there is no incurred cost for state payroll tax and it cannot be claimed.

Expenditure incurred in securing state or territory government incentives and support is considered to be financing expenditure and therefore is not production expenditure or QAPE.

2.5. Productions which commenced before 10 May 2011

There have been two major legislative changes relevant to the Location Offset since its introduction in 2007. These are outlined below, however if your production may fall within these dates you should contact the Screen Industry Section for more information before completing an application form.

For productions commencing principal photography, or production of the animated image, on or after 8 May 2007 and prior to 10 May 2011:

- the Location Offset rate is applied at 15 per cent of QAPE
- some items related to production financing cannot be regarded as QAPE, and
- GST input credits can be considered as QAPE.

For productions commencing principal photography, or production of the animated image, on or after 8 May 2007 and prior to 1 July 2010:

- there is a requirement for productions spending between \$15 million and \$50 million to spend at least 70 per cent of the production's total production expenditure in Australia.

Prior to 2007 a tax offset known as the Refundable Film Tax Offset was provided by the Australian Government, this can no longer be accessed.

3. Application and process

Prior to applying for the Location Offset, applicants are advised to read these guidelines, the Location Offset Glossary, the Application Form, the ITAA97 and the Location Offset Rules carefully.

Information that must be provided when applying to the Location Offset is provided for under the Location Offset Rules. In addition, the function and procedures of the Film Certification Advisory Board are established by the Film Certification Advisory Board Rules 2008.

3.1. Provisional application

You may apply for a provisional certificate before production commences or during production. A provisional certificate indicates eligibility and the extent to which elements of projected expenditure on a production may be counted towards QAPE. The Film Certification Advisory Board (the Board) is responsible for issuing provisional certificates.

Applying for a provisional certificate is entirely your choice and is optional, it is not a requirement for final certification.

3.1.1 Provisional application form

The Provisional Application Form is available at: www.arts.gov.au.

In general all the eligibility requirements for the Location Offset, as described in Part 2 of these guidelines apply to the assessment of a provisional certificate, however in some cases the information may be based on intentions or best estimates, such as to the likely production expenditure and QAPE.

The extent to which eligibility of QAPE can be assessed is dependent on the information provided by the applicant.

3.1.2 Eligible applicants

A company is eligible to apply for provisional certification for the Location Offset if it is:

- an Australian resident, or is a foreign resident with a permanent establishment in Australia and an ABN, and
- is carrying out, or is making arrangements for carrying out, all activities that are necessary for the making of the film in Australia.

If the applicant company has taken over responsibility for the production from a previous company this must also be noted, with the relevant legal agreement attached to your application and documentation establishing the production company.

If the production company is yet to be established you must indicate the level of responsibility that the production company will have for the making of the production and whether the production company will be an Australian company or a foreign company with a permanent establishment and an ABN.

3.1.3 Assessment

Applications will be assessed by the Film Certification Advisory Board.

The Department, on behalf of the Board, may contact you to confirm or provide additional information to assist with the assessment of your application. The Board may also ask an Independent Film Production Consultant (IFPC) to assess an application.

During the assessment of provisional applications, it is usual practice for applicants to be advised if any projected budget items would not be eligible as production expenditure or QAPE.

3.1.4 Notification

In accordance with the Location Offset Rules the Film Certification Advisory Board will issue you, or decline to issue you, with a provisional certificate.

A provisional certificate will state that, based on the information and projected budget presented in the application, the proposed production would meet, or is likely to meet, the eligibility requirements in relation to the Location Offset. The Board may also include conditions on the provisional certificate.

A production that holds a provisional certificate is not guaranteed of qualifying for the Location Offset and must apply for final certification once QAPE has ceased to be incurred in order to claim the Offset. The assessment of projected QAPE at the provisional stage does not bind a decision regarding eligibility for final certification as all details of a final application will be assessed based on the information presented at the final certificate stage.

The Board may decide not to issue a provisional certificate if the production does not meet, or is unlikely to meet, the eligibility requirements under the ITAA97, or if the application does not include enough information to enable an assessment. If a certificate is not issued the Board will provide written notice of the reasons. A decision not to issue a provisional certificate for a production does not prevent a production company from applying for a final certificate in relation to that production.

3.2. Final certification

The Minister for the Arts is responsible for issuing final certificates.

3.2.1 Application Form

Application forms are available at: www.arts.gov.au.

