



# **Tax Laws Amendment (2007 Measures No. 5) Act 2007**

**No. 164, 2007**

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

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



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# **Tax Laws Amendment (2007 Measures No. 5) Act 2007**

**No. 164, 2007**

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

[Assented to 25 September 2007]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2007  
Measures No. 5) Act 2007*.

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## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	25 September 2007
2. Schedules 1 to 7	The day on which this Act receives the Royal Assent.	25 September 2007
3. Schedule 8	The later of: (a) the day on which this Act receives the Royal Assent; and (b) the day on which the <i>Tax Laws Amendment (2007 Measures No. 4) Act 2007</i> receives the Royal Assent.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	25 September 2007
4. Schedule 9	The day on which this Act receives the Royal Assent.	25 September 2007
5. Schedule 10, Parts 1 and 2	The day on which this Act receives the Royal Assent.	25 September 2007
6. Schedule 10, Part 3	1 July 2010.	1 July 2010
7. Schedule 10, Part 4	The day on which this Act receives the Royal Assent.	25 September 2007
8. Schedule 11	The day on which this Act receives the Royal Assent.	25 September 2007
9. Schedule 12	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months	27 September 2007 ( <i>see</i> F2007L03842)

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or 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 this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 2.

## **Schedule 10—Streamlining concessions for Australian films and Australian film production**

### **Part 1—Main amendments**

#### ***Income Tax Assessment Act 1997***

##### **1 Division 376**

Repeal the Division, substitute:

#### **Division 376—Films generally (tax offsets for Australian production expenditure)**

##### **Table of Subdivisions**

- 376-A Guide to Division 376
- 376-B Tax offsets for Australian expenditure in making a film
- 376-C Production expenditure and qualifying Australian production expenditure
- 376-D Certificates for films and other matters

##### **Subdivision 376-A—Guide to Division 376**

###### **376-1 What this Division is about**

Companies may be entitled to 1 of 3 refundable tax offsets in relation to Australian expenditure incurred in making films. The offsets are designed to support and develop the Australian screen media industry by providing concessional tax treatment for Australian expenditure.

##### **Table of sections**

- 376-2 Key features of the tax offsets for Australian production expenditure on films
  - 376-5 Structure of this Division
-

**376-2 Key features of the tax offsets for Australian production expenditure on films**

- (1) The 3 tax offsets are:
  - (a) a refundable tax offset for Australian expenditure in making an Australian film (the producer offset); and
  - (b) a refundable tax offset for Australian expenditure in making any film (the location offset); and
  - (c) a refundable tax offset for Australian expenditure on post, digital and visual effects production for any film (the PDV offset).
- (2) A company is only entitled to one of these offsets in relation to a film.
- (3) The amount of the offset is determined as a percentage of certain Australian expenditure incurred by a company in producing the film:
  - (a) the amount of the producer offset is 40% of the company's qualifying Australian production expenditure on the film if the film is a feature film, and 20% of such expenditure if the film is not a feature film; and
  - (b) the amount of the location offset is 15% of the company's qualifying Australian production expenditure on the film; and
  - (c) the amount of the PDV offset is 15% of the company's qualifying Australian production expenditure on the film that relates to post, digital and visual effects production for the film.
- (4) One of the requirements for entitlement to these offsets is that a company must be issued with a certificate for the film. The certificate will state the amount of Australian expenditure on which the offset will be determined.
- (5) The offset is claimed by a company in its income tax return.

**376-5 Structure of this Division**

- (1) Subdivision 376-B tells you about the different tax offsets available for films, who can get each offset and what conditions must be met to get each offset. It also tells you how to work out the amount of each offset.

**Schedule 10** Streamlining concessions for Australian films and Australian film production

**Part 1** Main amendments

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- (2) Subdivision 376-C explains what is meant by:
- (a) production expenditure on a film; and
  - (b) qualifying Australian production expenditure on a film.
- It also contains some rules for quantifying expenditure.
- (3) Subdivision 376-D deals with a number of administrative matters:
- (a) applying for a certificate for a film; and
  - (b) the issue and revocation of a certificate for a film; and
  - (c) the making of rules by the Arts Minister (including rules for the establishment of the Film Certification Advisory Board) and the film authority; and
  - (d) review of decisions of the Arts Minister and the film authority; and
  - (e) amendment of assessments following the revocation of a certificate for a film.

**Subdivision 376-B—Tax offsets for Australian expenditure in making a film**

**Table of sections**

**Refundable tax offset for Australian expenditure in making a film (location offset)**

- 376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset)
- 376-15 Amount of the location offset
- 376-20 Minister must issue certificate for a film for the location offset
- 376-25 Company may nominate one individual whose remuneration is to be disregarded for the location offset
- 376-30 Minister to determine a company's qualifying Australian production expenditure for the location offset

**Refundable tax offset for post, digital and visual effects production for a film (PDV offset)**

- 376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset)
- 376-40 Amount of the PDV offset
- 376-45 Minister must issue certificate for a film for the PDV offset
- 376-50 Minister to determine a company's qualifying Australian production expenditure for the PDV offset

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**Refundable tax offset for Australian expenditure in making an Australian film (producer offset)**

- 376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset)
- 376-60 Amount of the producer offset
- 376-65 Film authority must issue certificate for an Australian film for the producer offset
- 376-70 Determination of content of film
- 376-75 Film authority to determine a company's qualifying Australian production expenditure for the producer offset

**Refundable tax offset for Australian expenditure in making a film (location offset)****376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset)**

- (1) A company is entitled to a \*tax offset under this section (the *location offset*) for an income year in respect of a \*film if:
- (a) if the total of the company's \*qualifying Australian production expenditure on the film (as determined by the \*Arts Minister under section 376-30) is less than \$50 million—the company's \*production expenditure on the film ceased being incurred in the income year; and
  - (b) if the total of the company's qualifying Australian production expenditure on the film (as determined by the \*Arts Minister under section 376-30) is at least \$50 million—the company's qualifying Australian production expenditure on the film ceased being incurred in the income year; and
  - (c) the \*Arts Minister has issued a certificate to the company for the film under section 376-20 (certificate for the location offset); and
  - (d) the company claims the offset in its \*income tax return for the income year; and
  - (e) the company:
    - (i) is an Australian resident; or
    - (ii) is a foreign resident but does have a \*permanent establishment in Australia and does have an \*ABN;

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**Part 1** Main amendments

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when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (d) is irrevocable.

Note: The location offset is a refundable tax offset: see subsection 67-25(2A).

- (2) The company is not entitled to the location offset if:
- (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the \*film under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
  - (b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or
  - (c) a certificate for the film has been issued at any time under section 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); or
  - (d) a certificate for the film has been issued at any time under section 376-65 (certificate for the producer offset) (whether or not the certificate is still in force).

**376-15 Amount of the location offset**

The amount of the location offset is 15% of the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*Arts Minister under section 376-30).

**376-20 Minister must issue certificate for a film for the location offset**

- (1) The \*Arts Minister must issue a certificate to a company for a \*film in relation to the location offset if the Minister is satisfied that the conditions in subsections (2), (3) and (5) are met.

*Type of film*

- (2) The conditions in this subsection are that:
- (a) the \*film was produced for:
    - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way

- of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
- (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
- (b) the film is:
- (i) a \*feature film or a film of a like nature; or
- (ii) a mini-series of television drama; or
- (iii) a television series that is not covered by subparagraph (i) or (ii); and
- (c) the film is not, or is not to a substantial extent:
- (i) if the film is covered by subparagraph (b)(i) or (ii)—a documentary; or
- (ii) a film for exhibition as an advertising program or a commercial; or
- (iii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
- (iv) a film of a public event; or
- (v) if the film is covered by subparagraph (b)(i) or (ii)—a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or
- (vi) a training film; or
- (vii) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).

*Television series*

- (3) The conditions in this subsection are that:
- (a) if the \*film is a television series that is not covered by subparagraph (2)(b)(i) or (ii), it is made up of 2 or more episodes that:
- (i) are produced wholly or principally for exhibition to the public on television under a single title; and
- (ii) contain a common theme or themes; and
- (iii) contain dramatic elements that form a narrative structure; and

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**Part 1** Main amendments

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- (iv) are produced wholly or principally for exhibition together, for a national market or national markets; and

Note: A documentary can be a television series.

