



Australian Government

SCREEN
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FACT SHEET: Depreciating assets and inter-company rentals

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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.

Depreciating assets

A depreciating asset is an asset that has a limited effective life and can reasonably be expected to decline in value over the time it is used, except (a) land; or (b) an item of trading stock or (c) an intangible asset (definition in section 40-30 of the *Income Tax Assessment Act 1997*).

The usual depreciation requirements are in place for where an asset is purchased for a production.

However, you also need to consider where a company holds an existing depreciating asset and uses it on the making of a film, even if those assets were acquired originally for another project or before any particular film project began.

'Rental' costs and asset depreciation

Where a company has not set up a special purpose vehicle (SPV) to produce the film and it owns assets which are used in the production of the film, these assets also need to be depreciated according to tax law.

Often a company submitting an application for the Producer Offset will refer to this as a 'rental' in its expenditure statements, cost reports and budget (ie office rental, equipment rental). However, for the purposes of the Producer Offset this is not a rental. This is because the legislation regarding the Producer Offset is part of taxation law, and, according to that legislation, items of '*plant and equipment*' used in a business should be treated as depreciating assets.

The issue for applicants is that a company cannot 'rent' an asset from itself. A rental situation (for the purposes of the Producer Offset) can only occur between two separate entities (ie parent company to subsidiary or SPV or a rental company to production company). If the applicant company owns the asset, it must be treated as a depreciating asset and not as a rental. Refer below for a definition of 'entity'; however, for the avoidance of doubt, Screen Australia sought advice from the Australian Taxation Office who confirmed that operating a separate set of accounts is not sufficient to demonstrate a separate entity.

Rules for depreciation

Special rules apply to depreciating assets used in a business with a turnover of less than \$2 million per annum (a 'Small Business'). Broadly, these rules allow a full deduction for the purchase of assets with a value of less than \$1,000. Please refer to the following link to the Australian Taxation Office for more information: <http://ato.gov.au/businesses/content.asp?doc=/content/00149651.htm>

For assets with a value of \$1,000 or more, the normal depreciation rules apply. That is, the depreciation rate is applied to the asset for the period of time the asset is used in the business. There is general information on depreciation as it relates to QAPE in the Guidelines to the Producer Offset available on the Screen Australia website.

For example: an applicant company claiming the Producer Offset does not set up an SPV. The company owns an asset which it charges to the

production (eg a camera). The asset has an effective life of five years and it has been held by the company for, say, four years. The applicant company could claim QAPE only on the amount depreciated for the camera.

However, if a company has an asset (eg a camera) which has an effective life of, say, five years, and they don't start using it in their business until it is four years old, they still can only claim one year's depreciation until the effective life of the asset ends. This means that even though no depreciation has been claimed for the first four years, there has to be a *notional* reduction, and the value of the asset at the beginning of the fifth year is the same as if depreciation *had* been claimed in the previous four years. Similarly, if depreciation on the camera has been claimed in the business for less than five years, then a portion of the depreciation could be claimable as QAPE for the period remaining (that is applicable to the film's production period).

In both of these cases, if the asset has been used by the company in its business and the company has been claiming depreciation through its company tax returns for the five years, the asset is deemed to have no remaining value and no amount can be claimed as QAPE (even if it has been 'rented' to the production in the budget).

An example: the production budget for a documentary contains six weeks camera hire @ \$250 per week. The production company owns a camera which they purchased six years ago. The camera has no effective life left as an asset. The applicant is not able to claim QAPE on this \$1,500.

Another example: the production budget for a documentary contains six weeks' camera hire @ \$250 per week. The production company bought this camera two years ago for \$6,500. The camera has an effective life of five years (ie \$1,300 per year). The period the camera is used for on the production is 12 weeks (approx. four months). Therefore the production company can claim \$433 as QAPE (\$1,300 per year / four months).

In order to enable Screen Australia to properly assess these claims included in QAPE, an applicant needs to provide a list of assets owned by the applicant company and used on a production. The applicant also needs to provide information on how the assets have been treated by the company to date (including the purchase price and date of purchase). The usual types of asset we see in these circumstances include items such as cameras and editing equipment/suites. The applicant's accountant should be able to provide all the requisite information.

Rental charges for non-SPV companies

For the purposes of the Producer Offset, rental charges (eg office rental/editing rooms) cannot be charged to and between the same company.

Example 1: An applicant company does not set up an SPV and makes a film through their 'main' company. The applicant company owns their own office space and also owns the editing rooms they use on the production. The applicant company cannot charge a rental fee to themselves (even if this is in the production budget) for either the office or the editing room.

Example 2: An applicant company does not set up an SPV and makes a film through their 'main' company. The applicant company rents office space from a third party (for example a real estate agent).

The applicant company may only claim as QAPE a proportion of the rent that is attributable to the film's production. This fee can only be claimed as QAPE if rent was actually paid by the applicant company to a third party on the premises. Applicants may be asked to substantiate this claim.

Example 3: An applicant company does not set up an SPV and makes a film through their 'main' company. A principal of the company (for example, one of the company directors Davey Jones) runs the applicant company from his own home, including editing facilities. Davey Jones owns his home.

The applicant company pays Davey Jones office rental and in the production budget for the film, there will be a rental charge. As per Example 2, the applicant company may claim a proportion of the rent that is attributable to the film's production as QAPE. This is because rent was actually paid by the applicant company. For the purposes of the Offset, it is not the rental amount in the budget that is apportioned rather, the *actual* rent that the applicant company pays.

Example 4: An applicant does not set up an SPV and makes a film through their 'main' company. A principal of the company, for example one of the company directors (Davey Jones), runs the applicant company from his own home including editing facilities. The applicant company does not pay an office rental to Davey Jones but there is a rental charge in the production budget. The rental fee in this situation would not be eligible for QAPE because the applicant company has not actually paid rent on the premises. The overhead would be expected to cover any indirect costs incurred by the applicant.

What is an 'entity'?

For clarification, the definition of 'entity' contained within the *Income Tax Assessment Act 1997* in section 960-100 is as follows:

960-100 Entities

- (1) *Entity* means any of the following:
 - (a) an individual;
 - (b) a body corporate;
 - (c) a body politic;
 - (d) a partnership;
 - (e) any other unincorporated association or body of persons;
 - (f) a trust;
 - (g) a *superannuation fund;
 - (h) an *approved deposit fund.

Note: The term *entity* is used in a number of different but related senses. It covers all kinds of legal person. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

For further information please refer to the *Income Tax Assessment Act 1997* section 960-100 at the following link:

http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/itaa1997240/s960.100.html?stem=0&synonyms=0&query=960-100