Applicants should review these Guidelines, the Location Offset Glossary and the Application Form prior to the start of production to ensure that all required information is recorded, and can be provided, in the formats required in the Application Form. Applicants are also encouraged to seek accounting advice, from an Australian production accountant, prior to the start of production in Australia to ensure that expenditure records are appropriately documented and the relevant information can be extracted from the systems used.

It is vital that all sections of the form are completed and all relevant documents are attached. Applications will not be assessed until all information is received.

Applicants should be aware that for the assessment of a final application a substantial amount of material is required to support your application. You will be required to attach a range of documentation including copies of legal documents relating to, for example, the establishment of the applicant company, legal agreements to verify Australian copyright ownership and confirmation of distribution and exhibition arrangements. The required documents are detailed in the Application Form and the Location Offset Rules.

Under the Location Offset Rules, the Film Certification Advisory Board may request any additional information it deems necessary to provide advice to the Minister about an application. For instance, where an application response is incomplete or unsubstantiated the Board may require the applicant, at the applicant's expense, to provide further information. This information must be provided within the requested time, although the applicant may write to the Board seeking an extension of time. If the required information is not provided the assessment may be progressed without further information from the applicant.

3.2.2 Statutory declaration

The information provided in your application must be certified in a statutory declaration by an authorised person from the applicant company—normally this would be the production's Producer or the applicant company's Chief Executive Officer.

Please ensure the original signed statutory declaration is submitted to the Department and filled out correctly, including the name, address and occupation of the person making the declaration and the qualifications of the person witnessing the declaration.

3.2.3 Submitting your application

An application for a final certificate may be submitted at any time after the production has finished incurring QAPE.

The application must be submitted to the Department in the form specified. The Application Form is available at: www.arts.gov.au.

3.2.4 Consideration by the Film Certification Advisory Board

Once an application has been received by the Department it will be provided to the Film Certification Advisory Board. The Board's members are highly experienced Australian producers with expertise in screen production. The Board is chaired by a senior representative of the Department.

The Board will consider the application and provide advice to the Minister on whether the Board is satisfied that the production meets the requirements for certification under the ITAA97. This advice will inform the Minister's decision on whether to issue a certificate and on the level of QAPE.

The Board may request further information from an applicant if such information is required to assist its assessment of the application and preparation of its advice to the Minister.

3.2.5 Advice from an independent film production consultant

The Board may seek the advice of one or more Independent Film Production Consultants (IFPCs) including the:

- provision of an independent assessment of whether specific items claimed in an expenditure statement are reasonably attributable to production expenditure and QAPE

- assessment of whether costs charged for specific items are made on an arm's length basis, and
- provision of advice on whether the applicant's expenditure is commercially reasonable.

The Department engages a number of IFPCs to provide services to the Film Certification Advisory Board. IFPC's are referred to as 'Independent Line Producers' in the Location Offset Rules. IFPCs are highly skilled line producers and/or production managers with considerable experience in the Australia screen industry.

You should expect the application to be provided to an IFPC. This assessment will be undertaken on a strictly sensitive basis and the IFPC will be subject to a contractual duty of confidentiality.

The IFPC or Department may contact you for additional information to substantiate the information in the application and the QAPE claim. This information may be required to assist the IFPC's assessment and in order to provide advice to the Board. The IFPC may seek information on the process and methodologies adopted by the applicant, for example to show that the amounts claimed are in accordance with the legislation including the arm's length principle.

Delays in providing information will result in an extended assessment period.

You will be given a copy of the IFPC report and have the opportunity to make a written submission to the Board in response to the report. Comments should be directed to the Board, through the Department.

3.2.6 Film Certification Advisory Board advice to the Minister

The Board will provide the Minister with a written report on its assessment of the application against the requirements of the ITAA97.

The Minister will consider the Board's report and make determinations on whether or not to certify the production and the level of QAPE.

3.2.7 Notification

The process of assessing the application, including consideration by the Film Certification Advisory Board, may take approximately 15 weeks following receipt of all necessary attachments and information, after which the Minister will consider whether to issue a certificate. Failure to provide all relevant documents or additional information requested by the Board or the IFPC may result in the assessment process taking longer.

Where the Minister certifies a production for the Location Offset, the applicant company will be notified in writing of this decision. A certificate and a determination of QAPE will be issued.

Where the Minister refuses to issue a certificate the applicant company will be notified in writing of this decision (including reasons for the decision).

3.2.8 Submission to the Australian Tax Office

Where a certificate is issued, the applicant company can claim the offset in its income tax return for the relevant income year. The relevant year is the year in which QAPE ceased being incurred.