- (b) if the film is a television series that is not covered by subparagraph (2)(b)(i) or (ii):
    - (i) for a television series that is predominantly a digital animation or other animation—the \*making of the television series (other than a pilot episode, if any, or activities mentioned in paragraph 376-125(3)(a)) takes place within a period of not longer than 36 months; or
    - (ii) otherwise—all principal photography for the television series (other than a pilot episode, if any) takes place within a period of not longer than 12 months; and
  - (c) if the film is a television series that is not covered by subparagraph (2)(b)(i) or (ii)—the amount worked out for the film under subsection (6) is at least \$1 million.
- (4) To avoid doubt, and without limiting subparagraph (3)(a)(iii), a \*film satisfies the requirement in that subparagraph if:
- (a) the sole or dominant purpose of the film is to depict actual events, people or situations; and
  - (b) the film depicts those events, people or situations in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

*Conditions relating to expenditure thresholds*

- (5) The conditions in this subsection are that:
- (a) the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*Arts Minister under section 376-30) is at least \$15 million; and
  - (b) if the total of the company's qualifying Australian production expenditure on the film is less than \$50 million:
    - (i) the total of the company's qualifying Australian production expenditure on the film is at least 70% of the total of all the company's \*production expenditure on the film; and
    - (ii) the company either carried out, or made the \*arrangements for the carrying out of, all the activities that were necessary for the \*making of the film; and
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- (c) if the total of the company's qualifying Australian production expenditure on the film is at least \$50 million, the company either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film.

Note: The operation of subparagraph (b)(ii) and paragraph (c) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

- (6) For the purposes of paragraph (3)(c), the amount for a \*film is worked out by using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

*duration of film in hours* means the total length of the \*film, measured in hours.

*total QAPE* means the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*Arts Minister under section 376-30).

### **376-25 Company may nominate one individual whose remuneration is to be disregarded for the location offset**

- (1) In its application for the certificate under section 376-230, the company may nominate one individual as an individual to whom this section applies.
- (2) If the company nominates an individual under subsection (1), disregard the following for the purposes of this Division, to the extent that it relates to the location offset:
- (a) the remuneration and other benefits provided to the individual for the individual's services in relation to the \*making of the \*film;
  - (b) travel and other costs associated with the services the individual provides in relation to the making of the film.

Note: This means that, for the purposes of the location offset, the individual's remuneration and benefits, and associated costs, are disregarded both in working out the total of the company's qualifying Australian production expenditure on the film and in working out the company's total production expenditure on the film.

**376-30 Minister to determine a company's qualifying Australian production expenditure for the location offset**

- (1) If a company applies to the \*Arts Minister for the issue of a certificate to the company for a \*film under section 376-20 (certificate for the location offset), the Arts Minister must, as soon as practicable after receiving the application, determine in writing the total of the company's \*qualifying Australian production expenditure on the film for the purposes of the location offset.
- (2) In making a determination under subsection (1), the \*Arts Minister must have regard to the matters in Subdivision 376-C.
- (3) The \*Arts Minister must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

**Refundable tax offset for post, digital and visual effects production for a film (PDV offset)**

**376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset)**

- (1) A company is entitled to a \*tax offset under this section (the *PDV offset*) for an income year in respect of a \*film if:
  - (a) the company's \*qualifying Australian production expenditure on the film, to the extent that it relates to \*post, digital and visual effects production for the film, ceased being incurred in the income year; and
  - (b) the \*Arts Minister has issued a certificate to the company for the post, digital and visual effects production for the film under section 376-45 (certificate for the PDV offset); and
  - (c) the company claims the offset in its \*income tax return for the income year; and
  - (d) the company:
    - (i) is an Australian resident; or
    - (ii) is a foreign resident but does have a \*permanent establishment in Australia and does have an \*ABN;

when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (c) is irrevocable.

Note: The PDV offset is a refundable tax offset: see subsection 67-25(2A).

(2) **Post, digital and visual effects production** for a \*film means:

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

Note: 3D animation, digital compositing and music composition and recording are examples of post, digital and visual effects production.

(3) The company is not entitled to the PDV offset if:

- (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the \*film under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
- (b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or
- (c) a certificate for the film has been issued at any time under section 376-20 (certificate for the location offset) (whether or not the certificate is still in force); or
- (d) a certificate for the film has been issued at any time under section 376-65 (certificate for the producer offset) (whether or not the certificate is still in force).

### **376-40 Amount of the PDV offset**

The amount of the PDV offset is 15% of the total of the company's \*qualifying Australian production expenditure (as determined by the \*Arts Minister under section 376-50) on a \*film, to the extent that it relates to \*post, digital and visual effects production for the film.

**376-45 Minister must issue certificate for a film for the PDV offset**

- (1) The \*Arts Minister must issue a certificate to a company for the \*post, digital and visual effects production for a \*film in relation to the PDV offset if the Minister is satisfied that the conditions in subsections (2), (3) and (5) are met.

*Type of film*

- (2) The conditions in this subsection are that:
- (a) the \*film was produced for:
    - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
    - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
  - (b) the film is:
    - (i) a \*feature film or a film of a like nature; or
    - (ii) a mini-series of television drama; or
    - (iii) a television series that is not covered by subparagraph (i) or (ii); and
  - (c) the film is not, or is not to a substantial extent:
    - (i) if the film is covered by subparagraph (b)(i) or (ii)—a documentary; or
    - (ii) a film for exhibition as an advertising program or a commercial; or
    - (iii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
    - (iv) a film of a public event; or
    - (v) if the film is covered by subparagraph (b)(i) or (ii)—a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or
    - (vi) a training film; or
    - (vii) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).
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*Television series*

- (3) The condition in this subsection is that, if the \*film is a television series that is not covered by subparagraph (2)(b)(i) or (ii), it is made up of 2 or more episodes that:
- (a) are produced wholly or principally for exhibition to the public on television under a single title; and
  - (b) contain a common theme or themes; and
  - (c) contain dramatic elements that form a narrative structure; and
  - (d) are produced wholly or principally for exhibition together, for a national market or national markets.

Note: A documentary can be a television series.

- (4) To avoid doubt, and without limiting paragraph (3)(c), a \*film satisfies the requirement in that paragraph if:
- (a) the sole or dominant purpose of the film is to depict actual events, people or situations; and
  - (b) the film depicts those events, people or situations in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

*Conditions relating to expenditure thresholds*

- (5) The conditions of this subsection are that:
- (a) the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*Arts Minister under section 376-50), to the extent that it relates to \*post, digital and visual effects production for the film, is at least \$5 million; and
  - (b) the company either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the post, digital and visual effects production for the film.

Note: The operation of paragraph (b) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

**376-50 Minister to determine a company's qualifying Australian production expenditure for the PDV offset**

- (1) If a company applies to the \*Arts Minister for the issue of a certificate to the company for the \*post, digital and visual effects production for a \*film under section 376-45 (certificate for the PDV offset), the Arts Minister must, as soon as practicable after receiving the application, determine in writing the total of the company's \*qualifying Australian production expenditure, to the extent that it relates to post, digital and visual effects production for the film, for the purposes of the PDV offset.
- (2) In making a determination under subsection (1), the \*Arts Minister must have regard to the matters in Subdivision 376-C.
- (3) The \*Arts Minister must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

**Refundable tax offset for Australian expenditure in making an Australian film (producer offset)**

**376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset)**

- (1) A company is entitled to a \*tax offset under this section (the *producer offset*) for an income year in respect of a \*film if:
  - (a) the film was \*completed in the income year; and
  - (b) the \*film authority has issued a certificate to the company under section 376-65 (certificate for the producer offset) for the film; and
  - (c) the company claims the offset in its \*income tax return for the income year; and
  - (d) the company:
    - (i) is an Australian resident; or
    - (ii) is a foreign resident but does have a \*permanent establishment in Australia and does have an \*ABN;

when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (c) is irrevocable.

Note: The producer offset is a refundable tax offset: see subsection 67-25(2A).

(2) A *\*film* is **completed**:

- (a) for a film that is not a series or a season of a series—when it is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; or
- (b) for a series—at the earlier of:
  - (i) the time when the 65th episode is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; and
  - (ii) the time when the series is first in such a state; and
- (c) for a season of a series—at the earlier of:
  - (i) the time when the 65th episode of the series is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; and
  - (ii) the time when the season is first in such a state.

(3) **Film authority** means the Film Finance Corporation Australia Limited (incorporated under the *Companies Act 1981* on 12 July 1988).

