



Australian Government



# PRODUCER OFFSET GUIDELINES

## IMPORTANT NOTES

These guidelines are to assist you in applying to Screen Australia for certification for the Producer Offset.

You must provide full and complete supporting documentation with your application. Applications that are not adequately supported will be delayed, denied or rejected.

You should:

- (i) seek professional advice when preparing an application, for example from your lawyer and accountant; and
- (ii) read Division 376 of the [Income Tax Assessment Act 1997](#) and the [Producer Offset Rules 2018](#) carefully.

## DO THESE GUIDELINES APPLY TO YOU?

*These guidelines apply to projects that began principal photography on or after 1 July 2021.*

They reflect a general reform and include changes to the Producer Offset under the [Treasury Laws Amendment \(2021 Measures No. 5\) Act 2021](#).

The main changes are that:

- (i) the amount of the Producer Offset is 40% for feature films produced for commercial exhibition to the public in cinemas;
- (ii) the amount of the Producer Offset for other eligible projects has increased from 20% to 30%; and
- (iii) the 65-commercial-hour cap has been removed for drama productions.

They also include changes to the Producer Offset under the [Treasury Laws Amendment \(Delivering Better Financial Outcomes and Other Measures\) Act 2024](#), namely:

- (i) the introduction of a new per season minimum qualifying Australian production expenditure (**QAPE**) threshold of \$35 million per season for drama series that commenced principal photography on or after 1 July 2024.

For projects that began principal photography prior to 1 July 2021, please [contact](#) Screen Australia's Producer Offset and Co-production Unit (**POCU**).

These guidelines contain additional detail and simplified language which is not in previous versions.

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# 1 INTRODUCTION

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- (a) Screen Australia administers the Producer Offset under [Division 376](#) of the *Income Tax Assessment Act 1997 (ITAA)* and the [Producer Offset Rules 2018 \(Rules\)](#).
- (b) In order to claim the Producer Offset from the Australian Tax Office (**ATO**), you must obtain a final certificate from Screen Australia. Screen Australia will issue a final certificate for a project which it determines meets the requirements set out in the ITAA. You may also apply for a provisional certificate before or during production.
- (c) These guidelines have been prepared to assist you in that process. Before applying for the Producer Offset, you should read these guidelines, the ITAA and the Rules carefully. The ITAA and the Rules can be found on our website [here](#).
- (d) Applications for the Producer Offset are made through the Smarty Grants portal [here](#).
- (e) In these guidelines:
  - (i) **we** refers to Screen Australia;
  - (ii) **you** and **applicant** refer to a company applying for a provisional or final certificate;
  - (iii) the term **project** is used as a generic reference to film, television and other screen productions, unless quoting the ITAA, which uses the term **film**; and
  - (iv) highlighted words are hyperlinks to other sections of the guidelines, websites and relevant materials.
- (f) If there is any inconsistency between these guidelines and the ITAA or the Rules, the provisions in the ITAA and the Rules prevail.

## 1.1 What is the Producer Offset?

### 1.1.1 Summary

- (a) The Producer Offset is a refundable tax offset (a rebate) calculated on a project's qualifying Australian production expenditure (**QAPE**), for:
  - (i) 40% of an applicant's QAPE for a feature film that was produced for commercial exhibition to the public in cinemas; or
  - (ii) 30% of an applicant's QAPE for an otherwise eligible project such as a program produced for television or a subscription service.

### 1.1.2 Other refundable tax offsets

- (a) The Producer Offset is one of three refundable tax offsets for qualifying projects under the ITAA. The other two are:
  - (i) the location offset:
    - for projects that commenced principal photography prior 1 July 2023, a 16.5% offset on QAPE for projects filmed in Australia with Australian expenditure of over \$15 million and \$1 million per hour for television series (that do not satisfy the significant Australian content test for the Producer Offset);

- for projects that commenced principal photography on or after 1 July 2023, a 30% offset on QAPE for projects filmed in Australia with Australian expenditure of over \$20 million and \$1.5 million per hour for television series (that do not satisfy the significant Australian content test for the Producer Offset); and
  - (ii) the post, digital and visual effects (**PDV**) offset: a 30% offset on QAPE that relates to post, digital and visual effects for a project.
- (b) For information about the location and PDV offsets, you should contact the [Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#).

