



Tax Laws Amendment (2011 Measures No. 7) Act 2011

No. 147, 2011

**An Act to amend the law relating to taxation, and
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Tax Laws Amendment (2011 Measures No. 7) Act 2011

No. 147, 2011

An Act to amend the law relating to taxation, and for other purposes

[Assented to 29 November 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2011
Measures No. 7) Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 November 2011
2. Schedule 1	The day this Act receives the Royal Assent.	29 November 2011
3. Schedule 2, Part 1	The day this Act receives the Royal Assent.	29 November 2011
4. Schedule 2, Part 2	1 July 2016.	1 July 2016
5. Schedule 3	The day this Act receives the Royal Assent.	29 November 2011
6. Schedule 4	The day after this Act receives the Royal Assent.	30 November 2011
7. Schedules 5 to 7	The day this Act receives the Royal Assent.	29 November 2011
8. Schedule 8, Part 1, Division 1	1 January 2012.	1 January 2012
9. Schedule 8, Part 1, Division 2	1 July 2012.	1 July 2012
10. Schedule 8, Part 1, Division 3	1 January 2012.	1 January 2012
11. Schedule 8, Part 2	The day this Act receives the Royal Assent.	29 November 2011
12. Schedule 9	The day this Act receives the Royal Assent.	29 November 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of Schedule 1 (about special disability trusts) to this Act; and
- (b) the amendment is made within 2 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to that Schedule.

Schedule 9—Film tax offsets

Income Tax Assessment Act 1997

1 Paragraph 376-2(3)(b)

Omit “15%”, substitute “16.5%”.

2 Paragraph 376-2(3)(c)

Omit “15%”, substitute “30%”.

3 Section 376-15

Omit “15%”, substitute “16.5%”.

4 Section 376-40

Omit “15%”, substitute “30%”.

5 Subparagraph 376-55(2)(b)(i)

Omit “65th episode is first in a state”, substitute “episode in which the 65th commercial hour is reached is first in a state”.

6 Subparagraph 376-55(2)(c)(i)

Omit “65th episode of the series is first in a state”, substitute “episode in which the 65th commercial hour is reached is first in a state”.

7 At the end of subsection 376-55(4)

Add:

; or (g) the *film authority’s Producer Equity Program has provided financial assistance to the company or anyone else for the making of the film.

8 Subparagraph 376-65(2)(c)(v)

Omit “drama”, substitute “film”.

9 Subsection 376-65(4) (heading)

Repeal the heading, substitute:

Short form animated film

10 Subsection 376-65(4)

Omit “drama”, substitute “film”.

11 Paragraph 376-65(4)(a)

Omit “drama”.

12 Subsection 376-65(6) (cell at table item 1, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)

Repeal the cell, substitute:

\$500,000

13 Subsection 376-65(6) (cell at table item 2, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)

Repeal the cell, substitute:

\$500,000

14 Subsection 376-65(6) (cell at table item 2, column headed “and the amount for the film worked out under subsection (7) is at least ...”)

Repeal the cell, substitute:

not applicable

15 Subsection 376-65(6) (cell at table item 3, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)

Repeal the cell, substitute:

\$500,000

16 Subsection 376-65(6) (cell at table item 4, column headed “For this type of film ...”)

Omit “drama”, substitute “film”.

17 Subsection 376-65(6) (cell at table item 6, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)

Repeal the cell, substitute:

\$500,000

18 Subsection 376-65(6) (cell at table item 8, column headed “The total of the company’s qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...”)

Repeal the cell, substitute:

\$500,000

19 Paragraph 376-125(4)(c)

Omit “film; or”, substitute “film (other than the activities listed in paragraphs (a) to (e) of item 7 of the table in subsection 376-170(2)); or”.

20 Section 376-135 (cell at table item 1, column headed “except to the extent to which the expenditure is ...”)

Repeal the cell, substitute:

*qualifying
Australian
production
expenditure under
item 6 of the table
in subsection
376-150(1) and
paragraph (a) of
item 5 of the table
in subsection
376-170(2)

21 Section 376-135 (cell at table item 5, column headed “except to the extent to which the expenditure is ...”)

Repeal the cell, substitute:

*qualifying
Australian

production
expenditure under
item 3 or 4 of the
table in subsection
376-150(1) or
item 6 of the table
in subsection
376-170(2)

22 Subsection 376-150(1) (at the end of the table)

Add:

- 6 *Certain financing expenditure*
expenditure incurred in Australia prior to the end of the income year in which *completion of the *film occurs in respect of any of the following:
- (a) insurance related to making the film;
 - (b) fees for audit services and legal services provided in Australia in relation to raising and servicing the financing of the film which are incurred by the company that makes, or is responsible for making, the film;
 - (c) fees for incorporation and liquidation of the company that makes or is responsible for making the film.

