



# Producer Offset Rules 2007

as amended

made under section 376-265 (1) and (2) of the

*Income Tax Assessment Act 1997*

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## Contents

|                   |   |    |
|-------------------|---|----|
| <b>Part 1</b>     | <b>Preliminary</b>  |    |
|                   | 1 Name of Rules [see Note 1]  | 4  |
|                   | 2 Commencement [see Note 1]   | 4  |
|                   | 3 Objects of Rules  | 4  |
|                   | 4 Definitions   | 4  |
| <b>Part 2</b>     | <b>Provisional certificates for the producer offset</b>                                       |    |
|                   | 5 Interpretation for Part 2   | 5  |
|                   | 6 Application for provisional certificate   | 5  |
|                   | 7 Form of application for provisional certificate   | 6  |
|                   | 8 Delivery of application for provisional certificate   | 7  |
|                   | 8A Fee for application for provisional certificate  | 7  |
|                   | 9 Film authority to consider application for provisional certificate                          | 8  |
|                   | 10 Film authority may request additional information from applicant                           | 10 |
|                   | 11 Refusal to issue provisional certificate   | 10 |
|                   | 12 Notice of refusal to issue provisional certificate   | 10 |
|                   | 13 Issue of provisional certificate   | 11 |
|                   | 14 Content of provisional certificate   | 11 |
|                   | 15 Effect of provisional certificate  | 12 |
| <b>Part 3</b>     | <b>Certificates for the producer offset</b>   |    |
|                   | 16 Definition for Part 3  | 12 |
|                   | 17 Form of application for certificate for the producer offset                                | 12 |
|                   | 18 Delivery of application for certificate for the producer offset                            | 13 |
|                   | 18A Adjustment of fee for application for provisional certificate                             | 14 |
|                   | 19 Consideration of application for certificate for the producer offset and other information | 14 |
|                   | 20 Film authority may request additional information from applicant                           | 15 |
| <b>Part 4</b>     | <b>Expenditure statements and foreign currency statements</b>                                 |    |
|                   | 21 Definition for Part 4  | 16 |
|                   | 22 Expenditure statements for provisional certificates  | 16 |
|                   | 23 Expenditure statements for certificates for the producer offset                            | 17 |
|                   | 24 Foreign currency statement for certificates for the producer offset                        | 18 |
| <b>Part 5</b>     | <b>Audit requirements</b>   |    |
|                   | 25 Conduct of audit   | 18 |
| <b>Schedule 1</b> | <b>Information and documents for an application for a provisional certificate</b>             | 19 |
| Part A            | Information to be included in an application for a provisional certificate                    | 19 |
| Division 1        | Information about the applicant   | 19 |

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|                   |   | Page |
|-------------------|---|------|
| Division 2        | Information about the film  | 19   |
| Division 3        | Other information   | 22   |
| Part B            | Documents to be attached to an application for a provisional certificate                      | 23   |
| <b>Schedule 2</b> | <b>Information and documents for an application for a certificate for the producer offset</b> | 23   |
| Part A            | Information to be included in an application for a certificate for the producer offset        | 23   |
| Division 1        | Information about the applicant   | 23   |
| Division 2        | Information about the film  | 24   |
| Division 3        | Other information   | 28   |
| Part B            | Documents to be attached to an application for a certificate for the producer offset          | 28   |
| <b>Schedule 3</b> | <b>Form of auditor's statement</b>  | 29   |
| <b>Notes</b>      |   | 31   |

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**Rule 1**

## Part 1 Preliminary

### 1 Name of Rules [see Note 1]

These Rules are the *Producer Offset Rules 2007*.

### 2 Commencement [see Note 1]

These Rules commence on the day after they are registered.

### 3 Objects of Rules

The objects of these Rules are:

- (a) to provide for the issue of provisional certificates in relation to the producer offset (see subsection 376-265 (1) of the Act); and
- (b) to specify how applications for certificates (including provisional certificates) in relation to the producer offset are to be made (see subsection 376-265 (2) of the Act).

### 4 Definitions

In these Rules:

*Act* means the *Income Tax Assessment Act 1997*.

*application for a certificate for the producer offset* means an application made under subsection 376-230 (3) of the Act.

*certificate for the producer offset* means a certificate issued by the film authority under section 376-65 of the Act.

*commercial hour* has the same meaning as in Division 376 of the Act.

*estimated qualifying Australian production expenditure* means an amount worked out having regard to the matters in Subdivision 376-C of the Act.

*independent line producer* means a person who:

- (a) has recent experience in large budget film production management; and
- (b) in the film authority's opinion, is independent of the company in relation to which he or she is asked, under subrule 9 (3) or 19 (2), to provide a report.

*official co-production* means a film that has been, or will be, made under an arrangement entered into between the Commonwealth (or an authority of the Commonwealth) and a foreign country (or an authority of a foreign country).

*producer offset* means the tax offset mentioned in subsection 376-55 (1) of the Act.

*provisional certificate* means a certificate issued by the film authority under rule 13.

*registered company auditor* has the meaning given by section 9 of the *Corporations Act 2001*.

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**Rule 6**

*related body corporate* has the meaning given by section 9 of the *Corporations Act 2001*.

*statutory declaration* means a statutory declaration made under the *Statutory Declarations Act 1959*.

*Note* Several other words and expressions used in these Rules have the meaning given by subsection 995-1 (1) of the Act. For example:

- arm's length
- arrangement
- associate
- Australian resident
- completed
- development assistance
- film
- film authority
- make
- qualifying Australian production expenditure
- total film expenditure.

## Part 2 Provisional certificates for the producer offset

### 5 Interpretation for Part 2

(1) In this Part:

*applicant* means a company that has applied for a provisional certificate for the producer offset in accordance with this Part.

(2) For this Part, if a company (the *incoming company*) takes over the making of a film from another company (the *outgoing company*), any activities carried out, or arrangements made, by the outgoing company in relation to the film are taken to have been carried out or made by the incoming company in relation to the film.