## 1.2 How the Producer Offset works

### 1.2.1 Provisional certificates

- (a) You may apply for a provisional certificate at any time. Provisional certificate applications are submitted through the Smarty Grants platform [here](#).
- (b) A provisional certificate is a non-binding decision about a project's eligibility for a [final certificate](#), based on the information submitted in the application. It provides an indication only of the project's eligibility for a final certificate.
- (c) Importantly, the provisional certification process only assesses the criteria in subsections 376-65(2)-(6) of the ITAA (being [significant Australian content \(SAC\)](#), [format requirements](#) and minimum [QAPE threshold](#)); it does not address all of the eligibility conditions required for final certification.
- (d) A provisional certificate is not a guarantee that Screen Australia will issue a [final certificate](#) for the Producer Offset and does not prevent Screen Australia from making a decision to refuse to issue a final certificate.
- (e) A decision not to issue a provisional certificate for a project does not prevent you from applying for a final certificate for the project.
- (f) An applicant holding a provisional certificate must apply for and be issued with a final certificate in order to access the Producer Offset. However, you may apply for a final certificate without having applied for a provisional certificate.
- (g) It is important to note that for provisional certification, we will not:
- (i) assess an applicant's estimated [QAPE](#) (and applicants are encouraged to obtain their own independent QAPE opinion, if required);
  - (ii) certify that interested-party transactions are budgeted in accordance with the [arm's length](#) principle; or
  - (iii) audit the claims in your application form and associated documentation.
- (h) We determine a project's final eligibility for the Producer Offset based on the information available at the time the application for a [final certificate](#) is assessed and determined.
- (i) Fees are payable for provisional certificate applications, which are scaled to the project's budget in accordance with the Rules and which are outlined in the [application form](#).
- (j) As a provisional certificate is based solely on information provided in the application, if any material changes to the project or its structure are made which decrease the level of

significant Australian content or affect any other eligibility requirement, this may mean the project is no longer eligible. We therefore recommend you seek your own expert advice in relation to the impact of any changes on your project's eligibility for the Producer Offset. You may apply for a re-assessment of the provisional certificate to obtain an updated indication of the project's eligibility for a final certificate.

- (k) If a project does not enter production within two years of the provisional certificate being issued, you must seek a re-assessment of the provisional certificate or you can apply for a final certificate.
- (l) A re-assessment fee will be payable if you require re-assessment of a provisional certificate.
- (m) If your project is an official co-production, you can apply for provisional approval as an official co-production and for a provisional certificate for the Producer Offset at the same time. For further information on Australia's official co-production program, visit the [website](#), or [contact POCU](#).
- (n) You can contact Screen Australia's Producer Offset and Co-production Unit (**POCU**) to discuss a proposed project and its eligibility for the Producer Offset.

Phone: +61 2 8113 1042

Email: [POCU@screenaustralia.gov.au](mailto:POCU@screenaustralia.gov.au)

Web: <http://www.screenaustralia.gov.au/producer-offset>

- (o) For information about taxation and obligations of companies commencing business in Australia, registering for an Australian Business Number (**ABN**), filing business activity statements and annual income tax returns, you should visit the [ATO website](#) or contact the ATO at the following numbers:

132 866 – for businesses

137 286 – for tax agents

#### **IMPORTANT NOTES**

A project with a provisional certificate may not be eligible for a final certificate or claimed QAPE. You (and your financier(s)) are responsible for managing this risk.

Final certification is based on a full assessment of the completed project, including information on exhibition and/or distribution, evidence of incurred expenditure, audited expenditure statements and the completed film.

Importantly:

- if there are changes to the project after provisional certification, these changes may affect its eligibility for the Producer Offset or QAPE claim;
- if the information you give us for a provisional application is incomplete or inconsistent with the information you give us at final certification, this may affect the eligibility of the project for Producer Offset or QAPE claim; and
- you are responsible for ensuring that the project complies with all eligibility requirements for the Producer Offset and tracking incurred expenditure you propose to claim as QAPE.