23 Subsection 376-170(2) (at the end of the table)

Add:

- 5 *Other expenditure*
expenditure incurred in Australia in respect of any of the following:
- (a) obtaining an independent opinion of the amount of a film's *qualifying Australian production expenditure required for use in relation to the financing of the film;
 - (b) offset carbon emissions created during the making of the film.
-
- 6 *Expenditure incurred in producing Australian copyright promotional material*
expenditure incurred in Australia in the income year of the *completion of the *film or an earlier year in respect of any of the following:
- (a) producing material for publicising or otherwise promoting the film where the copyright in the material is held or partially held by a company that is an Australian resident;
 - (b) unit publicist fees.
-
- 7 *Expenditure incurred in delivering or distributing the film*
expenditure incurred by the applicant company in delivering or
-

distributing the film prior to the end of the income year in which the *film is complete to the extent to which it is incurred for, or reasonably attributable to, any of the following:

- (a) acquiring Australian classification certificates;
- (b) sound mix mastering licenses;
- (c) re-versioning the film in Australia;
- (d) freight services provided by a company in Australia for delivery of contracted deliverables in relation to the film;
- (e) storing the film in a film vault in Australia.

24 Paragraph 376-170(4)(b)

Omit “the following”, substitute “subject to subsection (4A), the following”.

25 Paragraph 376-170(4)(c)

Omit “65th episode of the series”, substitute “episode in which the 65th commercial hour of the series is reached”.

26 After subsection 376-170(4)

Insert:

(4A) Paragraph (4)(b) does not apply to a *film that is a documentary.

27 Subsection 376-170(5)

Omit “2007”, substitute “2011”.

28 At the end of Subdivision 376-C

Add:

376-185 Expenditure to be worked out excluding GST

In determining an amount of expenditure for the purpose of this Division, the expenditure is taken to exclude *GST.

29 Subsection 960-50(6) (cell at table item 9B, column headed “In this case ...”)

Omit “an amount that is relevant”, substitute “subject to item 9C, an amount that is relevant”.

30 Subsection 960-50(6) (after table item 9B)

Insert:

- 9C an amount that is relevant for the purposes of quantifying:
- (a) the total of all of a company's *production expenditure on a *film; or
 - (b) the total of the company's *qualifying Australian production expenditure on a film; or
 - (c) the company's *total film expenditure on a film;
- to the extent to which the total of the company's qualifying Australian production expenditure on a film is less than \$15 million and the amount is relevant for the purposes of calculating an amount of a *tax offset under section 376-60
- the amount is to be translated to Australian currency at the exchange rate applicable at the time when expenditure is incurred on the film

31 Application of amendments

- (1) The amendments made by items 1 and 3 apply in respect of the location offset to films commencing principal photography or production of the animated image on or after 10 May 2011.
- (2) The amendments made by items 2 and 4 apply in respect of the PDV offset to post, digital and visual effects production that commences on or after 1 July 2011.
- (3) The amendments made by items 5 to 19, 21, 23 to 28 and 30 apply in respect of the producer offset to:
 - (a) films for which production assistance (other than development assistance) has been approved by the film authority on or after 1 July 2011; or
 - (b) in any other case, films for which production expenditure is first incurred in, or in relation to, pre-production of the film on or after 1 July 2011.
- (4) The amendments made by items 20, 22 and 29 apply:

Schedule 9 Film tax offsets

- (a) in respect of the location offset to films commencing principal photography or production of the animated image on or after 10 May 2011; and
 - (b) in respect of the PDV offset to post, digital and visual effects production that commences on or after 1 July 2011; and
 - (c) in respect of the producer offset to films for which production assistance (other than development assistance) has been approved by the film authority on or after 1 July 2011; or
 - (d) in any other case, in respect of the producer offset to films for which production expenditure is first incurred in, or in relation to, pre-production of the film on or after 1 July 2011.
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*[Minister's second reading speech made in—
House of Representatives on 21 September 2011
Senate on 31 October 2011]*

(200/11)
