



# Income Tax Assessment Act 1997

No. 38, 1997 as amended

**Compilation start date:** 25 June 2014

**Includes amendments up to:** Act No. 49, 2014

This compilation has been split into 11 volumes

- Volume 1: sections 1-1 to 36-55
- Volume 2: sections 40-1 to 55-10
- Volume 3: sections 58-1 to 122-205
- Volume 4: sections 124-1 to 152-430
- Volume 5: sections 160-1 to 220-800
- Volume 6: sections 230-1 to 312-15
- Volume 7: sections 315-1 to 420-70**
- Volume 8: sections 620-5 to 727-910
- Volume 9: sections 768-100 to 995-1
- Volume 10: Endnotes 1 to 3
- Volume 11: Endnotes 4 to 8

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Income Tax Assessment Act 1997* as in force on 25 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 2 July 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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## **Chapter 3—Specialist liability rules**

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## **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).



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- (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 16.5% of the company's qualifying Australian production expenditure on the film; and
    - (c) the amount of the PDV offset is 30% 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.
- (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

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- (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 Meaning of *documentary*
- 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

#### **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

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## 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:
  - (b) 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; 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 section 67-23.

- (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 former 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 former 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

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- (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 16.5% 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, game show, a panel program, a variety program or a program of a like nature; or
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- (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
    - (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:

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- (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
  - (c) 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 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 Meaning of *documentary***

*Meaning of documentary*

- (1) A \*film is a **documentary** if the film is a creative treatment of actuality, having regard to:
  - (a) the extent and purpose of any contrived situation featured in the film; and
  - (b) the extent to which the film explores an idea or a theme; and

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- (c) the extent to which the film has an overall narrative structure; and
  - (d) any other relevant matters.

*Exclusion of infotainment or lifestyle programs and magazine programs*

- (2) However, a \*film is not a **documentary** if it is:
  - (a) an infotainment or lifestyle program (within the meaning of Schedule 6 to the *Broadcasting Services Act 1992*); or
  - (b) a film that:
    - (i) presents factual information; and
    - (ii) has 2 or more discrete parts, each dealing with a different subject or a different aspect of the same subject; and
    - (iii) does not contain an over-arching narrative structure or thesis.

**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.

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## 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 section 67-23.

- (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:



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- (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 former 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 former 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 30% 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

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- (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, game show, 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 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 \$500,000; 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.

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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)

- (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 section 67-23.

- (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 episode in which the 65th commercial hour is reached 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 episode in which the 65th commercial hour is reached is first in a state where it could

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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 Screen Australia.
- (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 former 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 former 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 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); 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; or
  - (g) the \*film authority's Producer Equity Program has provided financial assistance to the company or anyone else for the making of the film.
- (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;

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- (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).

### **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 film that is not covered by subparagraph (i), (ii), (iii) or (iv); and
- (d) the film is not, or is not to a substantial extent:
- (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, game show, 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 film*

- (4) The conditions in this subsection are that, if the \*film is a short form animated film, it:
  - (a) is a 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.

<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	\$500,000	not applicable
2	A single episode program other than a *documentary	\$500,000	not applicable
3	A single episode program that is a *documentary	\$500,000	\$250,000
4	A short form animated film that is not a *feature film, a single episode program, a series or a season of a series	\$250,000	\$1,000,000

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**Expenditure thresholds**

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<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>
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	\$500,000	\$250,000
7	A *film where the application for the certificate is for a season of a series, and the series is not a *documentary	\$1 million	\$500,000
8	A *film where the application for the certificate is for a season of a series, and the series is a *documentary	\$500,000	\$250,000

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

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

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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:
  - (a) the subject matter of the film;
  - (b) the place where the film was made;
  - (c) 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

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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**

- 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

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### **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
- 376-185 Expenditure to be worked out excluding GST

### **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.
- (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 (other than the activities listed in paragraphs (a) to (e) of item 7 of the table in subsection 376-170(2)); 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

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(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.

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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.

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

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**Expenditure that does not count as production expenditure on a film**

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Item	This kind of expenditure by the company is not production expenditure ...	except to the extent to which the expenditure is ...
4	<p><i>General business overheads</i></p> <p>expenditure incurred to meet the general business overheads of the company that:</p> <p>(a) are not incurred in, or in relation to, the *making of the *film; and</p> <p>(b) are not reasonably attributable to:</p> <p style="padding-left: 20px;">(i) the use of equipment or other facilities for; or</p> <p style="padding-left: 20px;">(ii) activities undertaken in; the making of the film</p>	<p>*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)</p>
5	<p><i>Publicity and promotion expenditure</i></p> <p>expenditure incurred in publicising or otherwise promoting the *film (including press expenses, still photography, videotapes, public relations and other similar expenses)</p>	<p>*qualifying Australian production expenditure under item 3 or 4 of the table in subsection 376-150(1) or item 6 of the table in subsection 376-170(2)</p>
6	<p><i>Deferments</i></p> <p>amounts that are payable only out of the receipts, earnings or profits from the *film</p>	
7	<p><i>Profit participation</i></p> <p>amounts that:</p> <p>(a) depend on the receipts, earnings or profits from the *film; or</p> <p>(b) are otherwise dependent on the commercial performance of the film</p>	
8	<p><i>Residuals</i></p> <p>amounts payable in satisfaction of the residual rights of a person who is a member of the cast</p>	<p>paid out by the company before the *film is *completed</p>

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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>
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.