## 1.2.2 Final certificates

- (a) In order to claim the Producer Offset from the ATO, the applicant must have a final certificate from Screen Australia.
- (b) When we issue a final certificate, it states our determination of QAPE. The applicant then claims the Producer Offset in the applicant's income tax return to the ATO for the financial year in which the project is completed. The ATO will credit the Producer Offset against any existing income tax liability and refund the remainder.
- (c) You can apply for a final certificate once a project is [completed](#) and audited.
- (d) To apply, you must complete and submit an application form with all required attachments, including a statutory declaration and a copy of the completed project. Applications are submitted through [Smarty Grants](#). A copy of the project is important for the assessment process, is covered by the tax secrecy provisions and you may watermark it.
- (e) You will also need to lodge expenditure statements attesting to the claimed [QAPE](#) for the project. These include the [general ledger](#), final cost report and a Final [QAPE spreadsheet](#). A registered company auditor must audit your QAPE claim in accordance with the [Rules](#).
- (f) We will only issue a final certificate if we are satisfied that you have provided sufficient and proper evidence to demonstrate that the project meets the relevant requirements set out in [Division 376](#) of the ITAA, which are summarised here:
  - (i) the applicant must:
    - A. be an [eligible entity](#) (section 376-55(1)(d)); and
    - B. have the requisite [company responsibility](#) for the making of the project (section 376-65(1)(a));
  - (ii) the project must:
    - C. have [significant Australian content \(SAC\)](#) or be an official co-production (section 376-65(2)(a));
    - D. be of an eligible [duration](#) (section 376-65(3)-(5));
    - E. meet or exceed the relevant [QAPE thresholds](#) (section 376-65(6));
    - F. satisfy the requisite [format requirements](#) (section 376-65(2)(c)-(d));
    - G. be [completed](#) in the income year of the applicant's tax return (section 376-55(1)(a),(2)); and
    - H. meet the requirements of being either:
      - 1. a feature film that was produced for commercial exhibition to the public in cinemas for the 40% rebate (section 376-60(a)); or
      - 2. another [eligible format](#) that was produced for distribution, broadcast or exhibition to the public in Australia for the 30% rebate (sections 376-60(b) and 376-65(2)(b));

*and*

- (iii) because the Producer Offset, the location offset and the PDV offset are mutually exclusive, the project (or any entity in relation to the project) must not have accessed other Australian government incentives (see section 2.6 below).

### 1.2.3 Incomplete applications may be rejected

- (a) If you do not provide adequate documentation in support of your application for a provisional or final certificate, your application may be denied. The processing of your application may also be rejected or paused until you are able to fix any problems in your paperwork, which means the timeline for you obtaining a certificate will be delayed.

### 1.2.4 General ledger

- (a) The general ledger is the key part of the expenditure statement that you are required to submit as part of the final certificate application.
- (b) To meet the requirements in rule 28 of the [Rules](#), the general ledger should include the following details:
  - (i) a description of each budget item;
  - (ii) the amount of expenditure, including the cost/rate (usually per week);
  - (iii) details of each service provider (including the name of the person performing the role and the company, if relevant);
  - (iv) the dates the work was performed and goods and services were provided; and
  - (v) where the work was performed.
- (c) Applications without a detailed general ledger including the above information, or with an incomplete or incorrect general ledger, cannot be assessed and will be delayed, denied or rejected. Lump sum payments in the general ledger cannot be assessed.

### 1.2.5 Statutory declaration

- (a) The information in an application for a provisional or final certificate must be certified as true and correct in a pro-forma statutory declaration sworn by a person from the applicant company who is in a position to attest to the veracity of the application form and its attachments – normally this would be a company director, often the physical producer – and witnessed by somebody authorised at law to do so (see the [Attorney General's Department website](#)).

### 1.2.6 Independent film production consultants (IFPCs)

- (a) We may seek the advice of an independent film production consultant (**IFPC**) in assessing the QAPE claim at the final certificate stage.
- (b) The IFPCs we engage are highly experienced production managers, line producers and production accountants in the film and television industry.
- (c) The IFPC is subject to the [tax secrecy](#) obligations and a contractual duty of confidentiality. We will consult with you to ensure that there is no conflict of interest in relation to the IFPC that is proposed for your project.
- (d) The IFPC works under our supervision and represents us in the course of undertaking the QAPE assessment. You must cooperate with the IFPC's requests.

- (e) We will provide the IFPC's report to you for your comment. You may provide written submissions to us in response to the report prior to us making a final QAPE determination.

### 1.2.7 Notification

- (a) We will notify you in writing when we issue a [final certificate](#), along with the determination of [QAPE](#).
- (b) If we decide to refuse to issue a final certificate, we will notify you in writing.

### 1.2.8 Submission to the ATO

- (a) We send a copy of the final certificate to the ATO. The applicant can then claim the Producer Offset in its income tax return for the financial year in which the project was [completed](#), offset against any pre-existing tax liabilities. Further information on claiming [tax offsets](#) and submission of [company tax returns](#) is available from the ATO website.

