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**Department of Infrastructure, Transport,
Regional Development and Communications**
Office for the Arts

Post, Digital and Visual Effects (PDV) offset guidelines

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Director—Creative Services
Communication Branch
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
Canberra ACT 2601
Australia

Email: publishing@infrastructure.gov.au
Website: www.infrastructure.gov.au

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Incentive for Post, Digital and Visual Effect (PDV) production in Australia

The PDV 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 30 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 Infrastructure, Transport, Regional Development and Communications (the Department) administers both the Location Offset and PDV Offset. These guidelines refer to the PDV Offset.

Location 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 PDV Offset will prohibit it from receiving certification for either the Location or Producer Offsets.

1. Introduction

The Australian Government recognises the economic, employment and skills development opportunities international and domestic screen production brings to Australia and to Australians working in the screen industry.

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

The PDV Offset provides a financial incentive for post, digital and visual effects production in Australia. It is aimed at enabling the Australian visual effects, post production and animation sector to continue to develop its reputation as one of the best and most cost-effective in the world.

The legislation which governs the PDV Offset 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 PDV Offset Rules 2018 (the PDV 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 PDV Offset Rules, if there is an inconsistency between the guidelines and the ITAA97 or the PDV Offset Rules, the provisions in the ITAA97 and the PDV Offset Rules prevail.

The guidelines should be read in conjunction with the PDV 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 (please refer to section 2.2 Eligible Formats and Distribution for information on 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 PDV Offset

The PDV Offset is applied at a fixed rate of 30 per cent of Qualifying Australian Production Expenditure (QAPE) related to PDV activity on an eligible film or television project that commences PDV activity on or after 1 July 2011.

For films commencing on or after 1 July 2007 and before 1 July 2011, the PDV Offset is applied at a fixed rate of 15 per cent. Please contact the Screen Industry Section of the Department if your film falls within this period to discuss eligibility requirements.

In order to access the PDV 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 PDV Offset is the year in which QAPE in relation to PDV production 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.

1.1.1 Definition of PDV

Subsection 376-35(2) of the ITAA97 defines PDV for the purposes of the Offset as:

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

QAPE claimed for the PDV Offset must be for PDV related activities in accordance with this definition or part of the specific inclusions included under the ITAA97. For ease of reference, QAPE in relation to PDV activity is also referred to as PDV-QAPE in this document and the PDV Offset Glossary.

Also see [Part 2](#) of the guidelines regarding QAPE and the PDV Offset Glossary.

1.1.2 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 PDV 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 PDV-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 PDV 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 PDV-QAPE has ceased to be incurred or when the production is completed. The assessment of projected PDV-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.

1.1.3 Final certification

In order to claim the PDV 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 376-35)
 - 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 post, digital and visual effects production for the production (ITAA97 section 376-45).
- The production must be of an eligible format and meet relevant production timeframes (ITAA97 section 376-45)
 - format (feature film or film of like nature e.g. telemovie, mini-series of television drama or television series)
 - must have commenced PDV activity in Australia on or after 1 July 2007.
- QAPE as it relates to PDV production (PDV-QAPE) must meet or exceed the threshold, currently \$500,000 (ITAA97 section 376-45).
- 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 Location or Producer Offsets will prohibit access to the PDV Offset (ITAA97 section 376-35). 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 PDV-QAPE. You then claim the PDV Offset in your tax return for the income year in which the final PDV-QAPE is expended. The Australian Tax Office (ATO) will credit the PDV Offset against any existing income tax liabilities and refund the remainder.

1.1.4 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. PDV Offset eligibility

2.1. Eligible applicants

2.1.1 The company

To be eligible for the PDV 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 PDV 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 in Australia that were necessary for post, digital and visual effects for the production.

The applicant company is usually the company that incurs all the PDV expenditure in Australia or through which all transactions are channelled. For example, the expenditure incurred undertaking PDV work or in contracting another company to undertake PDV work may both qualify as PDV-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 carry out or undertake the PDV arrangements. 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 PDV Offset for a particular production. The applicant must be a company that meets the requirements of both Australian company registration and responsibility for Australian PDV production activities.

Expenditure by prior companies

An application should be made by the production company that completes the eligible PDV 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 project are not eligible in the calculation of QAPE.

For example, one company may initiate the development of a project 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 project 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 PDV Offset are:

- feature films or films of a like nature (e.g. telemovies) (unless a documentary)
- mini-series of television drama
- television series (including a documentary)—see below.

Distribution of eligible formats can include direct-to-video, direct-to-DVD, television broadcast or online distribution.

The following formats are ineligible for the PDV Offset:

- 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
- a 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 (1) of the Classification Act and
 - is contained in a device separate from that containing the original game.

2.2.1 Eligible television series

For the purposes of the PDV 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 PDV 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.

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 \$500,000 PDV-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 Commencement, completion and timeframes

In order to qualify for the PDV Offset, the production must have commenced PDV activity in Australia on, or after, 1 July 2007.

There are no requirements under the PDV Offset that a production, including television series, must be completed within a given timeframe.

2.3. Production Expenditure, QAPE and thresholds

The PDV 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 activities related to PDV activities in Australia, including for goods and services provided in Australia and the use of land located in Australia.