### 6 Application for provisional certificate

A company may apply to the film authority for a provisional certificate for the producer offset for a film if:

(a) either:

(i) the company is an Australian resident; or

(ii) the company:

(A) is a foreign resident; and

(B) has a permanent establishment in Australia; and

(C) has an ABN; and

(b) the company:

(i) is the company that is carrying out, or is making the arrangements for the carrying out of, all the activities that are necessary for the making of the film; or

**Rule 7**

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- (ii) is the company developing the film prior to the establishment of a production company.

**7 Form of application for provisional certificate***Information in application*

- (1) An application for a provisional certificate for the producer offset must:
  - (a) be made to the film authority in writing; and
  - (b) include the information specified in clauses 1.1 to 2.30 of Part A of Schedule 1; and
  - (c) be signed on behalf of the applicant.
- (2) If the film is a series or a season of a series, the application must also include:
  - (a) the information specified in clauses 2.31 and 2.32 of Part A of Schedule 1; and
  - (b) if the series or season is similar to another series — the information specified in clause 2.33 of Part A of Schedule 1.
- (3) If any of the information specified in Division 3 of Part A of Schedule 1 is available and is relevant to the film, the application must also include that information.
- (4) If the application does not deal with expenditure thresholds, the applicant must advise the film authority, in the application, that the application does not deal with expenditure thresholds.

*Documents attached to application*

- (5) If the application does not deal with expenditure thresholds, the following documents must be attached to the application:
  - (a) if the film is an official co-production — the documents specified in Part B of Schedule 1;
  - (b) if the film is not an official co-production — the documents specified in Part B of Schedule 1, other than the documents specified in clause 1.3 of that Part.
- (6) If the application deals with expenditure thresholds, the following documents must be attached to the application:
  - (a) if the film is an official co-production — the documents specified in Part B of Schedule 1;
  - (b) if the film is not an official co-production — the documents specified in Part B of Schedule 1, other than the documents specified in clause 1.3 of that Part;
  - (c) an expenditure statement, prepared in accordance with rule 22, for the total film expenditure, and the estimated qualifying Australian production expenditure, on the film.

**Rule 8A***Waiver of requirement*

- (7) The film authority may waive a requirement specified in this rule for an application.

**8 Delivery of application for provisional certificate**

An application for a provisional certificate for the producer offset must be delivered to the film authority.

**8A Fee for application for provisional certificate**

- (1) A fee (the *application fee*) is payable by an applicant in relation to an application for a provisional certificate.

*Working out the application fee*

- (2) In the financial year starting on 1 July 2010, the application fee is the amount specified in the following table.

| Item | If the total film expenditure of the film (excluding GST) is ... | the fee is ... |
|------|--|----------------|
| 1    | no more than \$1 000 000   | \$100          |
| 2    | more than \$1 000 000 but no more than \$5 000 000               | \$500          |
| 3    | more than \$5 000 000 but no more than \$15 000 000              | \$1 000        |
| 4    | more than \$15 000 000 but no more than \$30 000 000             | \$2 000        |
| 5    | more than \$30 000 000   | \$3 500        |

- (3) However, if:
- a company proposes to make an application for a certificate for the producer offset in relation to a film; and
  - the company holds a provisional certificate in relation to the film; and
  - the total film expenditure of the film (excluding GST) when the application for a certificate for the producer offset is made (the *new total*) is higher than the total film expenditure of the film (excluding GST) that was provided in the application for the provisional certificate; and
  - the application fee that was worked out under subrule (2) would have been higher if the new total had been taken into account;
- the application fee is taken to be the fee that would have been worked out if the new total had been taken into account.

*Note* See rule 18A for when the balance of the adjusted application fee is to be paid.

- (4) In the financial year starting on 1 July 2011, or a subsequent 1 July, if the latest CPI number is greater than the earlier CPI number, the application fee is the amount worked out using the formula:

$$\frac{\text{previous indexable amount} \times \text{latest CPI number}}{\text{earlier CPI number}}$$

**Rule 9**

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where:

**previous indexable amount** is the amount of the fee that was payable immediately before that 1 July.

- (5) In the financial year starting on 1 July 2011, or a subsequent 1 July, if the latest CPI number is not greater than the earlier CPI number, the application fee is the fee that was payable immediately before that 1 July.
- (6) If, apart from this subrule, the amount worked out under subrule (4) would be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded up.
- (7) For this rule:
  - (a) if the Australian Statistician publishes a CPI number for a March quarter in substitution for a CPI number previously published by the Australian Statistician for that quarter, the publication of the later CPI number must be disregarded; and
  - (b) if the Australian Statistician changes the reference base for the Consumer Price Index, then, after the change is made, regard must be had only to the CPI numbers published using the new reference base.

- (8) In this rule:

**CPI number** means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

**earlier CPI number** means the CPI number for the March quarter 2 financial years before that 1 July.

**latest CPI number** means the CPI number for the last March quarter before that 1 July.

*Other matters relating to the fee*

- (9) The film authority must not consider the application unless the application fee has been paid.
- (10) If the applicant withdraws the application, the film authority must refund the application fee to the applicant.
- (11) If the film authority refuses to issue a provisional certificate, the application fee is not refundable.

## **9 Film authority to consider application for provisional certificate**

- (1) On receiving an application for a provisional certificate for the producer offset, the film authority must:
  - (a) consider the application; and
  - (b) decide whether or not to issue a provisional certificate to the applicant.

*Note* See subrule 8A (9) and rule 13.