(4) The company is not entitled to the producer offset if:

- (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the *\*film* under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
- (b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or
- (c) a certificate for the film has been issued at any time under section 376-20 (certificate for the location offset) (whether or not the certificate is still in force); or

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- (d) a certificate for the film has been issued at any time under section 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); or
  - (e) the company or someone else has deducted money paid for \*shares in a \*film licensed investment company under Subdivision 375-H and the film licensed investment company has invested in the film; or
  - (f) production assistance (other than \*development assistance) for the film has been received by the company or anyone else before 1 July 2007 from any of the following bodies:
    - (i) the Film Finance Corporation Australia Limited;
    - (ii) Film Australia Limited;
    - (iii) the Australian Film Commission;
    - (iv) the Australian Film, Television and Radio School.
- (5) **Development assistance** for a \*film means financial assistance provided to assist with meeting the development costs for the film, and includes assistance to the extent to which it is provided in relation to any of the following:
- (a) location surveys and other activities undertaken to assess locations for possible use in the film;
  - (b) storyboarding for the film;
  - (c) scriptwriting for the film;
  - (d) research for the film;
  - (e) casting actors for the film;
  - (f) developing a budget for the film;
  - (g) developing a shooting schedule for the film.

**376-60 Amount of the producer offset**

The amount of the producer offset is:

- (a) if the \*film is a \*feature film—40%; or
- (b) if the film is not a feature film—20%;

of the total of the company's \*qualifying Australian production expenditure on the film (as determined by the \*film authority under section 376-75).

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**376-65 Film authority must issue certificate for an Australian film for the producer offset**

- (1) The \*film authority must issue a certificate to a company for a \*film in relation to the producer offset if the film authority is satisfied that:
- (a) the company either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the \*making of the film; and
  - (b) the conditions in subsections (2) to (6) are met.

Note: The operation of paragraph (a) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

*Type of film*

- (2) The conditions in this subsection are that:
- (a) the \*film:
    - (i) has a significant Australian content (see section 376-70); or
    - (ii) has been made under an \*arrangement entered into between the Commonwealth or an authority of the Commonwealth and a foreign country or an authority of the foreign country; and
  - (b) the film was produced for:
    - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
    - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
  - (c) the film is:
    - (i) a \*feature film; or
    - (ii) a single episode program; or
    - (iii) a series; or
    - (iv) a season of a series; or
    - (v) a short form animated drama that is not covered by subparagraph (i), (ii), (iii) or (iv); and
  - (d) the film is not, or is not to a substantial extent:

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- (i) a film for exhibition as an advertising program or a commercial; or
- (ii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
- (iii) a film of a public event (other than a documentary); or
- (iv) a training film; or
- (v) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*); or
- (vi) a news or current affairs program; or
- (vii) a reality program (other than a documentary).

*Single episode programs*

- (3) The conditions in this subsection are that, if the \*film is a single episode program, it:
- (a) is of a like nature to a \*feature film; and
  - (b) is produced for:
    - (i) exhibition to the public by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
    - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
  - (c) if the program is a documentary—is of at least one half of a commercial hour in duration; and
  - (d) if the program is not a documentary—is of at least one commercial hour in duration.

*Short form animated drama*

- (4) The conditions in this subsection are that, if the \*film is a short form animated drama, it:
- (a) is a drama program comprising one or more episodes which are produced wholly or principally for exhibition together, for a national market or national markets under a single title; and

- (b) is predominantly made using cell, stop motion, digital or other animation; and
- (c) contains a common theme or themes; and
- (d) is of at least one quarter of a commercial hour in duration.

*Series and seasons of series*

- (5) The conditions in this subsection are that:
  - (a) if the application for the certificate is for a \*film that is a series and not for a film that is a season of that series:
    - (i) the series is made up of at least 2 episodes; and
    - (ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and
    - (iii) the series has a new creative concept (see section 376-70); and
  - (b) if the application for the certificate is for a film that is a season of a series:
    - (i) the season is made up of at least 2 episodes; and
    - (ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and
    - (iii) the series has a new creative concept (see section 376-70).

*Expenditure thresholds*

- (6) The conditions in this subsection are as set out in the table.

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<b>Expenditure thresholds</b>			
<b>Item</b>	<b>For this type of film ...</b>	<b>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 ...</b>	<b>and the amount for the film worked out under subsection (7) is at least ...</b>
1	A *feature film	\$1 million	not applicable
2	A single episode program other than a documentary	\$1 million	\$800,000
3	A single episode program that is a documentary	not applicable	\$250,000
4	A short form animated drama that is not a *feature film, a single episode program, a series or a season of a series	\$250,000	\$1,000,000
5	A *film where the application for the certificate is for a series and not for a season of that series, and the series is not a documentary	\$1 million	\$500,000
6	A *film where the application for the certificate is for a series and not for a season of that series, and the series is a documentary	not applicable	\$250,000
7	A *film where the application for the certificate is for a season of a series, and the series is not a	\$1 million	\$500,000

**Expenditure thresholds**

<b>Item</b>	<b>For this type of film ...</b>	<b>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 ...</b>	<b>and the amount for the film worked out under subsection (7) is at least ...</b>
	documentary		
8	A *film where the application for the certificate is for a season of a series, and the series is a documentary	not applicable	\$250,000

- (7) The amount worked out for a \*film under this subsection is the amount worked out using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

*duration of film in hours* means the total length of the \*film, measured in hours.

*total QAPE* means the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*film authority under section 376-75).

**376-70 Determination of content of film**

- (1) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a \*film has a significant Australian content, the \*film authority must have regard to the following:
- the subject matter of the film;
  - the place where the film was made;
  - the nationalities and places of residence of the persons who took part in the \*making of the film;

- (d) the details of the \*production expenditure incurred in respect of the film;
  - (e) any other matters that the film authority considers to be relevant.
- (2) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a \*film that is a series has a new creative concept, the \*film authority must have regard to the following:
- (a) the title of the series;
  - (b) whether the series has substantially different characters, settings, production locations and individuals involved in the \*making of the series than any other series;
  - (c) any other matters that the film authority considers to be relevant.

**376-75 Film authority to determine a company’s qualifying Australian production expenditure for the producer offset**

- (1) If a company applies to the \*film authority for the issue of a certificate to the company for a \*film under section 376-65 (certificate for the producer offset), the film authority must, as soon as practicable after receiving the application, determine in writing the total of the company’s \*qualifying Australian production expenditure on the film for the purposes of the producer offset.
- (2) In making a determination under subsection (1), the \*film authority must have regard to the matters in Subdivision 376-C.
- (3) The \*film authority must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

**Subdivision 376-C—Production expenditure and qualifying Australian production expenditure**

**Table of sections**

**Production expenditure—common rules**

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- 376-125 Production expenditure—general test
- 376-130 Production expenditure—special qualifying Australian production expenditure
- 376-135 Production expenditure—specific exclusions

**Production expenditure—special rules for the location offset**

- 376-140 Production expenditure—special rules for the location offset

**Qualifying Australian production expenditure—common rules**

- 376-145 Qualifying Australian production expenditure—general test
- 376-150 Qualifying Australian production expenditure—specific inclusions
- 376-155 Qualifying Australian production expenditure—specific exclusions
- 376-160 Qualifying Australian production expenditure—treatment of services embodied in goods

**Qualifying Australian production expenditure—special rules for the location offset and the PDV offset**

- 376-165 Qualifying Australian production expenditure—special rules for the location offset and the PDV offset

**Qualifying Australian production expenditure—special rules for the producer offset**

- 376-170 Qualifying Australian production expenditure—special rules for the producer offset

**Expenditure generally—common rules**

- 376-175 Expenditure to be worked out on an arm's length basis
- 376-180 Expenditure incurred by prior production companies

**Production expenditure—common rules****376-125 Production expenditure—general test**

- (1) A company's *production expenditure* on a \*film is expenditure that the company incurs to the extent to which it:
  - (a) is incurred in, or in relation to, the \*making of the film; or
  - (b) is reasonably attributable to:
    - (i) the use of equipment or other facilities for; or
    - (ii) activities undertaken in;the making of the film.