### 1.2.9 Statement of reasons and appeal of decision

- (a) You may request that we provide you with a statement of reasons for our decision concerning a final certificate (see section 268 of the [Administrative Review Tribunal Act 2024](#)).
- (b) You may seek review of a decision by the Administrative Review Tribunal (**ART**). A statement of reasons or review of a decision may be sought in relation to a:
  - (i) decision not to issue a final certificate;
  - (ii) determination of the amount of QAPE; or
  - (iii) decision to [revoke](#) a final certificate.
- (c) Further information on the ART's processes can be found at [www.art.gov.au](http://www.art.gov.au).

### 1.2.10 Revocation of a final certificate

- (a) Screen Australia may revoke a final certificate where it was obtained by fraud or serious misrepresentation, and will notify the applicant in writing of this decision. Screen Australia can also refer matters of suspected fraud or misrepresentation to the ATO (section 376-245(3) of the ITAA).
- (b) The information you provide to us may be used for the purposes of considering the revocation of a final certificate.

## 1.3 Tax secrecy

- (a) Division 355 of the [Taxation Administration Act 1953](#) imposes stringent secrecy obligations and restrictions on the staff of Screen Australia. These are the same obligations that apply to ATO officers assessing a company or individual tax return. All information provided by an applicant to POCU will be held by POCU officers on a confidential basis and dealt with in accordance with Division 355.

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## 2 ELIGIBILITY

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### 2.1 Eligible Applicants

#### 2.1.1 The Company

- (a) To be eligible for the Producer Offset, an applicant must be either:
- (i) an Australian resident company, being:
    - A. a company incorporated in Australia; or
    - B. if not incorporated in Australia, a company having its central management and control (CMC) in Australia, or its voting power controlled by shareholders who are residents of Australia. (Taxation Rule [TR 2018/5](#) and [PCG 2018/9](#) provides guidance for when a foreign incorporated company is an Australian tax resident);

*or*

  - (ii) a foreign resident company with an ABN operating through a permanent establishment in Australia. (Taxation ruling [TR 2002/5](#), as amended by [TR 2002/5A](#), [5A2](#) and [5A3](#), provides guidance about whether a foreign resident company has a place at or through which it carries on business for the purposes of the definition of 'permanent establishment').
- (b) Individuals, partnerships, sole traders and a company which is acting in the capacity of a trustee of a trust are ineligible for the Producer Offset.

#### 2.1.2 Company responsibility

- (a) The applicant for the Producer Offset must be the company that either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the project.
- (b) In most cases, the proper applicant is the company that incurs the expenditure. Often this is a special purpose vehicle (**SPV**) incorporated to make and complete the project. Note that the use of an SPV is not a requirement, and companies with other ongoing business may be eligible.
- (c) There is no requirement that a [provisional certificate](#) and [final certificate](#) for the same project must be held by the same entity (see section 376-180 of the ITAA).

#### EXAMPLE

A production company (often the producer's company), which intends to set up an SPV to make the film, may apply for and obtain a provisional certificate in its own name prior to incorporation of the SPV. The final certificate could then be applied for by the SPV.

## 2.2 Significant Australian content

### 2.2.1 Summary of the SAC test

- (a) To be eligible for the Producer Offset, a project must have significant Australian content.
- (b) We refer to this requirement as *meeting the SAC test*. The SAC test reflects the cultural policy objective of the Producer Offset: *to support the production of significant Australian content*.
- (c) Generally, to meet the SAC test, Australians will need to be the key creative contributors, responsible for the project's core origination and there will need to be significant involvement by Australians in the creative development of the project. This is particularly relevant when any copyright in the film is owned by a non-Australian (foreign) entity and there is little or no opportunity for the Australian applicant to participate in the project's revenue.
- (d) In deciding whether or not a project meets the SAC test, we must have regard to each of the elements set out in section 376-70(1) of the ITAA, which are:
  - (i) the subject matter of the film;
  - (ii) the place where the film was made;
  - (iii) the nationalities and places of residence of the persons who took part in the making of the film;
  - (iv) the details of the production expenditure incurred in respect of the film; and
  - (v) any other matters that we consider to be relevant.
- (e) The SAC test is a holistic one and no single element is determinative.
- (f) Your project will not necessarily meet the SAC test merely because you are undertaking pre-production, production and post-production in Australia, and crew and below-the-line cast are Australian nationals. Such a project may fail the SAC test but may still be eligible for the [location offset](#).
- (g) Under the [Acts Interpretation Act 1901](#), 'Australia' in this context does not include New Zealand.