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**Rule 9**

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- (2) For paragraph (1) (a), in considering the application, the film authority:
  - (a) may seek information or advice from any person or source; and
  - (b) may take into account the knowledge and experience of:
    - (i) the members of the board of the film authority; and
    - (ii) employees of the film authority; and
  - (c) must consider all relevant information, including the following information:
    - (i) the application and attached documents;
    - (ii) any written report requested by the film authority under subrule (3) and any written submission made by the applicant in response to that report;
    - (iii) any additional information provided by the applicant under rule 10;
    - (iv) any other relevant information or advice obtained by the film authority.
- (3) Without limiting paragraph (2) (a), the film authority may ask an independent line producer to provide a written report to the film authority about any matter that is relevant to whether a condition set out in subsections 376-65 (2) to (6) of the Act will be met or is likely to be met.
- (4) If a request under subrule (3) relates to the conditions set out in subsection 376-65 (6) of the Act, the report may include advice about any of the following matters:
  - (a) whether the applicant's expenditure statement is commercially reasonable;
  - (b) whether specific items claimed in the applicant's expenditure statement are reasonably attributable to the estimated qualifying Australian production expenditure;
  - (c) whether costs that are charged for specific items indicate that the parties to the transaction will be dealing with each other at arm's length.
- (5) If the film authority intends to use information or advice from a third party to support a decision to refuse to issue a provisional certificate for the producer offset to an applicant, the film authority must give the applicant reasonable opportunity to comment on the substance of that information or advice.
- (6) If the film authority asks an independent line producer to provide a written report under subrule (3), the film authority must:
  - (a) give a copy of the report to the applicant to whom it relates as soon as practicable; and
  - (b) give the applicant reasonable opportunity to make a written submission to the film authority in response to the report.

**Rule 10**

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**10 Film authority may request additional information from applicant**

- (1) If, in the opinion of the film authority, it requires additional information in order to decide whether or not to issue a provisional certificate for the producer offset to an applicant, the film authority may ask the applicant, in writing, to provide that information to the film authority.
- (2) The request must specify:
  - (a) the information required by the film authority (the *additional information*); and
  - (b) the period within which the information must be provided to the film authority (the *notification period*).
- (3) An applicant may ask the film authority to extend the notification period.
- (4) A request under subrule (3) must be made:
  - (a) in writing; and
  - (b) within 28 days of the applicant's receipt of the request under subrule (1).
- (5) If a request is made by an applicant under subrule (3), the film authority may extend the notification period.
- (6) If an applicant does not provide the additional information within the notification period, or within the notification period as extended under subrule (5), the film authority may refuse to issue a provisional certificate to the applicant.

**11 Refusal to issue provisional certificate**

- (1) This rule applies in addition to subrule 10 (6).
- (2) If the application for the provisional certificate deals with expenditure thresholds, the film authority may refuse to issue a provisional certificate for the film if it is not satisfied that the conditions set out in subsections 376-65 (2) to (6) of the Act will be met, or are likely to be met, if the film is completed in accordance with the information supplied in the application.
- (3) If the application for the provisional certificate does not deal with expenditure thresholds, the film authority may refuse to issue a provisional certificate for the film if it is not satisfied that the conditions set out in subsections 376-65 (2) to (5) of the Act will be met, or are likely to be met, if the film is completed in accordance with the information supplied in the application.

**12 Notice of refusal to issue provisional certificate**

- (1) If the film authority decides not to issue a provisional certificate for the producer offset for a film, the film authority must give the applicant written notice of the decision.

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**Rule 14**

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- (2) The written notice must set out each condition specified in section 376-65 of the Act that the film authority was not satisfied would be met, or likely to be met, if the film was completed in accordance with the information supplied in the application.
- (3) The film authority must give the written notice to the applicant no later than 28 days after the film authority's decision not to issue the provisional certificate.

**13 Issue of provisional certificate**

- (1) If an application for a provisional certificate for the producer offset deals with expenditure thresholds, the film authority must issue a provisional certificate for the film to the applicant if it is satisfied that the conditions set out in subsections 376-65 (2) to (6) of the Act will be met, or are likely to be met, if the film is completed in accordance with the information supplied in the application.
- (2) If an application for a provisional certificate for the producer offset does not deal with expenditure thresholds, the film authority must issue a provisional certificate for the film to the applicant if it is satisfied that the conditions set out in subsections 376-65 (2) to (5) of the Act will be met, or are likely to be met, if the film is completed in accordance with the information supplied in the application.
- (3) A provisional certificate is subject to any condition specified by the film authority in the certificate.

**14 Content of provisional certificate**

- (1) This rule applies in addition to subrule 13 (3).
- (2) If the application for the provisional certificate deals with expenditure thresholds, the provisional certificate must state that the film authority is satisfied that the conditions set out in subsections 376-65 (2) to (6) of the Act will be met, or are likely to be met, if the film is completed in accordance with:
  - (a) the information supplied in the application; and
  - (b) the conditions (if any) specified in the provisional certificate.
- (3) If the application for the provisional certificate does not deal with expenditure thresholds, the provisional certificate must state that the film authority is satisfied that the conditions set out in subsections 376-65 (2) to (5) of the Act will be met, or are likely to be met, if the film is completed in accordance with:
  - (a) the information supplied in the application; and
  - (b) the conditions (if any) specified in the provisional certificate.
- (4) A provisional certificate must also state that it:
  - (a) does not entitle an applicant to claim a tax offset under Division 376 of the Act; and

**Rule 15**

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- (b) does not prevent a decision by the film authority to refuse to grant a certificate under Division 376 of the Act; and
- (c) is not a guarantee that the film authority will issue a certificate to the applicant under section 376-65 of the Act.

**15 Effect of provisional certificate**

A provisional certificate for the producer offset:

- (a) does not entitle an applicant to claim a tax offset under Division 376 of the Act; and
- (b) does not prevent a decision by the film authority to refuse to grant a certificate under Division 376 of the Act; and
- (c) is not a guarantee that the film authority will issue a certificate to the applicant under section 376-65 of the Act.

**Part 3 Certificates for the producer offset****16 Definition for Part 3**

In this Part:

*applicant* means a company that has applied for a certificate for the producer offset in accordance with this Part.

**17 Form of application for certificate for the producer offset***Information in application*

- (1) An application for a certificate for the producer offset must:
  - (a) be made to the film authority in writing; and
  - (b) include the information specified in clauses 1.1 to 2.32 and Division 3 of Part A of Schedule 2; and
  - (c) be signed on behalf of the applicant.
- (2) If the film is a series, or a season of a series, the application must also include:
  - (a) the information specified in clauses 2.33 and 2.34 of Part A of Schedule 2; and
  - (b) if the series or season is similar to another series — the information specified in clause 2.35 of Part A of Schedule 2.

