

Producer Offset Amendment Rules 2010 Explanatory Statement

The *Producer Offset Amendment Rules 2010* (the Amendment Rules) amend the *Producer Offset Rules 2007* (the Rules) and are made under the authority of subsection 376-265 of the *Income Tax Assessment Act 1997* (the Act). The Rules are made by the Chief Executive Officer of Screen Australia. Screen Australia is defined as the 'film authority' pursuant to subsection 376-55(3) of the Act.

Background

Division 376 tasks Screen Australia with administering the Producer Offset, an incentive to provide support to producers of Australian screen content through the mechanism of a refundable tax offset. To receive the Producer Offset, a company (the production company) which has made a film must be issued with a certificate issued by Screen Australia under section 376-65. Prior to issuing a certificate, Screen Australia must be satisfied that the company and the film satisfy a number of conditions, which are outlined in Division 376.

A certificate can only be issued once a film is completed. To provide production companies with some certainty as to whether they will qualify for a certificate on completion, the Act provides for 'provisional certificates' to be issued (subsection 376-265(1)). The rules regarding the issue of provisional certificates are outlined in the Rules. The Rules also provide for the form of applications for certificates (known as final certificates) and associated matters (subsection 376-265(2)).

Prior to Screen Australia's commencement, the Producer Offset was administered by one of Screen Australia's predecessor agencies, the then Film Finance Corporation Australia (FFC). The Rules were made by the FFC in 2007.

Aims and impact of the instrument

The aims of the Amendment Rules are two fold:

1. To provide for Screen Australia to levy fees on applications for provisional certificates in order to lessen the impact of administering the Producer Offset on Screen Australia, and
2. To remove some compliance costs for applicants and provide additional flexibility in the application process.

The Amendment Rules would impose a low-level cost on applicants for provisional certificates, but would lessen the cost of administration for Screen Australia by an anticipated \$100,000 per annum.

The Amendment Rules would also remove some anomalies in the application process and provide Screen Australia with additional flexibility in the assessment of provisional certificates to the benefit of applicants.

Finally, the Amendment Rules would provide for Screen Australia to determine, from time to time, the proper form for auditors' statements which accompany applications for certificates. Refinement of the auditor's statement over time will mean that auditors are more certain of their obligations and audits will be more accurate. This in turn will reduce the time it takes Screen Australia to consider applications for certificates. Changes to the auditor's statement would be undertaken following consultation with auditors, production companies, relevant professional associations and Government agencies.

Reason for Government action

Screen Australia has administered the Producer Offset since July 2008. In that time, Screen Australia has identified a number of deficiencies in the Rules, which have led to unforeseen outcomes in the application process. These are addressed in the Amendment Rules.

Each application for a certificate must be accompanied by an auditor's statement, the form for which is specified in the Rules. Accordingly, any amendment proposed by Screen Australia to the form of auditor's statement currently requires a Rules amendment. The Amendment Rules therefore provide Screen Australia with the flexibility to determine the form of auditor's statements from time to time so as to increase the accuracy of audits and applications, thereby decreasing assessment time and the cost of compliance.

Further, while Screen Australia as the 'film authority' is required to undertake the administration of the 'final' certificate application process, the provisional certificate application process is a service provided by Screen Australia to industry, at significant administrative cost to Screen Australia. The Amendment Rules impose a modest fee on applicants for provisional certificates, with the level of the fee scaled to reflect the size of the production.

The fees will not recover Screen Australia's costs. They will, however, provide Screen Australia with some additional resources with which to undertake its functions. Screen Australia is able to levy fees for its operations pursuant to subsection 6(4) of the *Screen Australia Act 2008*.

Fees are also imposed on applicants who have been issued with a provisional certificate, but wish to make changes to the structure of the film and wish Screen Australia to confirm their entitlement to the existing provisional certificate. Screen Australia has found that it is called upon to 're-visit' a significant number of applications, at the applicant's request, after the issue of provisional certificates, due to changes in the project. This process creates an additional administrative burden on Screen Australia.

Consultation

Screen Australia publicly announced its intention to levy fees on applications for provisional certificates in the context of conducting consultation on its terms of trade. Draft revised terms of trade, with an outline of the operation of the Producer Offset provisional certificate fees, were announced by press release and released on 13 November 2009. Nineteen submissions in relation to the proposed revised terms of trade were received from industry members and stakeholders. Only one submission referred to the proposal to impose fees on Producer Offset provisional certificate applications; that submission indicated that the proposed fees were 'steep'.

Screen Australia also consulted with the Australian Taxation Office and the Department of the Environment, Water, Heritage and the Arts; neither body raised concerns with the proposal to impose fees.

Screen Australia considers that it cannot continue to provide the current level of service to industry (in relation to the Producer Offset) without an increase to its budget and therefore, given that the fees are relatively small, the imposition is justified.

Clause by Clause

Schedule 1 of the instrument contains the amendments to the Rules.

Item 1 provides for Screen Australia to waive requirements for provisional certificates. This will provide the ability for Screen Australia, when it considers it appropriate to do so, to approve an application which would otherwise be ineligible for a provisional certificate. Without this amendment, Screen Australia is unable to certify a film which does not comply with the requirements in the Rules.

Items 2, 3 and 6 imposes fees for provisional certificates:

- Fees are required on lodgement of an application and Screen Australia will not consider the application (i.e. make a decision on the application) until the fee is paid (Proposed subrule 8A(9)).
- Proposed subrule 8A(2) lists the fees payable, based on the budget of the film, but is repayable if the application is withdrawn prior to Screen Australia considering it (proposed subrule 8A(11)). Fees are not repayable if Screen Australia has considered the application; i.e. has made a decision on the application (proposed subrule 8A(12)).
- On the commencement of each subsequent financial year, fees will be CPI adjusted (proposed subrules 8A(4)-(8)).
- Proposed subrules 8A(3) and subrule 18A take account of a situation where a fee was levied based on a particular budget range, but the final budget of the film (as received by Screen Australia with an application for a 'final' certificate) would have meant that the fee should have been a higher amount. In such a case, the applicant must pay the additional amount. This is an anti-avoidance mechanism.

Item 4 provides for the Chief Executive Officer of Screen Australia to determine the appropriate form of an auditor's statement from time to time. In the absence of such a determination, the statement is to be in the form in Schedule 3 to the Rules.

Item 5 removes subrule 17(5) from the Rules. It is an unnecessary provision as the requirement is repeated in Schedule 2 to the Rules.

Item 7 amends Schedule 1, clause 1.3, of the Rules. So-called 'official' co-productions are eligible to apply for provisional and final certificates. Currently, the Rules require confirmation from both co-producing countries and an executed copy of the agreement between co-producers to be provided with a provisional certificate application form. As a matter of practice, several foreign 'competent authorities' do not issue confirmation of approval at this (provisional) stage and co-production agreements are usually not executed until after Screen Australia would consider an application. The item removes this anomaly, relaxing the requirement so that only proof of Australian provisional co-production approval must be provided.