



Australian Government

SCREEN
AUSTRALIA

PRODUCER OFFSET FACT SHEET: General Business Overheads and QAPE

SEPTEMBER 2010

Please note: Screen Australia cannot provide legal or accounting advice and strongly recommends that all potential applicants for the Producer Offset seek competent independent professional assistance. The information in this fact sheet is general information only, not tailored to any project in any way, and not intended to be relied on in place of professional advice.

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Screen Australia has updated its policy in relation to general business overheads and how they relate to qualifying Australian production expenditure (QAPE).

The policy update will take effect for Provisional Certificate Applications (and any related Final Certificate Applications) received by the Producer Offset and Co-production Unit (POCU) from 1 October 2010.

From this date applicants will be asked to calculate what their *actual* business overheads are (for each project) and also to make a reasonable apportionment between the project and other activities undertaken by the company. The update is a legislative matter and Screen Australia has no discretion in relation to this.

Please see below for further information.

Screen Australia recognises that it is standard practice in the Australian film industry to include the category of 'overheads' in a production budget and that these overheads often provide some recompense to the producer for many years spent working on the project prior to financing and after delivery of the film.

There is no limit on the amount of overheads an applicant for the Producer Offset can allocate in a production budget. However, not all of these overheads will necessarily be QAPE.

The Producer Offset legislation (subsection 376-170(2) of the *Income Tax Assessment Act 1997*) allows for some of the general business overheads incurred by an applicant company to be claimed as QAPE.

For the purposes of QAPE, the overheads for any one project are capped at 5 per cent of the company's total expenditure on the film; or \$500,000 (whichever is the lesser). However, applicants should not assume that they can automatically claim a 5 per cent overhead fee as QAPE.

In administering the Producer Offset, Screen Australia is acting under the authority of the *Income Tax Assessment Act 1997*. The legislation clearly states that the allowance in a budget for overheads 'must represent a reasonable apportionment of those overheads incurred between the making of the film and the other activities undertaken by the company.'

Firstly, the claimed overheads must be **genuinely incurred costs**. Screen Australia expects to see the claimed overheads form part of the applicant's original budget and final cost report as well as being reflected in the general ledger for the project.

Secondly, the claimed overheads must represent **reasonable apportionment** of the applicant's actual company overheads (not just a reasonable apportionment of a project's particular budget).

This is applicable both to applicants who set up a special purpose vehicle (SPV) and to applicants who produce projects through their 'main' company.

For ongoing companies (ie those that do not set up an SPV to make the film) the overheads being claimed as QAPE need to be genuinely incurred by the company. The applicant company's yearly financial statements should be used to determine what the actual overheads are and apportion these overheads accordingly. This may be different to what is in the production budget for the film (see examples below). Where there are no annual financial statements available, applicants will need to identify an alternative reasonable basis for determining actual overhead expenditure.

For SPV companies, Screen Australia would expect to see an invoice from the parent company to the SPV for any genuine overheads incurred for the film. As above, applicants should refer to the yearly financial statements of the parent company to determine these costs.

The Producer Offset legislation defines the period of 'the making of the film' as from the development stage up until completion of the film (subsection 376-125).

Application forms require applicants to complete the following breakdown:

OVERHEAD CALCULATIONS	
Period in which the film was made (<i>from development to completion of the film</i>) (eg June 2008 – December 2009)	
Time in months/years (eg 18 months/1.5 years)	
Total company overheads <u>incurred</u> by the applicant company (<i>or parent company if applicable for SPVs</i>) for the above period (eg as shown in annual financial statements)	\$
Percentage (%) of time spent on this project in relation to other projects/activities undertaken by the company	
Amount of overheads being claimed as QAPE for this project (<i>this may be different to the overheads recorded in the actual budget/cost report</i>)	\$
Total overheads amount as per cost report (<i>for reference only</i>)	\$

Applicants may also be asked to provide further evidence of how the overheads were incurred and apportioned (for SPV projects and non-SPV projects).

EXAMPLE 1 *

OVERHEAD CALCULATIONS	
Period in which the film was made (<i>from development to completion of the film</i>) (eg June 2008 – December 2009)	February 2008 – May 2010
Time in months/years (eg 18 months/1.5 years)	27 months (2.25 years)
Total company overheads <u>incurred</u> by the applicant company (<i>or parent company if applicable for SPVs</i>) for the above period (eg as shown in annual financial statements)	\$450,000 (ie \$200,000 per year)
Percentage (%) of time spent on this project in relation to other projects/activities undertaken by the company	50%
Amount of overheads being claimed as QAPE for this project (<i>this may be different to the overheads recorded in the actual budget/cost report</i>)	\$225,000
Total overheads amount as per cost report (<i>for reference only</i>)	\$250,000

* In Example 1 above, the applicant can only claim \$225,000 as QAPE because this was the amount of the actual overheads incurred by the applicant company, even though the amount in the cost report was \$250,000 (5% of the total budget of \$5,000,000).