### 2.2.2 How we assess each element of the SAC test

#### 2.2.2.1 Subject matter of the film

- (a) The subject matter of the film is what the project is about. We assess a number of factors, including the extent to which the project has a significant creative connection with Australia and whether the "look and feel" of the project is Australian.
- (b) The applicant must demonstrate meaningful and substantial Australian involvement in the core origination and development of the project. We will ask, for example:
  - (i) did the project originate in Australia or was it developed by Australians?
  - (ii) is the project under Australian control?
  - (iii) were Australian citizens or residents involved in the project's development?

- (iv) is the project based on an Australian story?
- (v) is the project about Australian characters?
- (vi) is the project set in Australia?
- (vii) does the project reflect a cultural background that is particular to Australia or Australians?
- (viii) does the project reveal some aspect of Australia's or Australians' cultural background or experience?
- (ix) are there other relevant factors which are specific to the individual project?

### 2.2.2.2 The place where the film was made

- (a) We assess whether the project will be primarily produced in Australia, including pre-production, production and post-production.
- (b) Projects which undertake:
  - (i) most or all work in Australia will generally have a strong claim in respect of this element. However, it is not the sole determinative factor;
  - (ii) a substantial period(s) of production outside of Australia will generally have a weaker claim against this element.

### 2.2.2.3 The nationalities and places of residence of the persons who took part in the making of the film

- (a) The higher the proportion of Australian citizens and residents involved in the project, the stronger the applicant's claim will be against this element.
- (b) We look at the nationalities and places of residence of the following roles:
  - (i) *executive producer, producer, writer and director*: the nationalities and places of residence of these roles is particularly important;
  - (ii) *lead cast members*: the proportion of Australian actors in lead roles is generally expected to be material. We will look at other equivalent roles in certain genres (such as narrator, presenter, interviewees) as appropriate;
  - (iii) *key creative heads of department*: for example, the director of photography, production designer, editor, costume designer, sound designer and composer; and
  - (iv) *other cast, crew and service providers*: for example, post-production houses.
- (c) To verify claimed roles, we will refer to the general rules crediting such roles used by the Australian film and television production industry and as may be endorsed by the appropriate industry bodies ([Screen Producers Association of Australia](#), [Australian Writers' Guild](#) and [Australian Directors' Guild](#)).
- (d) If you intend to bring in foreign actors for a project you should consult the Australian Government's Foreign Actors Certification Scheme ([FACS](#)) early in the production process. FACS is separate from the Producer Offset.

#### **2.2.2.4 The details of the production expenditure incurred in respect of the film**

- (a) In determining the extent to which the project's production expenditure contributes to the Australian film industry, we consider:
  - (i) the extent to which expenditure is made on Australian citizens or residents and Australian service providers; and
  - (ii) the extent to which expenditure is incurred on goods and services provided in Australia. This includes expenditure on non-Australian citizens or residents to the extent that they are working on the project in Australia.

#### **2.2.2.5 Any other matters that Screen Australia considers to be relevant**

- (a) We must take into account any other matter that we consider to be relevant and may consider:
  - (i) the extent to which creative control rests with Australian citizens or residents;
  - (ii) the extent to which copyright ownership resides with Australians – in particular, whether this is commensurate with the proportion of the budget provided by Australians;
  - (iii) the extent to which there is recoupment and profit participation for Australian nationals or residents, and the extent to which that is commensurate with ownership;
  - (iv) the policy purposes of the Producer Offset, such as the impact of the project on creating a sustainable Australian film and television production industry, or whether it supports the development and employment of Australian key creatives to make Australian films; and
  - (v) anything else that we or you consider relevant.

### **2.2.3 Supporting documentation**

- (a) We may ask you for additional information to assess the project's claim against the SAC test, for example:
  - (i) a development timeline demonstrating the length of association of Australians with the project;
  - (ii) agreements with key creatives which define their length of association, level of creative control and input;
  - (iii) copies of earlier screenplays and correspondence which demonstrates the length of association and impact of Australians in the development of the project;
  - (iv) location survey photos that identify the impact of the Australian landscape on the project;
  - (v) anything else that we or you consider relevant.