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- (2) The **making** of a \*film means the doing of the things necessary for the production of the first copy of the film.
- (3) The **making** of a \*film includes:
- (a) pre-production activities in relation to the film; and
  - (b) post-production activities in relation to the film; and
  - (c) any other activities undertaken to bring the film up to the state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public.
- (4) The **making** of a \*film does not include:
- (a) developing the proposal for the \*making of the film; or
  - (b) arranging or obtaining finance for the film; or
  - (c) distributing the film; or
  - (d) promoting the film.
- (5) Without limiting subsection (1), a company's **production expenditure** on a \*film:
- (a) may be expenditure that is incurred in the income year for which the \*tax offset is sought or in an earlier income year; and
  - (b) may be expenditure of either a capital or a revenue nature; and
  - (c) may be expenditure that gives rise to a deduction.
- Paragraph (c) has effect subject to item 10 of the table in section 376-135 (which deals with capital allowances).
- (6) If:
- (a) a company:
    - (i) \*holds a \*depreciating asset; and
    - (ii) uses the asset, while held, in the \*making of a \*film; and
  - (b) deductions in relation to the asset are available under Division 40 (which deals with capital allowances);
- the **production expenditure** of the company on the film includes an amount equal to the decline in the value of the asset to the extent to which that decline is reasonably attributable to the use of the asset in the making of the film (the **film proportion**). The decline in value of the asset is to be worked out using Division 40.
- Note: Under item 10 of the table in section 376-135, expenditure that sets or increases the cost of the asset does not count as production expenditure.
-

- (7) If a \*balancing adjustment event occurs for the asset before the film is \*completed:
- (a) if the asset's \*termination value is more than its \*adjustable value just before the event occurred—the *production expenditure* of the company on the film is reduced by the film proportion of the difference; or
  - (b) if the asset's termination value is less than its adjustable value just before the event occurred—the *production expenditure* of the company on the film includes the film proportion of the difference.

### **376-130 Production expenditure—special qualifying Australian production expenditure**

Expenditure of a company is also *production expenditure* of the company on a \*film if it is \*qualifying Australian production expenditure of the company on the film under section 376-150 or 376-165.

Note: This means that the special qualifying Australian production expenditure in sections 376-150 and 376-165 is taken into account both in working out the total amount of the company's qualifying Australian production expenditure and in working out the total amount of all the company's production expenditure on the film. The total amount of all production expenditure is relevant to a company's eligibility for the location offset: see the test in paragraph 376-20(5)(b).

### **376-135 Production expenditure—specific exclusions**

Despite sections 376-125 and 376-130, the following expenditure of a company is not *production expenditure* of the company on a \*film, except to the extent, if any, as mentioned in column 3 of the table:

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<b>Expenditure that does not count as production expenditure on a film</b>		
<b>Item</b>	<b>This kind of expenditure by the company is not production expenditure ...</b>	<b>except to the extent to which the expenditure is ...</b>
1	<i>Financing expenditure</i> expenditure incurred by way of, or in relation to, the financing of the *film (including returns payable on amounts invested in the film and expenditure in relation to raising and servicing finance for the film)	
2	<i>Development expenditure</i> *development expenditure on the *film	*qualifying Australian production expenditure under item 1 of the table in subsection 376-150(1)
3	<i>Copyright acquisition expenditure</i> expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film	*qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1)
4	<i>General business overheads</i> expenditure incurred to meet the general business overheads of the company that: (a) are not incurred in, or in relation to, the *making of the *film; and (b) are not reasonably attributable to: (i) the use of equipment or other facilities for; or (ii) activities undertaken in; the making of the film	*qualifying Australian production expenditure under item 1 of the table in subsection 376-165(1) or item 1 of the table in subsection 376-170(2)
5	<i>Publicity and promotion expenditure</i> expenditure incurred in publicising or otherwise promoting the *film (including press expenses, still photography, videotapes, public relations and other similar expenses)	*qualifying Australian production expenditure under item 3 or 4 of the table in subsection 376-150(1)

<b>Expenditure that does not count as production expenditure on a film</b>		
<b>Item</b>	<b>This kind of expenditure by the company is not production expenditure ...</b>	<b>except to the extent to which the expenditure is ...</b>
6	<i>Deferments</i> amounts that are payable only out of the receipts, earnings or profits from the *film	
7	<i>Profit participation</i> amounts that: (a) depend on the receipts, earnings or profits from the *film; or (b) are otherwise dependent on the commercial performance of the film	
8	<i>Residuals</i> amounts payable in satisfaction of the residual rights of a person who is a member of the cast	paid out by the company before the *film is *completed
9	<i>Advances</i> amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid	
10	<i>Acquisition of depreciating asset</i> expenditure to the extent to which it sets, or increases, the *cost of a *depreciating asset  This item has effect subject to subsections 376-125(6) and (7).	*qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1)
11	<i>Regulations</i> expenditure specified in regulations	

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## Production expenditure—special rules for the location offset

### 376-140 Production expenditure—special rules for the location offset

Despite sections 376-125 and 376-130, the expenditure of a company is not *production expenditure* of the company on a \*film in relation to the location offset if:

- (a) the film is a television series that is not a \*feature film or a mini-series of television drama; and
- (b) the expenditure is reasonably attributable to the production of a pilot episode to the television series; and
- (c) the expenditure, apart from this subsection, would be production expenditure that was not \*qualifying Australian production expenditure.

Note: The total amount of all production expenditure is relevant to the test in paragraph 376-20(5)(b).

## Qualifying Australian production expenditure—common rules

### 376-145 Qualifying Australian production expenditure—general test

A company's *qualifying Australian production expenditure* on a \*film is the company's \*production expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to:

- (a) goods and services provided in Australia; or
- (b) the use of land located in Australia; or
- (c) the use of goods that are located in Australia at the time they are used in the \*making of the film.

### 376-150 Qualifying Australian production expenditure—specific inclusions

- (1) The following expenditure of a company is also *qualifying Australian production expenditure* of the company on a \*film:

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Special Australian expenditure	
Item	Type of expenditure
1	<i>Australian development expenditure</i>

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**Special Australian expenditure**

<b>Item</b>	<b>Type of expenditure</b>
	<p>*development expenditure on the *film to the extent to which it is incurred for, or is reasonably attributable to:</p> <p>(a) goods and services provided in Australia; or</p> <p>(b) the use of land located in Australia; or</p> <p>(c) the use of goods that are located in Australia at the time they are used in the *making of the film</p> <p>[see subsection (2)]</p>
2	<p><i>Expenditure incurred in acquiring Australian copyright</i></p> <p>expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film if the copyright is held by an individual or a company that is an Australian resident</p>
3	<p><i>Expenditure incurred in producing Australian copyrighted promotional material</i></p> <p>expenditure incurred in producing material for use in publicising or otherwise promoting the *film if the copyright in the material is held by an individual or a company that is an Australian resident</p>
4	<p><i>Expenditure incurred in producing additional content</i></p> <p>expenditure incurred in producing audio or visual content for the *film otherwise than for use in the first copy of the film, to the extent that the expenditure is incurred in Australia prior to the *completion of the film</p>
5	<p><i>Regulations</i></p> <p>expenditure prescribed by the regulations</p>

- (2) Legal costs are covered by item 1 of the table in subsection (1) only if they relate to:
- (a) writers' contracts; or
  - (b) chain of title and other copyright issues.

**376-155 Qualifying Australian production expenditure—specific exclusions**

Despite sections 376-145, 376-150, 376-165 and 376-170, the following expenditure of a company is not *qualifying Australian production expenditure* of a company on a \*film:

- (a) expenditure that is incurred when:
  - (i) the company is a foreign resident; and

- (ii) the company does not have both a \*permanent establishment in Australia and an \*ABN;
- (b) expenditure in relation to:
  - (i) remuneration and other benefits provided to an individual for the individual's services in relation to the \*making of the film; or
  - (ii) travel and other costs associated with the services an individual provides in relation to the making of the film; if the individual:
    - (iii) is not a member of the cast; and
    - (iv) enters Australia to work on the film for less than 2 consecutive calendar weeks;
- (c) expenditure prescribed by the regulations.

**376-160 Qualifying Australian production expenditure—treatment of services embodied in goods**

If:

- (a) a company incurs expenditure for the provision of what is essentially a service; and
- (b) the results of the service are provided to the company by being embodied in goods that are delivered to the company; and
- (c) the service that is embodied in the goods was predominantly performed outside Australia;

the service is not provided to the company in Australia merely because the goods are delivered to the company in Australia.

Note: Paragraph (b)—a document, for example, might set out legal or other professional advice or a computer disk might contain a program that has been made or data that has been compiled.

**Qualifying Australian production expenditure—special rules for the location offset and the PDV offset**

**376-165 Qualifying Australian production expenditure—special rules for the location offset and the PDV offset**

- (1) For the purposes of the location offset and the PDV offset, the following expenditure of a company is also *qualifying Australian production expenditure* of the company on a \*film:

**Special Australian expenditure—location offset and PDV offset****Item    Type of expenditure**

- 1        *Australian business overheads*  
 general business overheads of the company that:
- (a) are not incurred in, or in relation to, the \*making of the \*film; and
  - (b) are not reasonably attributable to:
    - (i) the use of equipment or other facilities for; or
    - (ii) activities undertaken in;
      - the making of the film;
 to the extent to which they:
  - (c) are incurred for, or are reasonably attributable to:
    - (i) goods and services provided in Australia; or
    - (ii) the use of land located in Australia; or
    - (iii) the use of goods that are located in Australia at the time they are used in the making of the film; and
  - (d) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company
- This item has effect subject to subsection (2).