*Documents attached to application*

- (3) The following documents must be attached to the application:
  - (a) if the film is an official co-production — the documents specified in Part B of Schedule 2;

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**Rule 18A**

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- (b) if the film is not an official co-production — the documents specified in Part B of Schedule 2, other than the documents specified in clause 1.5 of that Part;
  - (c) an expenditure statement, prepared in accordance with rule 23, for the total film expenditure, and the estimated qualifying Australian production expenditure, on the film;
  - (d) an auditor's statement that is:
    - (i) in the form:
      - (A) approved by the Chief Executive Officer of the film authority; or
      - (B) if the Chief Executive Officer of the film authority has not approved a form — specified in Schedule 3; and
    - (ii) signed by a person who:
      - (A) is a registered company auditor; and
      - (B) is not an officer, employee or partner of the applicant or of a body corporate that is a related body corporate in relation to the applicant;
  - (e) a completed budget spreadsheet, in the form approved by the film authority.
- (4) If expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the film is claimed, by the applicant, as estimated qualifying Australian production expenditure under item 2 of the table in subsection 376-150 (1) of the Act, the following documents must also be attached to the application:
- (a) evidence that the copyright is held by an Australian resident;
  - (b) proof of the acquisition of the copyright or the licence (including any agreement in relation to the acquisition).
- (6) If the expenditure statement contains an amount of estimated qualifying Australian production expenditure that has been translated into Australian currency using the special translation rule in item 9 or 9B of the table in subsection 960-50 (6) of the Act, a foreign currency statement, prepared in accordance with rule 24, must also be attached to the application.

## **18 Delivery of application for certificate for the producer offset**

An application for a certificate for the producer offset must be delivered to the film authority.

**Rule 18A**

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**18A Adjustment of fee for application for provisional certificate**

If subrule 8A (3) applies in relation to an application for a provisional certificate, the difference between the application fee that was paid in relation to the application and the application fee that is taken to be payable is payable when the application for a certificate for the producer offset is delivered to the film authority.

*Note* If the total film expenditure of the film (excluding GST) increases before the applicant makes an application for a certificate for the producer offset, the application fee for the application for the provisional certificate in relation to the film is taken to be adjusted to the amount that would have been paid if the higher total had been known.

**19 Consideration of application for certificate for the producer offset and other information**

- (1) In determining whether or not to issue a certificate for the producer offset to the applicant, the film authority:
  - (a) may seek information or advice from any person or source; and
  - (b) may take into account the knowledge and experience of:
    - (i) the members of the board of the film authority; and
    - (ii) employees of the film authority; and
  - (c) must consider all relevant information, including the following information:
    - (i) the application and attached documents;
    - (ii) any written report requested by the film authority under subrule (3) and any written submission made by the applicant in response to that report;
    - (iii) any additional information provided by the applicant under rule 20;
    - (iv) any other relevant information or advice obtained by the film authority.

*Note* The film authority issues a certificate for the producer offset in accordance with section 376-65 of the Act.

- (2) Without limiting paragraph (1) (a), the film authority may ask an independent line producer to provide a written report to the film authority about any matter that is relevant to:
  - (a) determining whether the applicant either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the film; or
  - (b) whether a condition set out in subsection 376-65 (2), (3), (4), (5) or (6) of the Act has been met.
- (3) If a request made under subrule (2) relates to the conditions set out in subsection 376-65 (6) of the Act, the report may include advice about any of the following matters:
  - (a) whether the applicant's expenditure statement is commercially reasonable;

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**Rule 20**

- (b) whether specific items claimed in the applicant's expenditure statement are reasonably attributable to the estimated qualifying Australian production expenditure on the film;
  - (c) whether costs that are charged for specific items indicate that the parties to the transaction were dealing with each other at arm's length.
- (4) If the film authority intends to use information or advice from a third party to support a decision to refuse to issue a certificate for the producer offset to an applicant, the film authority must give the applicant reasonable opportunity to comment on the substance of that information or advice.
- (5) If the film authority requests that an independent line producer provide the film authority with a written report under subrule (2), the authority must:
- (a) give a copy of the report to the applicant to whom it relates as soon as practicable; and
  - (b) give the applicant reasonable opportunity to make a written submission to the film authority in response to the report.

## **20 Film authority may request additional information from applicant**

- (1) If, in the opinion of the film authority, it requires additional information in order to decide whether or not to issue a certificate for the producer offset to an applicant, the film authority may ask the applicant, in writing, to provide that information to the film authority.
- (2) The request must specify:
- (a) the information required by the film authority (the *additional information*); and
  - (b) the period within which the information must be provided to the film authority (the *notification period*).
- (3) An applicant may ask the film authority to extend the notification period.
- (4) A request under subrule (3) must be made:
- (a) in writing; and
  - (b) within 28 days of the applicant's receipt of the request under subrule (1).
- (5) If a request is made by an applicant under subrule (3), the film authority may extend the notification period.
- (6) If an applicant does not provide the additional information within the notification period, or within the notification period as extended under subrule (5), the film authority may refuse to issue a certificate to the applicant.

## **Part 4 Expenditure statements and foreign currency statements**

**Rule 21**

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**21 Definition for Part 4**

In this Part:

**applicant** means a company that has applied, or that intends to apply, for a provisional certificate, or a certificate, for the producer offset.

**22 Expenditure statements for provisional certificates**

- (1) For paragraph 7 (6) (c), an expenditure statement for a provisional certificate for the producer offset must comply with subrules (2) to (6).
- (2) An expenditure statement must:
  - (a) distinguish expenditure that has been, or will be, incurred on film production activity carried out in Australia from expenditure that has been, or will be, incurred on film production activity carried out outside Australia; and
  - (b) specify any estimated qualifying Australian production expenditure claimed under item 2 of the table in subsection 376-170 (2) of the Act (expenditure for travel to Australia and other countries); and
  - (c) specify any expenditure incurred by an outgoing company.