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## 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

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Item	Type of expenditure
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- |   |   |
|---|---|
| 1 | <i>Australian development expenditure</i><br>*development expenditure on the *film to the extent to which it is incurred for, or is reasonably attributable to: <ul style="list-style-type: none"><li>(a) goods and services provided in Australia; or</li><li>(b) the use of land located in Australia; or</li><li>(c) the use of goods that are located in Australia at the time they are used in the *making of the film</li></ul> |
|---|---|

[see subsection (2)]

- |   |  |
|---|--|
| 2 | <i>Expenditure incurred in acquiring Australian copyright</i><br>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 |
|---|--|

- |   |  |
|---|--|
| 3 | <i>Expenditure incurred in producing Australian copyrighted promotional material</i><br>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 |
|---|--|

- |   |   |
|---|---|
| 4 | <i>Expenditure incurred in producing additional content</i> |
|---|---|
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**Special Australian expenditure**

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**Item    Type of expenditure**

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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

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5        *Regulations*

expenditure prescribed by the regulations

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6        *Certain financing expenditure*

expenditure incurred in Australia prior to the end of the income year in which \*completion of the \*film occurs in respect of any of the following:

- (a) insurance related to making the film;
  - (b) fees for audit services and legal services provided in Australia in relation to raising and servicing the financing of the film which are incurred by the company that makes, or is responsible for making, the film;
  - (c) fees for incorporation and liquidation of the company that makes or is responsible for making the film.
- 

(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;

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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:

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#### **Special Australian expenditure—location offset and PDV offset**

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<b>Item</b>	<b>Type of expenditure</b>
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- |   |   |
|---|---|
| 1 | <i>Australian business overheads</i><br>general business overheads of the company that: <ul style="list-style-type: none"><li>(a) are not incurred in, or in relation to, the *making of the *film; and</li><li>(b) are not reasonably attributable to:</li></ul> |
|---|---|
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**Special Australian expenditure—location offset and PDV offset**

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**Item    Type of expenditure**

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(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).

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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

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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

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- (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**

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- 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 (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.
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**Special Australian expenditure—producer offset**

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**Item    Type of expenditure**

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- 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.
- 
- 5    *Other expenditure*  
expenditure incurred in Australia in respect of any of the following:  
(a) obtaining an independent opinion of the amount of a film's \*qualifying Australian production expenditure required for use in relation to the financing of the film;  
(b) offset carbon emissions created during the making of the film.
- 
- 6    *Expenditure incurred in producing Australian copyright promotional material*  
expenditure incurred in Australia in the income year of the \*completion of the \*film or an earlier year in respect of any of the following:  
(a) producing material for publicising or otherwise promoting the film where the copyright in the material is held or partially held by a company that is an Australian resident;  
(b) unit publicist fees.
- 
- 7    *Expenditure incurred in delivering or distributing the film*  
expenditure incurred by the applicant company in delivering or distributing the film prior to the end of the income year in which the \*film is complete to the extent to which it is incurred for, or reasonably attributable to, any of the following:  
(a) acquiring Australian classification certificates;  
(b) sound mix mastering licenses;  
(c) re-versioning the film in Australia;  
(d) freight services provided by a company in Australia for delivery of contracted deliverables in relation to the film;  
(e) storing the film in a film vault in Australia.
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- 
- (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:
- (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:
    - (ii) Film Australia Limited;
    - (iii) the Australian Film Commission;
    - (iv) the Australian Film, Television and Radio School;
    - (v) Screen Australia;unless the amount or value of the assistance has been repaid;
  - (b) subject to subsection (4A), 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 episode in which the 65th commercial hour of the series is reached.
- (4A) Paragraph (4)(b) does not apply to a \*film that is a \*documentary.
- (5) In applying paragraph (4)(c), episodes completed before 1 July 2011 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).

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## 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:

- (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 paragraphs 376-20(5)(c), 376-45(5)(b) and

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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):

- (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).

### **376-185 Expenditure to be worked out excluding GST**

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

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

### Table of sections

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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
376-270	Amendment of assessments
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### 376-230 Production company may apply for 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) when all of the company's \*qualifying Australian production expenditure for the film 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.

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- (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

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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.
- (2) If the \*Arts Minister revokes a certificate under subsection (1), the Minister must give the company to whom the certificate was issued

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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

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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.



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**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.