- 2        *Travel to Australia*  
 expenditure of the company in relation to an individual's travel to Australia to undertake activities in Australia in relation to the \*making of the \*film, if the remuneration paid to the individual for those activities is \*qualifying Australian production expenditure of the company

- 3        *Expenditure incurred in freighting goods to Australia*  
 expenditure incurred in freighting goods to Australia, to the extent that the goods will be used in the \*making of the \*film

- (2) General business overheads of the company are covered by item 1 of the table in subsection (1) only to the extent to which they do not exceed the lesser of:
- (a) 2% of the total of all the company's \*production expenditure on the \*film; and
  - (b) \$500,000.

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**Qualifying Australian production expenditure—special rules for the producer offset**

**376-170 Qualifying Australian production expenditure—special rules for the producer offset**

*Expenditure that is qualifying Australian production expenditure*

- (1) For the purposes of subsections 376-65(6) and (7), expenditure on a \*film incurred in a foreign country is ***qualifying Australian production expenditure*** of a company on the film if:
- (a) the expenditure is incurred by the company claiming the offset, or by another entity that is involved in the \*making of the film; and
  - (b) the expenditure would be qualifying Australian production expenditure if it had been incurred for, or reasonably attributable to:
    - (i) goods and services provided in Australia; or
    - (ii) the use of land located in Australia; or
    - (iii) the use of goods that are located in Australia at the time they are used in the \*making of the film; and
  - (c) the film is made under an \*arrangement entered into between the Commonwealth or an authority of the Commonwealth and the foreign country or an authority of the foreign country.

Note: This means that such expenditure is taken into account for the purposes of determining whether to issue a certificate for the producer offset to the company under section 376-65. It is not taken into account in working out the amount of the producer offset to which the company is entitled.

- (2) For the purposes of the producer offset, the following expenditure of a company is also ***qualifying Australian production expenditure*** of the company on a \*film:

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**Special Australian expenditure—producer offset**

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**Item    Type of expenditure**

- 1        *Australian business overheads*  
general business overheads of the company that:
- (a) are not incurred in, or in relation to, the \*making of the \*film; and
  - (b) are not reasonably attributable to:
-

**Special Australian expenditure—producer offset****Item    Type of expenditure**

- (i) the use of equipment or other facilities for; or  
(ii) activities undertaken in;  
the making of the film;  
to the extent to which they:
- (c) are incurred for, or are reasonably attributable to:  
(i) goods and services provided in Australia; or  
(ii) the use of land located in Australia; or  
(iii) the use of goods that are located in Australia at the time they are used in the making of the film; and
- (d) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company
- This item has effect subject to subsection (3).
- 
- 2    *Travel to Australia and other countries*  
expenditure of the company in relation to an individual's travel:  
(a) to Australia, to undertake activities in relation to the \*making of the \*film; and  
(b) to or within any other country, to undertake activities in relation to the making of the film, if the remuneration paid to the individual for those activities would be \*qualifying Australian production expenditure of the company under item 4 of this table.
- 
- 3    *Expenditure incurred in freighting goods within and between countries*  
expenditure incurred in freighting goods within and between countries, to the extent that the goods will be used in the \*making of the \*film.
- 
- 4    *Expenditure incurred in other countries*  
expenditure incurred outside Australia:  
(a) for the remuneration of an Australian resident, or the purchase of goods or services from companies or \*permanent establishments that have an \*ABN; and  
(b) during the period in which principal photography for the film takes place outside Australia  
if the subject matter of the film reasonably requires the location in which the expenditure is incurred to be used for principal photography.
- 
- (3) General business overheads of the company are covered by item 1 of the table in subsection (2) only to the extent to which they do not exceed the lesser of:

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- (a) 5% of the total of all the company's \*total film expenditure on the \*film; and
- (b) \$500,000.

*Expenditure that is not qualifying Australian production expenditure*

- (4) For the purposes of the producer offset, the following expenditure of a company is not ***qualifying Australian production expenditure*** of a company on a \*film:
  - (a) expenditure on the film that is paid for with \*development assistance received from any of the following bodies:
    - (i) the Film Finance Corporation Australia Limited;
    - (ii) Film Australia Limited;
    - (iii) the Australian Film Commission;
    - (iv) the Australian Film, Television and Radio School;unless the amount or value of the assistance has been repaid;
  - (b) the following expenditure:
    - (i) \*development expenditure on the film;
    - (ii) remuneration provided to the principal director, producers and principal cast associated with the film; to the extent that such expenditure comprises greater than 20% of the company's \*total film expenditure on the film;
  - (c) for a series or a season of a series—expenditure on an episode beyond the 65th episode of the series.
- (5) In applying paragraph (4)(c), episodes completed before 1 July 2007 count towards the limit in that paragraph.
- (6) ***Total film expenditure*** on a film means:
  - (a) expenditure covered by sections 376-125, 376-130, 376-150 and 376-170; and
  - (b) expenditure mentioned in column 2 of the table in section 376-135, to the extent that it is not covered by paragraph (a).

**Expenditure generally—common rules**

**376-175 Expenditure to be worked out on an arm's length basis**

For the purposes of this Division, if any 2 or more parties to:

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- (a) an \*arrangement under which a company incurs expenditure in relation to a \*film; or
  - (b) any act or transaction directly or indirectly connected with expenditure that a company incurs in relation to a film;
- do not deal with each other at \*arm's length in relation to the arrangement, or in relation to the act or transaction, the expenditure is taken to be only so much (if any) of the expenditure as would have been incurred if they had been dealing with each other at arm's length in relation to the arrangement, or in relation to the act or transaction.

**376-180 Expenditure incurred by prior production companies**

- (1) For the purposes of this Division, if a company (the *incoming company*) takes over the \*making of a \*film from another company (the *outgoing company*):
    - (a) expenditure incurred in relation to the film by the outgoing company is taken to have been incurred in relation to the film by the incoming company; and
    - (b) for the purposes of determining the extent to which that expenditure is \*qualifying Australian production expenditure of the incoming company, the incoming company is taken:
      - (i) to have been an Australian resident at any time when the outgoing company was an Australian resident; and
      - (ii) to have had a \*permanent establishment in Australia at any time when the outgoing company had a permanent establishment in Australia; and
      - (iii) to have had an \*ABN at any time when the outgoing company had an ABN; and
    - (c) expenditure that the incoming company incurs in order to be able to take over the making of the film is to be disregarded for the purposes of this Division; and
    - (d) any activities carried out, and arrangements made, by the outgoing company in relation to the film are taken, for the purposes of subparagraph 376-20(5)(b)(ii) and paragraphs 376-20(5)(c), 376-45(5)(b) and 376-65(1)(a), to have been carried out or made by the incoming company in relation to the film.
  - (2) For the purposes of subsection (1):
-

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- (a) expenditure incurred on the \*film by the outgoing company includes expenditure that the outgoing company is itself taken to have incurred on the film because of the operation of subsection (1); and
- (b) the outgoing company is taken:
  - (i) to have been an Australian resident at any time when the outgoing company is taken to have been an Australian resident because of the operation of subsection (1); and
  - (ii) to have had a \*permanent establishment in Australia at any time when the outgoing company is taken to have had a permanent establishment in Australia because of the operation of subsection (1); and
  - (iii) to have had an \*ABN at any time when the outgoing company is taken to have had an ABN because of the operation of subsection (1); and
- (c) activities carried out by the outgoing company in relation to the film include activities that the outgoing company is taken to have carried out in relation to the film because of the operation of subsection (1); and
- (d) arrangements made by the outgoing company for the carrying out of activities in relation to the film include arrangements that the outgoing company is taken to have made because of the operation of subsection (1).

Example: If Uncle Carty Ltd starts out making a film and then Mr Grouble Ltd takes over the making of the film, Mr Grouble Ltd is taken to have incurred the expenditure that Uncle Carty Ltd incurred on the film. If Lousie Ltd subsequently takes over the making of the film from Mr Grouble Ltd, Lousie Ltd is taken to have incurred the expenditure that Mr Grouble Ltd incurred on the film (including the expenditure of Uncle Carty Ltd that is attributed to Mr Grouble Ltd).