*Note* **Outgoing company** is explained in subrule 5 (2).
- (3) An expenditure statement must also include:
  - (a) a statement of the estimated qualifying Australian production expenditure, and the total film expenditure, on the film; and
  - (b) a description of each budget item; and
  - (c) the amount of projected expenditure on each budget item; and
  - (d) details of each service provider by budget item; and
  - (e) details of the location in which, and the period over which, each service or good has been, or will be, provided; and
  - (f) details of the location of any land to be used in making the film, and the period of use of the land.
- (4) An amount in an expenditure statement must be expressed in Australian currency.
- (5) For the purposes of an expenditure statement, an amount in foreign currency that is relevant for a purpose mentioned in column 2 of item 9 of the table in subsection 960-50 (6) of the Act must be translated into Australian currency using the special translation rule in that item as if:
  - (a) a reference in that item to qualifying Australian production expenditure were a reference to estimated qualifying Australian production expenditure; and
  - (b) a reference to the time when principal photography commences or production of the animated image commences were a reference to the date estimated by the applicant for paragraph 2.4 (a) or (b) (as applicable) of Part A of Schedule 1.

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**Rule 23**

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- (6) If an expenditure statement includes an amount in foreign currency that has been translated into Australian currency using the special translation rule in item 9 of the table in subsection 960-50 (6) of the Act, as applied in accordance with subrule (5), the expenditure statement must also include the estimated exchange rate used to translate the amount.

## **23 Expenditure statements for certificates for the producer offset**

- (1) For paragraph 17 (3) (c), an expenditure statement for a certificate for the producer offset must comply with subrules (2) to (8).
- (2) An expenditure statement must:
- (a) distinguish expenditure incurred on film production activity carried out in Australia from expenditure incurred on film production activity carried out outside Australia; and
  - (b) specify any estimated qualifying Australian production expenditure claimed under an item of the table in subsection 376-150 (1) or 376-170 (2) of the Act; and
  - (c) specify any expenditure incurred by an outgoing company.

*Note* **Outgoing company** is explained in subsection 376-180 (1) of the Act.

- (3) If the film is an official co-production, the expenditure statement must also specify any estimated qualifying Australian production expenditure claimed by the applicant under subsection 376-170 (1) of the Act (expenditure incurred by another entity).
- (4) If development expenditure on the film or remuneration provided to the principal director, producers or the principal cast associated with the film, is claimed by the applicant as estimated qualifying Australian production expenditure, the expenditure statement must also specify:
- (a) the total amount of any development expenditure claimed as estimated qualifying Australian production expenditure; and
  - (b) the total amount of any such remuneration claimed as estimated qualifying Australian production expenditure; and
  - (c) the sum of the amounts mentioned in paragraphs (a) and (b), expressed as a percentage of the total film expenditure claimed by the applicant.
- (5) If any of the expenditure on the film was paid for with development assistance received from a body listed in paragraph 376-170 (4) (a) of the Act, the expenditure statement must also specify:
- (a) the expenditure that was paid for with the development assistance; and
  - (b) whether the amount or value of the development assistance has been repaid.
- (6) An expenditure statement must also include:
- (a) a statement of the estimated qualifying Australian production expenditure, and the total film expenditure, on the film; and
  - (b) a description of each budget item; and
  - (c) the amount of expenditure on each budget item; and

**Rule 24**

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- (d) details of each service provider by budget item; and
  - (e) details of the location in which, and the period over which, each service or good was provided; and
  - (f) details of the location of any land used in making the film, and the period of use of the land.
- (7) An amount in an expenditure statement must be expressed in Australian currency.
- (8) For the purposes of an expenditure statement, an amount in foreign currency that is relevant for a purpose mentioned in column 2 of item 9 or 9B of the table in subsection 960-50 (6) of the Act must be translated into Australian currency using the special translation rule in the relevant item as if a reference in that item to qualifying Australian production expenditure were a reference to estimated qualifying Australian production expenditure.

**24 Foreign currency statement for certificates for the producer offset**

For subrule 17 (6), a foreign currency statement for a certificate for the producer offset must set out:

- (a) each amount, expressed in the relevant foreign currency, of estimated qualifying Australian production expenditure that has been expended in a foreign currency (the *foreign expenditure amount*); and
- (b) for a foreign expenditure amount that is to be translated into Australian currency using the special translation rule in item 9 of the table in subsection 960-50 (6) of the Act, as applied in accordance with subrule 23 (8) (an *item 9 foreign expenditure amount*):
  - (i) the amount, expressed in Australian currency; and
  - (ii) the sum of all of the item 9 foreign expenditure amounts, expressed in Australian currency; and
- (c) for a foreign expenditure amount that is to be translated into Australian currency in accordance with the special translation rule in item 9B of the table in subsection 960-50 (6) of the Act, as applied in accordance with subrule 23 (8) (an *item 9B foreign expenditure amount*):
  - (i) the amount, expressed in Australian currency; and
  - (ii) the sum of all of the item 9B foreign expenditure amounts, expressed in Australian currency.

**Part 5 Audit requirements****25 Conduct of audit**

A company that has applied, or that intends to apply, for a certificate for the producer offset must ensure that an audit that is conducted for paragraph 17 (3) (d) is conducted in accordance with all applicable accounting standards, including any standards relating to the independence of auditors.

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## Schedule 1

### Information and documents for an application for a provisional certificate

(rule 7)

#### ***Part A Information to be included in an application for a provisional certificate***

##### **Division 1 Information about the applicant**

- 1.1 Registered name of the company.
- 1.2 ABN of the company.
- 1.3 For a company that is incorporated in a State or Territory — the State or Territory in which the company is incorporated.
- 1.4 For a company that is not incorporated in a State or Territory — the place in which the company is incorporated.
- 1.5 Registered address of the company.
- 1.6 For a company that is a foreign resident — details of the company's permanent establishment in Australia.
- 1.7 Names and addresses of company directors.
- 1.8 Details of the contact person for the application, including the following details:
  - name
  - office or title
  - telephone
  - business address
  - mobile
  - facsimile
  - email.
- 1.9 The applicant's level of responsibility for the making of the film.

##### **Division 2 Information about the film**

###### *General information*

- 2.1 Working title of the film.
- 2.2 Format of the film.