The ATO will provide a tax offset or refund to the extent that the amount exceeds the amount of existing tax liabilities owed by the applicant company.

The ATO will not usually review either the requirements for the issue of a certificate or the determined amount of QAPE. However, if the ATO in the course of its assessment of an applicant's tax return finds

evidence of fraud or serious misrepresentation, the ATO will advise the Minister who may then revoke the certificate. Further information is available on the ATO website at www.ato.gov.au.

If the Location Offset has already been paid by the ATO and a certificate is subsequently revoked, the ATO may commence recovery of the Offset as a debt.

3.2.9 Statement of reasons and appeal of decision

An applicant can request a statement of reasons for a decision by the Minister under section 28 of the *Administrative Appeals Tribunal Act 1975* and may also seek review of the decision by the Administrative Appeals Tribunal. A statement of reasons or review of a decision may be sought in relation to a:

- decision not to issue a certificate (that is, declining to certify a production),
- determination of the amount of QAPE, or
- decision to revoke a certificate (see below).

3.2.10 Revocation of a certificate

The Minister may revoke a certificate where satisfied that it was obtained by fraud or serious misrepresentation and will notify the applicant company in writing of this decision (including reasons for the decision to revoke the certificate). Revocation of a certificate may also take place if an applicant fails to provide the Minister with a copy of a completed production (outlined below).

The information provided to the Board (in an application or at its request) may be used for the purposes of the consideration of the revocation of a certificate.

As noted above, a statement of reasons may be sought in relation to a decision to revoke a certificate. Review of the decision by Australia's Administrative Appeals Tribunal may also be sought.

3.2.11 Copy of the completed production

Once the production is completed, you must provide a copy of the completed production to the Minister, through the Department, within 30 days of completion. If the copy is not provided, the Minister may revoke any certificate issued. The copy should be provided on DVD (region 4 or unrestricted) or Blu Ray, or on a PC formatted USB.

The production's completion is defined as when the production material is in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public (as detailed in ITAA97 section 376-55(2)).

If you are applying for the Location Offset before the production is completed, you should indicate the expected date of completion. Should the expected date of completion change at any time, you should advise the Department of the change, and briefly indicate the reason(s) for the delay.

It is not anticipated that the Minister will revoke a certificate on this ground without first contacting the applicant (although the Minister is empowered to do so). Should you have any concerns regarding either provision of an expected date of completion or a DVD copy of the production, you should relate these concerns to the Department. The Department, acting as an agent for the Minister, will consider such concerns on a case by case basis.

3.3. Confidentiality

Please note that all information provided by the applicant will be held by the Department on a strictly commercial-in-confidence basis. Information will only be provided to the ATO, the Film Certification

Advisory Board and an Independent Film Production Consultant as required. In some circumstances to allow administration of the three offsets available under the Australian Screen Production Incentive some information may be exchanged between the Department and Screen Australia.

All bodies that are privy to confidential information will be bound by Australian Government confidentiality provisions which treat all such information as sensitive and, where appropriate, will be subject to contractual duties of confidentiality.

The Department may be legally required to release information provided by applicants in certain circumstances, for example, under the *Freedom of Information Act 1982*. In processing a request under that Act the Department may consult the relevant applicant prior to a decision on the release of documents containing commercial information being made.

4. Contacts

The Screen Industry Section can be contacted at:

Email: filmenquiries@arts.gov.au

Tel: +61 2 6271 1543

Web: www.arts.gov.au.

Screen Industry Section
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601 Australia

For information about taxation and the other obligations of companies commencing business in Australia, registering for an ABN, filing business activity statements and annual income tax returns, please consult the ATO website at www.ato.gov.au.

Alternatively, the ATO enquiry line for businesses is: +61 132866 (or +61 137286 for tax agents).

5. List of acronyms and abbreviations

ABN—Australian Business Number

ATO—Australian Taxation Office

Board—the Film Certification Advisory Board

Classification Act—*Classification (Publications, Films and Computer Games) Act 1995*

Department—the Department of Communications and the Arts

FBT—Fringe Benefits Tax

GST Act—*A New Tax System (Goods and Services Tax) Act 1999*

GST—Goods and Services Tax

IFPC—Independent film production consultant

ITAA36—*Income Tax Assessment Act 1936*

ITAA97—*Income Tax Assessment Act 1997*

Location Offset Rules—Location Offset Rules 2008

Minister—the Minister for the Arts

QAPE—Qualifying Australian Production Expenditure