**Subdivision 376-D—Certificates for films and other matters**

**Table of sections**

376-230	Production company may apply for certificate
376-235	Notice of refusal to issue certificate
376-240	Issue of certificate
376-245	Revocation of certificate
376-250	Notice of decision or determination
376-255	Review of decisions by the Administrative Appeals Tribunal
376-260	Minister may make rules about the location offset and the PDV offset
376-265	Film authority may make rules about the producer offset

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376-270 Amendment of assessments

**376-230 Production company may apply for certificate***Application for location offset certificate*

- (1) A company may apply to the \*Arts Minister for the issue of a certificate to the company for a \*film under section 376-20 (certificate for the location offset):
  - (a) if the total of the company's \*qualifying Australian production expenditure on the film (as determined by the \*Arts Minister under section 376-30) is less than \$50 million—when all of the company's \*production expenditure has been incurred; and
  - (b) if the total of the company's qualifying Australian production expenditure on the film (as determined by the \*Arts Minister under section 376-30) is at least \$50 million—when all of the company's qualifying Australian production expenditure has been incurred.

*Application for PDV offset certificate*

- (2) Once all of a company's \*qualifying Australian production expenditure on a \*film, to the extent that it relates to \*post, digital and visual effects production for the film, has been incurred, the company may apply to the \*Arts Minister for the issue of a certificate to the company for the film under section 376-45 (certificate for the PDV offset).

*Application for producer offset certificate*

- (3) Once a \*film is \*completed, a company may apply to the \*film authority for the issue of a certificate to the company for the film under section 376-65 (certificate for the producer offset).

*Form of application*

- (4) An application under subsection (1) or (2) must be made in accordance with the rules determined by the \*Arts Minister under section 376-260 so far as they relate to the requirements for applications.

- (5) An application under subsection (3) must be made in accordance with the rules determined by the \*film authority under section 376-265 so far as they relate to the requirements for applications.

**376-235 Notice of refusal to issue certificate**

- (1) If the \*Arts Minister decides not to issue a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset) for a \*film, the Minister must give the applicant written notice of the decision (including reasons for the decision).
- (2) If the \*film authority decides not to issue a certificate under section 376-65 (certificate for the producer offset) for a \*film, the authority must give the applicant written notice of the decision (including reasons for the decision).

**376-240 Issue of certificate**

- (1) A certificate issued to a company under section 376-20 (certificate for the location offset), 376-45 (certificate for the PDV offset) or 376-65 (certificate for the producer offset) must:
- (a) be in writing; and
  - (b) specify the company's \*ABN; and
  - (c) specify the date of issue of the certificate; and
  - (d) if the certificate is issued under section 376-20—specify the total of the company's \*qualifying Australian production expenditure on the \*film, as determined by the \*Arts Minister under section 376-30; and
  - (e) if the certificate is issued under section 376-45—specify the total of the company's qualifying Australian production expenditure on the film, to the extent that it relates to \*post, digital and visual effects production for the film, as determined by the Arts Minister under section 376-50; and
  - (f) if the certificate is issued under section 376-65—specify the total of the company's qualifying Australian production expenditure on the film, as determined by the \*film authority under section 376-75.

- (2) If the certificate is issued under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset), the \*Arts Minister must give the Commissioner notice of the issue of a certificate for a \*film within 30 days after issuing the certificate.
- (3) The notice under subsection (2) must specify:
- (a) the company's name; and
  - (b) the company's address; and
  - (c) the total of the company's \*qualifying Australian production expenditure on the \*film, as determined by the \*Arts Minister under section 376-30 or 376-50, as the case may be; and
  - (d) other matters agreed to between the \*Arts Minister and the Commissioner.

The notice must be accompanied by a copy of the certificate.

- (4) If the certificate is issued under section 376-65 (certificate for the producer offset), the \*film authority must give the Commissioner notice of the issue of a certificate for a \*film within 30 days after issuing the certificate.
- (5) The notice under subsection (4) must specify:
- (a) the company's name; and
  - (b) the company's address; and
  - (c) the total of the company's \*qualifying Australian production expenditure on the \*film, as determined by the \*film authority under section 376-75; and
  - (d) other matters agreed to between the film authority and the Commissioner.

The notice must be accompanied by a copy of the certificate.

### **376-245 Revocation of certificate**

- (1) The \*Arts Minister may revoke a certificate issued to a company for a \*film under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset) if:
- (a) the Minister is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation; or
  - (b) the company does not provide a copy of the film to the Minister within 30 days of when the film is \*completed.

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- (2) If the \*Arts Minister revokes a certificate under subsection (1), the Minister must give the company to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).
- (3) The \*film authority may revoke a certificate issued to a company for a \*film under section 376-65 (certificate for the producer offset) if the authority is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.
- (4) If the \*film authority revokes a certificate under subsection (3), the authority must give the company to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).
- (5) If a certificate is revoked under subsection (1) or (3), it is taken, for the purposes of this Division, never to have been issued.

Note: This means that if an assessment of a company's income tax is issued on the basis that the company is entitled to a tax offset for a film and the certificate for the film is then revoked, the assessment will be amended to take account of the fact that the company was never entitled to the tax offset: see section 376-270.

- (6) Subsection (5) does not apply for the purposes of:
  - (a) the operation of this section or section 376-250; or
  - (b) a review by a court or the \*AAT of the decision to revoke the certificate.

**376-250 Notice of decision or determination**

- (1) This section applies to a notice of a decision given under section 376-235 (refusal to issue a certificate) or 376-245 (revocation of a certificate), and to a notice of a determination given under section 376-30 (determination of qualifying Australian production expenditure for location offset), 376-50 (determination of qualifying Australian production expenditure for PDV offset) or 376-75 (determination of qualifying Australian production expenditure for producer offset).
- (2) The notice of the decision or determination is to include the statements set out in subsections (3) and (4).
- (3) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be

made to the \*AAT, by (or on behalf of) any entity whose interests are affected by the decision or determination, for review of the decision or determination.

- (4) There must also be a statement to the effect that a request may be made under section 28 of the *Administrative Appeals Tribunal Act 1975* by (or on behalf of) such an entity for a statement:
- (a) setting out the findings on material questions of fact; and
  - (b) referring to the evidence or other material on which those findings were based; and
  - (c) giving the reasons for the decision or determination;
- except where subsection 28(4) of that Act applies.
- (5) If the \*Arts Minister or the \*film authority fails to comply with subsection (3) or (4), that failure does not affect the validity of the decision or determination.

### **376-255 Review of decisions by the Administrative Appeals Tribunal**

Applications may be made to the \*AAT for review of:

- (a) a decision made by the \*Arts Minister to refuse an application for a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); or
- (b) a decision made by the Arts Minister under section 376-245 to revoke a certificate; or
- (c) a decision made by the \*film authority to refuse an application for a certificate under section 376-65 (certificate for the producer offset); or
- (d) a decision made by the film authority under section 376-245 to revoke a certificate; or
- (e) a determination by the Arts Minister in relation to the total of a company's \*qualifying Australian production expenditure under section 376-30 or 376-50; or
- (f) a determination by the film authority in relation to the total of a company's \*qualifying Australian production expenditure under section 376-75.

**376-260 Minister may make rules about the location offset and the PDV offset**

*Rules establishing the Film Certification Advisory Board*

- (1) The \*Arts Minister may, by legislative instrument, make rules:
  - (a) establishing a Film Certification Advisory Board to:
    - (i) consider applications under subsection 376-230(1) (application for a certificate for the location offset) or (2) (application for a certificate for the PDV offset) and advise the Minister on whether to issue certificates under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); and
    - (ii) perform such other functions in relation to the operation of this Division as are specified in the rules; and
  - (b) specifying the membership of the Board and the terms and conditions of appointment to the Board; and
  - (c) specifying procedures to be followed by the Board in performing its functions.

*Rules providing for provisional certificates in relation to location offset and the PDV offset*

- (2) The \*Arts Minister may, by legislative instrument, make rules providing for the issue of provisional certificates in relation to the location offset or the PDV offset.

*Rules about applications for certificates in relation to the location offset and the PDV offset*

- (3) The \*Arts Minister may, by legislative instrument, make rules specifying how applications for certificates (including provisional certificates) in relation to the location offset or the PDV offset are to be made, including:
    - (a) the form in which applications are to be made; and
    - (b) the information to be provided in applications; and
    - (c) methods for verifying such information; and
    - (d) procedures for providing, at the Minister's request, additional information in support of an application.
  - (4) Rules under paragraph (3)(c) can include rules requiring reports by auditors or independent line producers.
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**376-265 Film authority may make rules about the producer offset**

*Rules providing for provisional certificates in relation to the producer offset*

- (1) The \*film authority may, by legislative instrument, make rules providing for the issue of provisional certificates in relation to the producer offset.