*Note* See paragraph 376-65 (2) (c) of the Act.

- 2.3 Estimated duration of the film, in:  
(a) running time (minutes); and  
(b) for a film other than a feature film — commercial hours.
- 2.4 Estimated date of commencement of:  
(a) for an animated film — the production of animated images; or  
(b) otherwise — principal photography on the film.
- 2.5 Estimated date of completion of the film.

*Subject matter of the film*

- 2.6 Synopsis of the film.  
*Note* If the film is a series, a synopsis of the series must be provided. If the film is a season of a series, a synopsis of the season must be provided.
- 2.7 Nationality of the principal characters in the film.
- 2.8 Any settings in the film that are not Australian settings (including any setting that will be filmed in Australia but that will be presented as a setting that is outside Australia).
- 2.9 The proportion of the film that will be set outside Australia (including any part of the film that will be filmed in Australia but that will be presented as being set outside Australia).

*The place where the film was made*

- 2.10 Details of:  
(a) each stage of the production; and  
(b) the location of each stage of the production.
- 2.11 For any stage of the production that will take place outside Australia, the reason for the location of the stage.

*Details of persons who will take part in the making of the film*

- 2.12 For each key member of the cast:  
(a) name; and  
(b) nationality; and  
(c) details of residency.
- 2.13 For each key member of the production personnel:  
(a) name; and  
(b) nationality; and  
(c) details of residency.
- 2.14 For a person who has creative control over the production:  
(a) the name, nationality and details of residency of that person; and  
(b) details of the creative control held by that person.

- 
- 2.15 For a person who will benefit from profits recouped from the film:
- (a) the name, nationality and details of residency of that person; and
  - (b) details of the benefit to be obtained by the person.
- 2.16 For each person who owns copyright in the film:
- (a) name; and
  - (b) nationality; and
  - (c) details of residency.
- 2.17 For each person (if any) who is a beneficial owner of shares in the applicant company, his or her:
- (a) name; and
  - (b) nationality; and
  - (c) details of residency.
- 2.18 Details of:
- (a) the chain of title and underlying rights in the screenplay for the film, including the source material (if any); and
  - (b) the nationality of each person cited in relation to the matters in paragraph (a).

*Financial information*

- 2.19 Whether a deduction has been claimed under Division 10B of Part III of the *Income Tax Assessment Act 1936* in relation to a unit of industrial property that relates to copyright in the film.
- 2.20 Whether a provisional certificate, or a final certificate, has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film (whether or not the certificate is still in force).
- 2.21 Whether a deduction has been claimed, or will be claimed, under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film.
- 2.22 Whether:
- (a) the applicant, or another person, has applied for:
    - (i) a certificate for the location offset for the film under subsection 376-230 (1) of the Act; or
    - (ii) a certificate for the PDV offset for the film under subsection 376-230 (2) of the Act; or
  - (b) a certificate for the film has been issued at any time under section 376-20 of the Act (a certificate for the location offset) or under section 376-45 of the Act (a certificate for the PDV offset) (whether or not the certificate is still in force).
- 2.23 Whether development assistance or production assistance for the film has been received by the applicant, or by anyone else, from a Commonwealth government agency or a State or Territory government agency.

- 2.24 For any development assistance or production assistance described in clause 2.23 that has been received:
- (a) the amount or value of that assistance; and
  - (b) whether it has been, or will be, repaid (in full or in part).
- 2.25 Whether production assistance (within the meaning of paragraph 376-55 (4) (f) of the Act) for the film has been received from:
- (a) the Film Finance Corporation Australia Limited; or
  - (b) Film Australia Limited; or
  - (c) the Australian Film Commission; or
  - (d) the Australian Film, Television and Radio School.
- 2.26 For any production assistance described in clause 2.25 that has been received:
- (a) the amount or value of that assistance; and
  - (b) whether it has been, or will be, repaid (in full or in part).
- 2.27 Whether the company, or someone else, has deducted money paid for shares in a film licensed investment company under Subdivision 375-H of the Act, if the film licensed investment company has invested in the film.
- 2.28 For any money described in clause 2.27 that has been deducted — the amount of money deducted.
- 2.29 Whether the applicant is likely to incur expenditure on the film as a foreign resident.
- 2.30 For any expenditure described in clause 2.29:
- (a) the estimated total amount of the expenditure; and
  - (b) the period or periods during which the expenditure is likely to be incurred; and
  - (c) whether, during the whole or a part of a period mentioned in paragraph (b), the applicant will not have, or is likely not to have, a permanent establishment in Australia or an ABN.

*Further information required if the film is a series or a season of a series*

- 2.31 The number of previous episodes in the series (if any).
- 2.32 Whether the series has substantially different characters, settings, production locations and individuals involved in the making of the series than any other series.
- 2.33 Details of creative similarities and differences between the current series or season and any previous series.

### **Division 3 Other information**

- 3.1 Details of the production company for the film, including the following details:
- registered name of the production company

- 
- ABN of the production company
  - registered address of the production company
  - names and addresses of directors of the production company.
- 3.2 For any provider of goods or services that will be used in the making of the film who is:
- (a) an associate of the applicant; or
  - (b) an associate of a company that is an associate of the applicant; the details of the provider.
- 3.3 Details of any company that is an outgoing company in relation to the film.
- Note* **Outgoing company** is explained in subrule 5 (2).

### **Part B Documents to be attached to an application for a provisional certificate**

- 1.1 A statutory declaration stating:
- (a) that it is made for rule 7; and
  - (b) that:
    - (i) the information contained in the application for the provisional certificate; and
    - (ii) each document attached to the application;is correct and true in every particular.
- 1.2 Evidence, if it is available, that:
- (a) for an applicant that is an Australian resident — the applicant is an Australian resident; or
  - (b) for an applicant that is not an Australian resident — the applicant has:
    - (i) a permanent establishment in Australia; and
    - (ii) an ABN.
- 1.3 For a film that is an official co-production, evidence from the Commonwealth (or the relevant Commonwealth authority) that the film is an official co-production.