### **2.2.4 Official co-productions**

- (a) An official co-production is eligible for the Producer Offset in its own right and is therefore not required to meet the SAC test. By definition it is considered to be an Australian film.

For further information on Australia’s official co-production program, visit the [website](#), or [contact POCU](#).

- (b) Official co-production approval must be granted by the relevant competent authorities prior to a provisional or final certificate for Producer Offset being issued.

## 2.3 Production expenditure and QAPE

### 2.3.1 Production expenditure

- (a) Under section 376-125(1) of the ITAA, *production expenditure* is defined as expenditure an applicant ‘incurs’ to the extent to which it is incurred by the applicant in, or in relation to, the making of the film, or is reasonably attributable to the making of the film.

### 2.3.2 What does ‘incurred’ mean?

- (a) You will need to demonstrate to us that expenditure has been *incurred* by the applicant for it to be considered production expenditure.
- (b) The test as to whether relevant expenditure has been incurred is a legal one, having regard to the circumstances in each case. It requires that there be a *presently existing legal liability to pay*. For an amount to be expenditure that is incurred it must be:
  - (i) required to be paid within an identifiable timeframe;
  - (ii) quantifiable;
  - (iii) pecuniary (i.e. monetary or can be valued in monetary terms); and
  - (iv) a payment to which the applicant is *definitely committed*. Definite commitment requires a complete subjection on the part of the applicant to pay an amount. For example, if the liability is contingent on a future event taking place (such as there being net revenue in a future tax period or the applicant receiving the Producer Offset from the ATO), there is not a definite commitment.
- (c) You will be asked to provide contractual agreements and invoices in support of your claim that expenditure is incurred. We expect to see:
  - (i) a contract which:
    - A. is between the relevant parties;
    - B. is properly executed;
    - C. is dated prior to the work being performed;
    - D. describes in detail the services to be performed;
    - E. states the engagement period;
    - F. states the payment terms; and
    - G. if varied, is properly documented in writing in accordance with A-F above; and
  - (ii) a valid tax invoice that matches the executed contract.

- (d) While actual payment is not necessarily required in order for expenditure to be incurred, we may request evidence of actual payment (such as a remittance advice or bank statement) to confirm whether an amount has been incurred.
- (e) We may also request evidence of how the expenditure has been or will be treated for tax purposes (for example, a letter from your tax accountant) and evidence from third party providers of how payment received for their services has been or will be treated for tax purposes.
- (f) An applicant may incur production expenditure in the financial year for which the Producer Offset is sought or in earlier financial years. Expenditure incurred in a subsequent financial year to the completion of the film cannot be production expenditure. Applicants should ensure that QAPE expenditure is contracted throughout the production process to avoid QAPE under post-dated or back-dated contracts being rejected; expenditure under contracts dated after the end of the relevant financial year will ordinarily not count as QAPE (unless there is clear and unequivocal additional evidence that the expenditure was actually paid before the end of the relevant financial year).

#### EXAMPLES

Example 1: An applicant has obtained various services for a project from another company, including locations and office space. The applicant provides a tax invoice with its final certificate application, as evidence that the expenditure has been incurred. The tax invoice alone, with no further information on the agreement between the parties, is unlikely to be sufficient to enable Screen Australia to determine that there is a present existing liability to pay in place and that the expenditure has been properly incurred as required under the ITAA. Accordingly, the payment may not be counted as QAPE.

Example 2: An applicant begins principal photography in August 2021 and shoots for approximately eight weeks and then begins post-production for twenty weeks. The project is completed in May 2022. The contracts for the key personnel are dated in August 2022. Given the contracts are dated after the services were performed, this does not establish that expenditure was incurred on the making of the film. The applicant will need to demonstrate what agreement with the key personnel was in place during the making of the film (or actual payment at the time of principal photography) to substantiate that the expenditure has been properly incurred as required under the ITAA.

Example 3: An applicant has a number of projects in development and production. The individual producer who is an employee of the applicant is paid an annual salary of \$100,000. Half of this (\$50,000) is claimed as QAPE. The applicant will need to provide documentation to support their claim including the employment agreement with the individual producer, information on the applicant's other projects at the relevant time and detail (eg, timesheets) of how the fee has been apportioned across the other activities of the applicant.