The PDV 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 relating to PDV activity (PDV-QAPE), which is expenditure incurred inside Australia for the purposes of PDV production.

Both types of expenditure are subject to specific legislative inclusions and exclusions. The PDV 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 PDV 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 project (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 before the completion of the film)

- distribution
- deferment and profit participation, residuals, advances
- acquisition of depreciating assets.

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 PDV Offset, total Production Expenditure needs to be provided when a General Business Overheads QAPE claim is being made (see the PDV 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.

Qualifying Australian Production Expenditure (QAPE) related to PDV production

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.

In regards to the PDV Offset QAPE must also be related to post, digital and visual effects production (PDV-QAPE).

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

- is the basis for determining whether the minimum Australian expenditure threshold has been reached, and
- provides the basis of the PDV Offset itself, as the amount of the rebate is 30 per cent of PDV-QAPE.

PDV-QAPE may be incurred in any year before and including the year which PDV-QAPE ceased to be incurred.

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

- costs related to audio and visual creation and manipulation (that are not principal photography, pickups or the creation of physical elements)
- PDV staff and associated costs such as fringes or payroll tax
- expenses directly related to the enabling of PDV activity such as travel to or within Australia of PDV staff or freight to or within Australia of PDV materials
- acquisition/licencing of additional material, such as music, used during PDV where it is Australian-held copyright
- PDV activities related to the production of additional audio-visual content
- depreciation of assets, to the extent they are used in the PDV activity related to the production
- business expenses as they relate to PDV such as some insurances, legal or accounting expenses.

The following are excluded from PDV-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 1 July 2011)
- gratuities and entertainment expenses
- crew members' (including producers and executive producers), whether Australian or non-Australian residents, travel and stay in Australia for less than two consecutive weeks.

The PDV Offset Glossary provides detailed information on specific PDV-QAPE matters, including:

- apportionment of expenditure as it relates to PDV activities
- 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 or 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 PDV 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 PDV activity 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 Expenditure threshold

A production must spend PDV-QAPE of at least \$500,000 (as determined by the Minister) to be eligible for the PDV Offset.

The PDV 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 PDV Offset Glossary for further information on expenditure by prior companies.

QAPE per hour requirements

There are no QAPE per hour requirements under the PDV Offset.

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

- it has received a final certificate for the Location Offset
- it has received a final certificate for the Producer Offset
- the applicant, or anyone else, has claimed a deduction for the project under Division 10B of the ITAA36
- it has been granted a final certificate at any time under Division 10BA 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 PDV Offset, investors will be unable to claim a deduction under Division 10BA and your PDV 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 the 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 PDV 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 PDV Offset.

Most state and territory government support measures are provided as production investments, 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 through 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 1 July 2011

There have been two major legislative changes relevant to the PDV 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 PDV production, on or after 1 July 2011

- the QAPE related to PDV production must be at least \$500,000, for the production to be eligible; and
- the PDV Offset rate is applied at 30 per cent of QAPE

For productions commencing PDV production, on or after 1 July 2010 and before 1 July 2011:

- the QAPE related to PDV production must be at least \$500,000, for the production to be eligible
- the PDV 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 PDV production, on or after 1 July 2007 and before 1 July 2010:

- the PDV Offset rate is applied at 15 per cent of QAPE
- the QAPE related to PDV production must be at least \$5 million, for the production to be eligible, and
- GST input credits can be considered as QAPE.

3. Application and process

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

Information that must be provided when applying to the PDV Offset is provided for under the PDV Offset Rules. In addition, the function and procedures of the Film Certification Advisory Board are established by the Film Certification Advisory Board Rules 2018.

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 related to PDV. 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 PDV 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 PDV-QAPE.

The extent to which eligibility of PDV-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 PDV 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, PDV production activities in Australia that are necessary for the production.

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 project, and whether the production company will be an Australian company or a foreign company with a permanent establishment and an ABN. For example the applicant for a provisional certificate may be a company developing a project, however plans to establish a production company to undertake the specific project.

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.

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 aspects of the application or request 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 PDV-QAPE.

3.1.4 Notification

In accordance with the PDV 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 PDV 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 PDV Offset and must apply for final certification once the PDV-QAPE has ceased to be incurred in order to claim the Offset. The assessment of projected PDV-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 project 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 PDV Offset Glossary and the Application Form before 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, before 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 PDV Offset Rules.

Under the PDV 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 own 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 PDV-QAPE.

Access to the Application Form is 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 PDV-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 PDV-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 PDV 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 related to PDV.

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 PDV 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 related to PDV 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 PDV 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. A 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 PDV 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 film, 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 before a decision on the release of documents containing commercial information being made.

4. Contacts

The Screen Industry Section of the Department of Communications and the Arts can be contacted at:

Email: filmenquiries@arts.gov.au

Tel: +61 2 6271 1543

Web: www.arts.gov.au.

Screen Industry Section

Department of Infrastructure, Transport, Regional Development and Communications

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/businesses/.

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*

Minister—the Minister for the Arts

PDV—post digital and visual effects

PDV Offset Rules—PDV Offset Rules 2018

PDV-QAPE—Qualifying Australian Production Expenditure related to post digital and visual effects activity

QAPE—Qualifying Australian Production Expenditure