## **Schedule 2**

### **Information and documents for an application for a certificate for the producer offset**

(rule 17)

#### **Part A Information to be included in an application for a certificate for the producer offset**

##### **Division 1 Information about the applicant**

- 1.1 Registered name of the company.

|            |  |
|------------|--|
| Schedule 2 | Information and documents for an application for a certificate for the producer offset |
| Part A     | Information to be included in an application for a certificate for the producer offset |

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- 1.2 ABN of the company.
- 1.3 For a company that is incorporated in a State or Territory — the State or Territory in which the company is incorporated.
- 1.4 For a company that is not incorporated in a State or Territory — the place in which the company is incorporated.
- 1.5 Registered address of the company.
- 1.6 For a company that is a foreign resident — details of the company's permanent establishment in Australia.
- 1.7 Names and addresses of company directors.
- 1.8 Details of the contact person for the application, including the following details:
- name
  - office or title
  - telephone
  - business address
  - mobile
  - facsimile
  - email.
- 1.9 The applicant's level of responsibility for the making of the film.
- Note* The film authority must be satisfied that the applicant either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the film (see paragraph 376-65 (1) (a) of the Act).

## **Division 2 Information about the film**

### *General information*

- 2.1 Title of the film.
- 2.2 Format of the film.
- Note* See paragraph 376-65 (2) (c) of the Act.
- 2.3 Duration of:
- (a) for a film that is a series, or a season of a series — each episode of the film, in:
- (i) running time (minutes); and
  - (ii) commercial hours; or
- (b) for a film that is not a feature film and is not covered by paragraph (a) — the film, in:
- (i) running time (minutes); and
  - (ii) commercial hours; or
- (c) for a feature film — the film, in running time (minutes).

- 
- 2.4 Date of commencement of:
- (a) for an animated film — the production of animated images; or
  - (b) otherwise — principal photography on the film.

- 2.5 Date of completion of the film.

*Subject matter of the film*

- 2.6 A synopsis of:
- (a) for a film that is a series, or a season of a series — each episode of the film; or
  - (b) otherwise — the film.
- 2.7 Nationality of the principal characters in the film.
- 2.8 Any settings in the film that are not Australian settings (including any setting that was filmed in Australia but that is presented as a setting that is outside Australia).
- 2.9 The proportion of the film that is set outside Australia (including any part of the film that was filmed in Australia but that is presented as being set outside Australia).

*The place where the film was made*

- 2.10 Details of:
- (a) each stage of the production; and
  - (b) the location of each stage of the production.
- 2.11 For any stage of the production that took place outside Australia, the reason for the location of the stage.

*Details of persons who took part in the making of the film*

- 2.12 For each key member of the cast:
- (a) name; and
  - (b) nationality; and
  - (c) details of residency.
- 2.13 For each key member of the production personnel:
- (a) name; and
  - (b) nationality; and
  - (c) details of residency.
- 2.14 For a person who has creative control over the production:
- (a) the name, nationality and details of residency of that person; and
  - (b) details of the creative control held by that person.
- 2.15 For a person who will benefit from profits recouped from the film:
- (a) the name, nationality and details of residency of that person; and
  - (b) details of the benefit to be obtained by the person.

|            |  |
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| Schedule 2 | Information and documents for an application for a certificate for the producer offset |
| Part A     | Information to be included in an application for a certificate for the producer offset |

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- 2.16 For each person who owns copyright in the film:
- (a) name; and
  - (b) nationality; and
  - (c) details of residency.
- 2.17 For each person (if any) who is a beneficial owner of shares in the applicant company, his or her:
- (a) name; and
  - (b) nationality; and
  - (c) details of residency.
- 2.18 Details of:
- (a) the chain of title and underlying rights in the screenplay for the film, including the source material (if any); and
  - (b) the nationality of each person cited in relation to the matters in paragraph (a).

*Financial information*

- 2.19 Dates for:
- (a) the start of estimated qualifying Australian production expenditure on the film; and
  - (b) the end of estimated qualifying Australian production expenditure on the film.
- 2.20 For a film other than a feature film — estimated qualifying Australian production expenditure on the film (in Australian dollars) divided by the running time of the film (in hours).
- 2.21 Whether a deduction has been claimed under Division 10B of Part III of the *Income Tax Assessment Act 1936* in relation to a unit of industrial property that relates to copyright in the film.
- 2.22 Whether a provisional certificate, or a final certificate, has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film (whether or not the certificate is still in force).
- 2.23 Whether a deduction has been claimed, or will be claimed, under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film.
- 2.24 Whether:
- (a) the applicant, or another person, has applied for:
    - (i) a certificate for the location offset for the film under subsection 376-230 (1) of the Act; or
    - (ii) a certificate for the PDV offset for the film under subsection 376-230 (2) of the Act; or
  - (b) a certificate for the film has been issued at any time under section 376-20 of the Act (a certificate for the location offset) or under

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section 376-45 of the Act (a certificate for the PDV offset) (whether or not the certificate is still in force).

- 2.25 Whether development assistance or production assistance for the film has been received by the applicant, or by anyone else, from a Commonwealth government agency or a State or Territory government agency.
- 2.26 For any development assistance or production assistance described in clause 2.25 that has been received:
- (a) the amount or value of that assistance; and
  - (b) whether it has been, or will be, repaid (in full or in part).
- 2.27 Whether production assistance (within the meaning of paragraph 376-55 (4) (f) of the Act) for the film has been received from:
- (a) the Film Finance Corporation Australia Limited; or
  - (b) Film Australia Limited; or
  - (c) the Australian Film Commission; or
  - (d) the Australian Film, Television and Radio School.
- 2.28 For any production assistance described in clause 2.27 that has been received:
- (a) the amount or value of that assistance; and
  - (b) whether it has been, or will be, repaid (in full or in part).
- 2.29 Whether the company, or someone else, has deducted money paid for shares in a film licensed investment company under Subdivision 375-H of the Act, if the film licensed investment company has invested in the film.
- 2.30 For any money described in clause 2.29 that has been deducted — the amount of money deducted.
- 2.31 Whether the applicant incurred expenditure on the film as a foreign resident.
- 2.32 For any expenditure described in clause 2.29:
- (a) the estimated total amount of the expenditure; and
  - (b) the period or periods during which the expenditure was incurred; and
  - (c) whether, during the whole or a part of a period mentioned in paragraph (b), the applicant did not have a permanent establishment in Australia or an ABN.