### 2.3.3 What does *for the making of the film* mean?

- (a) You must demonstrate in your application that costs claimed as production expenditure are *for the making of the film* (see section 376-125(3) of the ITAA).
- (b) The making of the film means doing the things necessary for the production of the first copy of the film. This includes development, pre-production, principal photography and post-production activities, and any other activities that are necessary to bring the film up to the state that it is ready to be distributed, broadcast or exhibited to the general public.

- (c) The making of the film does not include:
- (i) developing the proposal for the making of the film;
  - (ii) arranging or obtaining finance for the film;
  - (iii) distributing the film (other than the activities specifically included in the legislation; namely, (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) (see section 376-170(2) item 7 of the ITAA); or
  - (iv) promoting the film.

#### 2.3.4 QAPE

- (a) QAPE is a subset of [production expenditure](#). It has a dual role for the purposes of the Producer Offset by providing the basis for determining:
- (i) whether the [minimum QAPE thresholds](#) have been met; and
  - (ii) the amount of the Producer Offset payable, because it is the amount on which the fixed percentage (30% or 40%) is calculated.
- (b) QAPE is defined in section 376-145 of the ITAA as the applicant's production expenditure that is incurred for, or is reasonably attributable to:
- (i) goods and services provided in Australia;
  - (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.
- (c) QAPE may include, for example:
- (i) remuneration of cast and crew for work undertaken in Australia;
  - (ii) expenditure on legal services provided in Australia;
  - (iii) post-production undertaken by post houses in Australia;
  - (iv) non-depreciable goods purchased in Australia;
  - (v) the cost of hiring items for use in the project, to the extent that the items were used in Australia;
  - (vi) the decline of value of a depreciating asset used in Australia for the making of the project.
- (d) Generally, only services that are provided in Australia are considered QAPE. If a company contracts an Australian firm to provide production services, and that firm subcontracts to a non-Australian firm or undertakes some of those services outside of Australia, the proportion of the expenditure that is undertaken outside Australia is non-QAPE. Under section 376-160 of the ITAA, this is the case even if the services are embodied in goods, or a deliverable, and that deliverable is provided to the company in Australia.

**EXAMPLES**

Example 1: An Australian post-production company enters into an agreement to perform services on a project eligible for the Producer Offset. Part of the agreement includes work that is outsourced to a company in New Zealand. The expenditure for the outsourced work is not QAPE because the services are not performed in Australia.

Example 2: A wig is hired from a specialty store in London to use in a project. The hire price is QAPE to the extent that the wig is used on the making of the film in Australia.

**2.3.5 The Gallipoli clause**

- (a) Section 376-170(2) item 4 of the ITAA (also known as the ***Gallipoli clause***) provides limited circumstances where QAPE may include certain costs of Australians on location shoots outside Australia.
- (b) The requirements are that:
  - (i) the expenditure is for the remuneration of Australian residents (citizenship is not enough if the Australian resides overseas);
  - (ii) the expenditure is incurred, and paid for services, during principal photography; and
  - (iii) the subject matter of the film reasonably requires the use of the overseas location.
- (c) In relation to (b)(iii) above, a claim that the subject matter of the film reasonably requires overseas shooting will only be made out where an applicant can sufficiently show that the story and setting require it. Commercial or budgetary considerations are not relevant. We may ask the applicant to demonstrate that the overseas location cannot be effectively duplicated in Australia.
- (d) If the Gallipoli clause does apply, the qualifying expenditure is limited to wages, fringes and per diems of the Australian resident. Actual travel costs and actual accommodation costs of Australian resident crew for an overseas location shoot may also be counted under section 376-170(2) item 2(b) of the ITAA.

**2.3.6 The two-week rule**

- (a) QAPE may include the remuneration (including salary, fringes, per diems, travel and accommodation) of foreign crew, including producers and executive producers, for work undertaken in Australia, regardless of their citizenship or residency. However, crew members must remain in Australia and work on the film for at least two consecutive calendar weeks (14 consecutive nights) for expenditure attributable to their stay to count as QAPE.

**2.3.7 Australian-held copyright**

- (a) Expenditure incurred in acquiring Australian copyright in a pre-existing work, for use in a project, may be QAPE if the copyright is held by an individual or company that is an Australian resident (see section 376-150(1) item 2 of the ITAA).
- (b) Footage claimed under this section must be part of a pre-existing work. Applicants must provide an archival log with their [final certificate](#) application that clearly lists all archival

footage used, the sources, length of clips, fee paid, and which footage is licensed from an interested party.