*Rules about applications for certificates in relation to the producer offset*

- (2) The \*film authority may, by legislative instrument, make rules specifying how applications for certificates (including provisional certificates) in relation to the producer offset are to be made, including:
- (a) the form in which applications are to be made; and
  - (b) the information to be provided in applications; and
  - (c) methods for verifying such information; and
  - (d) procedures for providing, at the authority's request, additional information in support of an application.
- (3) Rules under paragraph (2)(c) can include rules requiring reports by auditors or independent line producers.

**376-270 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this Division for an income year if:

- (a) a certificate issued to a company for a \*film is revoked under section 376-245 after the time the company lodged its \*income tax return for an income year; and
- (b) the amendment is made at any time during the period of 4 years starting immediately after the revocation of the certificate.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

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**376-275 Review in relation to certain production levels**

The Minister must, before the end of 12 months after the commencement of this Division, initiate a review of the effect of this Division in relation to levels of production by the Australian independent production sector compared to levels of production by Australian television broadcasters.

## **Part 2—Consequential and other amendments**

### ***Income Tax Assessment Act 1936***

#### **2 Paragraph 124L(1A)(b) (note)**

Repeal the note, substitute:

- ; and (c) an application for a certificate of the kind referred to in the definition of *Australian film* in subsection 124K(1) in respect of the film is made before the day on which the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* receives the Royal Assent; and
- (d) the owner claims a deduction in respect of the film under this Division in relation to the 2008-09 year of income or an earlier year of income.

Note 1: For other kinds of intellectual property, see Division 40 of the *Income Tax Assessment Act 1997*.

Note 2: Paragraph (d) means that, if a taxpayer claims a deduction in respect of a film under this Division in relation to the 2008-09 year of income, the taxpayer can claim a deduction in respect of the film in relation to the 2009-10 year of income as well.

#### **3 After subsection 124ZAB(2)**

Insert:

- (2A) An application under subsection (1) must be made before the day on which the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* receives the Royal Assent.

#### **4 Subsection 124ZAB(6A) (note)**

Omit “the tax offset”, substitute “a tax offset”.

#### **5 After subsection 124ZAC(1)**

Insert:

- (1A) The applicant cannot apply for a certificate in respect of a film under subsection (1) unless a certificate has been issued to the applicant in respect of the film under section 124ZAB.

#### **6 After subsection 124ZAF(1)**

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Insert:

- (1A) A deduction under subsection (1) is not allowable in relation to the 2009-10 year of income or a later year of income.

***Income Tax Assessment Act 1997***

**7 Subsection 36-17(5) (example)**

Omit “subject to the refundable tax offset rules in Division 67”, substitute “stated in Division 67 to be subject to the refundable tax offset rules”.

**8 Subsection 36-55(1) (note)**

After “Division 67 sets out”, insert “which tax offsets are subject to”.

**9 Subsection 36-55(1) (example)**

Omit “subject to the refundable tax offset rules in Division 67”, substitute “stated in Division 67 to be subject to the refundable tax offset rules”.

**10 At the end of section 40-45**

Add:

- (6) This Division applies to a \*depreciating asset that is copyright in a \*film where a company is entitled to a \*tax offset under section 376-55 in respect of the film as if the asset’s \*cost were reduced by the amount of that offset.

**11 Subsection 63-10(1) (table item 40, column headed “Tax offset”)**

Omit “in Division 67”, substitute “(see Division 67)”.

**12 Section 67-10**

Repeal the section, substitute:

**67-10 What this Division is about**

If your total tax offsets exceed your basic income tax liability, and some of those offsets are subject to the refundable tax offset rules,
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you may get a refund instead of paying income tax (see section 63-10). This Division tells you which tax offsets are subject to the refundable tax offset rules.

**13 Subsection 67-25(2A)**

Omit “The \*tax offset available under Division 376 is”, substitute “The \*tax offsets available under Division 376 are”.

**14 Subsection 219-15(2) (table item 5, column headed “If:”)**

Omit “in Division 67”, substitute “(see Division 67)”.

**15 Subsection 219-15(2) (table item 6, column headed “If:”)**

Omit “in Division 67”, substitute “(see Division 67)”.

**16 Subsection 960-50(6) (table item 9)**

Repeal the table item, substitute:

<p>9</p> <p>an amount that is relevant for the purposes of quantifying:</p> <p>(a) the total of all of a company’s *production expenditure on a *film; or</p> <p>(b) the total of the company’s *qualifying Australian production expenditure on a film; or</p> <p>(c) the company’s *total film expenditure on a film;</p> <p>to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-20 or 376-65</p>	<p>the amount is to be translated to Australian currency at the exchange rate applicable at the time when principal photography commences or production of the animated image commences.</p>
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9A	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; to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-45	the amount is to be translated to Australian currency at the exchange rate applicable when *post, digital and visual effects production for the film commences.
9B	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 amount is relevant for the purposes of calculating an amount of a *tax offset under section 376-15, 376-40 or 376-60	the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period that qualifying Australian production expenditure is incurred on the film.

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**17 Subsection 995-1(1) (definition of *completed*)**

Omit "376-15(2)", substitute "376-55(2)".

**18 Subsection 995-1(1)**

Insert:

*development assistance* for a \*film has the meaning given by section 376-55.

**19 Subsection 995-1(1)**

Insert:

*film authority* has the meaning given by section 376-55.

**20 Subsection 995-1(1) (definition of *make*)**

Omit “subsections 376-25(2), (3) and (4)”, substitute “section 376-125”.

**21 Subsection 995-1(1)**

Insert:

*post, digital and visual effects production* for a \*film has the meaning given by section 376-35.

**22 Subsection 995-1(1) (definition of *production expenditure*)**

Omit “sections 376-25 to 376-35”, substitute “Subdivision 376-C”.

**23 Subsection 995-1(1) (definition of *qualifying Australian production expenditure*)**

Omit “sections 376-40 to 376-55”, substitute “Subdivision 376-C”.

**24 Subsection 995-1(1) (definition of *television series*)**

Repeal the definition.

**25 Subsection 995-1(1)**

Insert:

*total film expenditure* has the meaning given by section 376-170.

## Part 3—Repeal of Divisions 10B and 10BA

### *Income Tax Assessment Act 1936*

#### **26 Paragraph 26AG(1)(a)**

Before “section”, insert “former”.

#### **27 Paragraph 26AG(1)(c)**

Omit “under section”.

#### **28 Paragraph 26AG(12)(b)**

Repeal the paragraph, substitute:

- (b) by reason of that disposal, an amount would, but for former subsection 124T(3), be included in the assessable income of the taxpayer of a year of income under former section 124P or would be applied, under former section 124N or 124S, in reducing the residual value, for the purposes of former Division 10B, of a unit of industrial property owned by the taxpayer; and

#### **29 Subsection 26AG(12)**

After “applied under”, insert “former”.

#### **30 Subsection 82KH(1) (paragraph (h) of the definition of *relevant expenditure*)**

Before “subsections 124R(2)”, insert “former”.

#### **31 Subsection 82KH(1) (paragraph (h) of the definition of *relevant expenditure*)**

Before “section 124M”, insert “former”.

#### **32 Subsection 82KH(1) (paragraph (n) of the definition of *relevant expenditure*)**

Before “subsection 124R(3)”, insert “former”.

#### **33 Subsection 82KH(1) (paragraph (n) of the definition of *relevant expenditure*)**

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Before “section 124M”, insert “former”.

**34 Subsection 82KH(1) (paragraph (v) of the definition of *relevant expenditure*)**

Before “subsections 124R(2)”, insert “former”.

**35 Subsection 82KH(1) (paragraph (v) of the definition of *relevant expenditure*)**

Before “section 124M”, insert “former”.

**36 Subsection 82KH(1) (definition of *unit of industrial property*)**

Before “Division”, insert “former”.

**37 Paragraph 82KH(1AD)(a)**

Before “section 124M”, insert “former”.

**38 Subsection 82KH(1BA)**

Before “Subdivision 375-G”, insert “former”.

**39 Subsection 82KH(1S)**

Before “section 124KA”, insert “former”.

**40 Paragraph 82KH(1T)(b)**

Before “subsection 124KA(2)”, insert “former”.

**41 Divisions 10B and 10BA of Part III**

Repeal the Divisions.

**42 Subsection 170(10) (table item 23, column headed “Provision”)**

Before “Division 10BA”, insert “Former”.

**43 Subsection 170(10AA) (table item 185, column headed “Provision”)**

Before “Subdivision 375-H”, insert “Former”.

**44 Subsection 262A(4AA)**

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Omit “or 124AO or under section 124W”, substitute “, 124AO or 124W”.