*Further information required if the film is a series or a season of a series*

- 2.33 The number of previous episodes in the series (if any).
- 2.34 Whether the series has substantially different characters, settings, production locations and individuals involved in the making of the series than any other series.
- 2.35 Details of creative similarities and differences between the current series or season and any previous series.

|            |  |
|------------|--|
| Schedule 2 | Information and documents for an application for a certificate for the producer offset |
| Part B     | Documents to be attached to an application for a certificate for the producer offset   |

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### **Division 3 Other information**

- 3.1 Details of the production company for the film, including the following details:
- registered name of the production company
  - ABN of the production company
  - registered address of the production company
  - names and addresses of directors of the production company.
- 3.2 For any provider of goods or services that are used in the making of the film who is:
- (a) an associate of the applicant; or
  - (b) an associate of a company that is an associate of the applicant; the details of the provider.
- 3.3 Details of any company that is an outgoing company in relation to the film.
- Note* **Outgoing company** is explained in subsection 376-180 (1) of the Act.

### **Part B Documents to be attached to an application for a certificate for the producer offset**

- 1.1 A statutory declaration stating:
- (a) that it is made for rule 17; and
  - (b) that:
    - (i) the information contained in the application for the provisional certificate; and
    - (ii) each document attached to the application;
 is correct and true in every particular.
- 1.2 Details of:
- (a) fees; and
  - (b) advances that are not recoverable from the payee; and
  - (c) residuals that:
    - (i) were paid to cast members before the film's completion; and
    - (ii) are included in the estimated qualifying Australian production expenditure claimed by the applicant for the producer offset.
- 1.3 Evidence that:
- (a) for an applicant who is an Australian resident — the applicant is an Australian resident; or
  - (b) for an applicant who is not an Australian resident — the applicant has:
    - (i) a permanent establishment in Australia; and
    - (ii) an ABN.

- 
- 1.4 Any agreement relating to:
- (a) the responsibility of the applicant for all the activities that were necessary for the making of the film; and
  - (b) the establishment of the applicant company; and
  - (c) the transfer of any film production responsibility from an outgoing company to the applicant; and
  - (d) the distribution or exhibition of the completed film.

*Examples for paragraph (d)*

- 1 A deal memorandum.
- 2 A letter of confirmation, on official letterhead, from the distributor.

- 1.5 For a film that is an official co-production:
- (a) a copy of the agreement between the co-producers of the film; and
  - (b) evidence from the Commonwealth (or the relevant Commonwealth authority) and from the relevant foreign country (or the relevant authority) that the film is an official co-production.

### **Schedule 3 Form of auditor's statement**

(subparagraph 17 (3) (d) (1))

The Manager  
Producer Offset  
Film Finance Corporation Australia Ltd  
GPO Box 3886  
SYDNEY NSW 2001

We have examined the attached statement of total film expenditure in so far as it relates to the making of the film entitled \_\_\_\_\_ ('the schedule').

We confirm that the auditor responsible for the preparation of this statement is a registered company auditor within the meaning of the *Corporations Act 2001* and is not an officer, employee or partner of the applicant, or of a related body corporate of the applicant.

The applicant is responsible for the preparation of the expenditure statement. It is our responsibility to form an independent opinion, based on our examination, on the expenditure statement and to report our opinion to you.

**Basis of opinion:** We conducted our audit in accordance with the Australian Auditing Standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial information is free of material misstatement.

We have received all the information and documents necessary to enable us to ascertain the amount of total film expenditure (as defined in subsection 995-1 (1) of

the *Income Tax Assessment Act 1997*) and estimated qualifying Australian production expenditure (as defined in rule 4 of the *Producer Offset Rules 2007*).

Our work included examining, on a test basis, evidence supporting the amounts and disclosures in the expenditure statement, and the presentation of that statement.

**On the basis of such examination, we report that in our opinion the total of the company's estimated qualifying Australian production expenditure on the film is Aus \$ \_\_\_\_\_ and the company's total film expenditure on the film is Aus \$ \_\_\_\_\_.**

In our opinion, the statement presents fairly, in all material respects, the estimated qualifying Australian production expenditure and the total film expenditure on the film entitled \_\_\_\_\_ for the period ended \_\_\_\_\_ in accordance with generally accepted accounting principles.

[Signed by partner]

[for Auditor]

**[Dated]**

**Table of Instruments****Notes to the *Producer Offset Rules 2007*****Note 1**

The *Producer Offset Rules 2007* (in force under section 376-265 (1) and (2) of the *Income Tax Assessment Act 1997*) as shown in this compilation is amended as indicated in the Tables below.

**Table of Instruments**

| <b>Title</b>  | <b>Date of FRLI registration</b> | <b>Date of commencement</b> | <b>Application, saving or transitional provisions</b> |
|---|----------------------------------|-----------------------------|---|
| <i>Producer Offset Rules 2007</i>                   | 28 Nov 2007 (see F2007L04553)    | 29 Nov 2007                 |   |
| <i>Producer Offset Amendment Rules 2010 (No. 1)</i> | 29 June 2010 (see F2010L01826)   | 1 July 2010                 | —   |

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| <b>Provision affected</b> | <b>How affected</b> |
|---------------------------|---------------------|
| <b>Part 2</b>             |                     |
| R. 7 .....                | am. 2010 No. 1      |
| R. 8A .....               | ad. 2010 No. 1      |
| Note to r. 9 (1) .....    | rs. 2010 No. 1      |
| <b>Part 3</b>             |                     |
| R. 17 .....               | am. 2010 No. 1      |
| R. 18A .....              | ad. 2010 No. 1      |
| <b>Schedule 1</b>         |                     |
| Schedule 1 .....          | am. 2010 No. 1      |