EXAMPLE 2 **

OVERHEAD CALCULATIONS	
Period in which the film was made (<i>from development to completion of the film</i>) (eg June 2008 – December 2009)	January 2009 – May 2010
Time in months/years (eg 18 months/1.5 years)	16 months (1.34 years)
Total company overheads <u>incurred</u> by the applicant company (<i>or parent company if applicable for SPVs</i>) for the above period (eg as shown in annual financial statements)	\$600,000 (ie \$450,000 per year)
Percentage (%) of time spent on this project in relation to other projects/activities undertaken by the company	20%
Amount of overheads being claimed as QAPE for this project (<i>this may be different to the overheads recorded in the actual budget/cost report</i>)	\$120,000
Total overheads amount as per cost report (<i>for reference only</i>)	\$120,000

** In Example 2 above, the applicant can claim \$120,000 as QAPE because this was the amount of the actual overheads incurred by the applicant company. In this case this is the same as the amount in the cost report (ie \$120,000 – 5% of the total budget of \$2,400,000).

General Business Overheads FAQs

1. Why has this policy been introduced?

In administering the Producer Offset, Screen Australia must apply the provisions of the *Income Tax Assessment Act 1997*. The legislation (at item 1 in the table in subsection 376-170(2)) specifies that QAPE may be claimed on:

...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 provision is subject to a cap of 5 per cent of the total film expenditure (total final costs) or \$500,000, whichever is the lesser (subsection 376-170(3)).

This means that the proportion of general business overheads claimed as QAPE need to be:

- expenses actually incurred
- having the character of 'general business overheads'
- apportioned on a fair and reasonable basis between the project (that is, activities related to 'the making of the film') and the other activities undertaken by the company.

This also means that there is no 'automatic entitlement' to claim \$500,000 or 5 per cent of the total final costs of a film as QAPE.

2. Will this affect the amount of overheads I can put in my production budget?

No, this has no bearing on what applicants can put in their budget as Production Company Overheads. This policy is only relevant for the Offset and the portion of overheads that can be claimed as QAPE.

3. How do I calculate my overheads if I have only recently set up an SPV to make my film?

In the case of a company which is a special purpose vehicle (SPV) formed to make a particular project, all overheads referable to the SPV are – by definition – attributable to the film in question. Typically the SPV's 'parent' company invoices the SPV for overhead expenditure incurred by the parent(s). In such a case, Screen Australia needs to be satisfied that such overheads claimed as QAPE represent a reasonable apportionment of the parent company's overheads between the making of the film and the other activities of the parent company. The provisional and final application forms include a table to assist with calculations of this type.

4. How do I calculate my overheads for my ongoing company (which is not an SPV)?

In the case of an 'ongoing' production company, by which is meant the situation where there is no SPV and the applicant for the Offset has a number of projects in its slate, the starting point should be identification of the general business overheads for that (ongoing) company across the period of the making of the film. These overheads will then need to be reasonably apportioned across all of the activities (projects) undertaken by the company during that period. Applicants should use their financial statements prepared for the company's tax return(s) as a reference. Screen Australia needs to be satisfied that the overheads claimed as QAPE represent a reasonable apportionment of the company's overheads between the project claiming the offset and the company's other activities. The provisional and final application forms include a table to assist with calculations of this type.

5. How do I calculate my overheads if I am a new producer who has only recently set up my production company?

In the case of a new company, not established as an SPV, there may be limited general business overheads incurred for a production. In these cases, applicants can only claim QAPE on the general business overheads actually incurred.

6. What if my company has six films in development and one in production?

It is clear that having a film in production is more cost and labour intensive than having a film in development. In the ordinary course, the overheads reasonably attributable to the film in production would represent a substantially higher proportion of the total overheads than the overheads attributable to the films in development. Applicants should make a reasonable estimate of the proportion of overheads incurred in respect of the making of the film, and claim that proportion as QAPE (subject to the 5 per cent/\$500,000 cap).

7. Does the use of financial statements as a basis for calculation of the QAPE of the general business overheads mean there will be any delays in assessing Final Certificate applications? Do applicants have to wait until the company's tax return is lodged with the ATO?

No. Applicants may have various means of identifying, and making a reasonable apportionment of, overheads for the relevant period. The use of end of year financial statements (or previous year's financial statements) is one mechanism.

8. Will I be required to submit my company's annual tax return to prove the business company overheads amount?

Generally speaking no, but Screen Australia does reserve the right to obtain further information from applicants in relation to any part of an application.

9. Who should I talk to if I have further queries?

Please call the Producer Offset and Co-production Unit on 02 8113 1042 and speak to Michele McDonald (Program Manager), Susan Wells or Colleen Champ (Senior Assessment Officers).