**45 Subsection 262A(4AC)**

Omit “, former subsection 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1) or 124JD(1) or subsection 124PA(1)”, substitute “or former subsection 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1), 124JD(1) or 124PA(1)”.

**46 Paragraph 262A(4AC)(a)**

Omit “, former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA or 124JD or section 124PA”, substitute “or former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA, 124JD or 124PA”.

**47 Subparagraph 570(1)(a)(ii)**

After “meaning of”, insert “former”.

**48 Paragraph 57-25(4)(e) in Schedule 2D**

Before “Division 10B”, insert “former”.

**49 Paragraph 57-25(4)(f) in Schedule 2D**

Before “Division 10BA”, insert “former”.

**50 Subsection 57-85(3) in Schedule 2D (table item 5, column 3)**

Before “**Division 10BA**”, insert “**Former**”.

**51 Subsection 57-85(3) in Schedule 2D (table item 7, column 3)**

Before “**Division 10B**”, insert “**Former**”.

**52 Paragraph 57-100(b) in Schedule 2D**

Before “subsection 124ZADA(1)”, insert “former”.

**53 Subsection 57-110(2) in Schedule 2D (table item 5, column headed “Balancing adjustment provision”)**

Omit “**Sections**”, substitute “**Former sections**”.

**54 Subsection 57-110(2) in Schedule 2D (table item 5, column headed “Deduction rule to which the balancing adjustment provision relates”)**

Before “**Division 10B**”, insert “**Former**”.

**55 Paragraph 268-35(2)(d) in Schedule 2F (note)**

Before “section 124ZAFA”, insert “former”.

**56 Paragraph 272-140 in Schedule 2F (note to the definition of *tax loss*)**

Repeal the note.

***Income Tax Assessment Act 1997***

**57 Section 10-5 (table item headed “industrial property”)**

Repeal the item, substitute:

**industrial property**

*see intellectual property and research and development*

**58 Section 12-5 (table item headed “film income”)**

Repeal the item.

**59 Section 12-5 (table item headed “industrial property”)**

Repeal the item, substitute:

**industrial property**

*see intellectual property and research and development*

**60 Section 12-5 (table item headed “shares”)**

Omit:

film licensed investment companies, deduction for

subscription for shares in ..... Subdivision 375-H

**61 Section 12-5 (table item headed “tax losses”)**

Omit:

film losses ..... Subdivision 375-G

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**62 Section 36-25 (column 3 of table item 3 in the table headed “Tax losses of entities generally)**

Before “Subdivision”, insert “Former”.

**63 At the end of section 36-40**

Add:

- (3) A *film loss* is the \*film component (if any) of a \*tax loss.
- (4) Your \*tax loss for an income year has a *film component* if your \*film deductions for the year exceed the sum of:
- (a) your \*assessable film income for the year; and
  - (b) your \*net exempt film income for the year.
- The amount of the *film component* is the excess or the tax loss, whichever is lesser.
- (5) However, if your \*tax loss worked out under a provision listed in the table, the *film component* is what that tax loss would have been if:
- (a) your \*film deductions for the \*loss year had been your only deductions; and
  - (b) your \*assessable film income for the loss year had been your only assessable income; and
  - (c) your \*net exempt film income for the loss year had been your only \*net exempt income.

However, the *film component* cannot exceed the actual tax loss.

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<b>Working out film component of tax loss</b>		
<b>Item</b>	<b>Provision</b>	<b>Type of entity</b>
1	165-70	Company—income year when ownership or control changed
2	175-35	Company—deductions that have been used to obtain a tax benefit disallowed
3	268-60 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>	Trust—income year when ownership or control changed

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**64 Paragraph 40-45(5)(a)**

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Before “Division”, insert “former”.

**65 Paragraph 40-45(5)(b)**

Before “Division” (first occurring), insert “former”.

**66 Paragraph 165-55(2)(d) (note)**

Before “section 124ZAFA”, insert “former”.

**67 Subsection 170-5(6) (note)**

Repeal the note.

**68 Subsection 175-10(1)**

Before “Subdivision”, insert “former”.

**69 Paragraph 175-15(1)(b)**

Before “Subdivision”, insert “former”.

**70 Subsection 170-105(7) (note)**

Repeal the note.

**71 Division 375**

Repeal the Division.

**72 Paragraphs 376-10(2)(a) and (b)**

Before “Division”, insert “former”.

**73 Paragraphs 376-35(3)(a) and (b)**

Before “Division”, insert “former”.

**74 Paragraphs 376-55(4)(a) and (b)**

Before “Division”, insert “former”.

**75 Paragraph 376-55(4)(e)**

Before “Subdivision”, insert “former”.

**76 Subsection 995-1(1) (definition of *assessable film income*)**

Repeal the definition, substitute:

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*assessable film income* for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is assessable income.

**77 Subsection 995-1(1) (subparagraphs (d) and (e) of the definition of *capital allowance*)**

Before “Division”, insert “former”.

**78 Subsection 995-1(1) (definition of *dividend*)**

Omit “and section 375-872 of this Act”.

**79 Subsection 995-1(1) (definition of *exempt film income*)**

Repeal the definition, substitute:

*exempt film income* for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is \*exempt income.

**80 Subsection 995-1(1) (definition of *film component*)**

Repeal the definition, substitute:

*film component* has the meaning given by section 36-40.

**81 Subsection 995-1(1) (definition of *film deductions*)**

Repeal the definition, substitute:

*film deductions* for an income year are the following:

- (a) amounts you could deduct for the income year under former section 124ZAF of the *Income Tax Assessment Act 1936*;
- (b) amounts that you could deduct for the income year and to which former section 124ZAO of that Act applied in relation to you for the income year.

**82 Subsection 995-1(1) (definition of *film licensed investment company*)**

Repeal the definition, substitute:

*film licensed investment company* means a company that has been granted a licence to raise concessional capital under the Film

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Licensed Investment Company Act 2005 (whether or not the licence has ceased to be in force).

**83 Subsection 995-1(1) (definition of *film loss*)**

Repeal the definition, substitute:

*film loss* has the meaning given by section 36-40.

Note: Section 701-30 (rules about where an entity is not a subsidiary member for the whole of an income year) may affect a film loss.

**84 Subsection 995-1(1) (definition of *FLIC concessional capital*)**

Repeal the definition.

**85 Subsection 995-1(1) (definition of *FLIC*)**

Repeal the definition.

**86 Subsection 995-1(1) (definition of *net assessable film income*)**

Repeal the definition, substitute:

*net assessable film income* for an income year is your \*assessable film income for that year reduced by your \*film deductions for that year.

**87 Subsection 995-1(1) (definition of *net exempt film income*)**

Repeal the definition, substitute:

*net exempt film income* for an income year is your \*exempt film income for that year reduced by:

- (a) any taxes payable in respect of that income in a country or place outside Australia; and
- (b) any expenses (not of a capital nature) so far as you incurred them during that year in deriving that income.

**88 Subsection 995-1(1) (note to the definition of *tax loss*)**

Repeal the note.

***Income Tax (Transitional Provisions) Act 1997***

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**Schedule 10** Streamlining concessions for Australian films and Australian film production

**Part 3** Repeal of Divisions 10B and 10BA

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**89 Section 375-100**

Before “section 375-805”, insert “former”.

**90 Subsection 375-110(1)**

Before “section 375-810”, insert “former”.

## **Part 4—Application and saving provisions**

### **91 Application**

- (1) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-10 of the *Income Tax Assessment Act 1997*, apply to films commencing principal photography or production of the animated image on or after 8 May 2007.
- (2) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-35 of the *Income Tax Assessment Act 1997*, apply to post, digital and visual effects production for a film that commences on or after 1 July 2007.
- (3) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-55 of the *Income Tax Assessment Act 1997*, apply to qualifying Australian production expenditure incurred:
  - (a) on or after 1 July 2007; and
  - (b) before 1 July 2007, to the extent that such expenditure is attributable to goods or services provided on or after 1 July 2007.

### **92 Saving provisions relating to amendment at item 1**

- (1) Despite the repeal and substitution of Division 376 of the *Income Tax Assessment Act 1997* by this Schedule, that Division continues to apply, in relation to films that commenced principal photography or production of the animated image before 8 May 2007, as if that repeal and substitution had not happened.
- (2) Despite the amendment made by item 1 of this Schedule, legislative instruments that:
  - (a) were made under section 376-105 of the *Income Tax Assessment Act 1997*; and
  - (b) were in force immediately before the commencement of that item;

continue to have effect, and may be dealt with, in relation to films that commenced principal photography or production of the animated image before 8 May 2007, as if the amendment had not happened.