- (c) Where footage is acquired from an interested party (such as a parent company), we must test whether the arrangement and fees charged are at [arm's length](#).
- (d) Applicants must provide information, such as arm's length quotes for a similar type of footage, to substantiate that the rates charged are at arm's length.
- (e) In cases where bulk amounts of archival footage are used from the one source (generally, more than three minutes), a sliding scale of rates is expected to be applied.
- (f) A project which reuses a significant amount of footage from a previous project (for example, in a 'best of' episode of a series), may not be eligible for the Producer Offset on the basis that it does not meet the relevant format or other requirements.

## 2.4 Minimum duration and QAPE

- (a) To be eligible for the Producer Offset, a project must:
  - (i) be of a minimum duration; and
  - (ii) incur a minimum level of QAPE.

### 2.4.1 Minimum duration requirements for different formats

- (a) The minimum duration requirements for different formats (see sections 995-1 and 376-65(3)-(5) of the ITAA) are as follows:
  - (i) *Feature films, including theatrical documentaries and animations (30% or 40% offset depending on eligibility)*
    - A. *Feature film*: more than 60 minutes
    - B. *Large format (such as IMAX)*: at least 45 minutes
  - (ii) *Non-feature programs other than documentaries or animations (30% offset)*
    - A. *Single episode*: 1 commercial hour
    - B. *Season of a series (at least 2 episodes)*: commercial ½ hour per episode
  - (iii) *Non-feature documentaries (30% offset)*
    - A. *Single episode or season of a series*: commercial ½ hour per episode
  - (iv) *Non-feature animations (30% offset)*
    - A. *Season of a series (at least 2 episodes)*: commercial ¼ hour per episode
    - B. *Single episode*: commercial hour
    - C. *Short-form animation (single episode or series)*: commercial ¼ hour in total

### 2.4.2 Minimum QAPE requirements for different formats

- (a) The minimum level of QAPE depends on the format of the project:
  - (i) all formats must meet a *total QAPE threshold*; and

- (ii) some formats must also meet a *per-hour QAPE threshold*.
- (b) The minimum total and per hour QAPE requirements for different formats (see section 376-65(6) of the ITAA) are as follows:

<b>Format</b>	<b>Total QAPE threshold</b>	<b>Per hour QAPE threshold</b>
Feature film	\$500,000	N/A
Single episode program	\$500,000	If a documentary - \$250,000 Otherwise – N/A
Series or season of a series*	If a documentary - \$500,000 Otherwise – \$1,000,000	If a documentary - \$250,000 Otherwise – \$500,000
Season of drama series for which:  <i>If predominantly animated –</i> <ul style="list-style-type: none"> <li>• the season commenced being made on or after 1 July 2024; and</li> <li>• the season (other than the pilot episode, if any) is made within a period of no more than 36 months</li> </ul> <i>Otherwise –</i> <ul style="list-style-type: none"> <li>• principal photography commenced on or after 1 July 2024; and</li> <li>• all principal photography (excluding the production of a pilot episode, if any) took place within a period of no more than 12 months</li> </ul>	\$35,000,000	N/A
Short form animated film	\$250,000	\$1,000,000

*\*A project that is a drama series may satisfy one or both of these categories, in which case, provided the project meets one or both of the applicable threshold/s, the minimum QAPE requirements will be taken to have been met.*

- (c) Per-hour QAPE is calculated by dividing the total QAPE of the project by its actual duration in hours (for example, for series, *the total duration = the number of episodes × the actual duration of each episode, expressed in hours*).
- (d) The QAPE spreadsheet, which must be lodged with all applications, will automatically calculate whether your project meets the QAPE thresholds.
- (e) For the purposes of meeting the QAPE thresholds, the ITAA allows official co-productions to count expenditure incurred in the non-Australian co-producing country that would have been QAPE if it had been incurred in Australia. This applies only to official co-productions and only to meeting the thresholds for eligibility.

## 2.5 Format requirements

### 2.5.1 Eligible formats

- (a) The following formats are eligible for the Producer Offset (see section 376-65(2)(c) of the ITAA):
  - (i) a feature film;
  - (ii) a single episode program;
  - (iii) a series;
  - (iv) a season of a series;
  - (v) a short form animated film.

#### 2.5.1.1 Series and seasons of series

- (a) Series and seasons of series must contain at least two episodes.
- (b) Each season of a series:
  - (i) is treated as a different film for the purposes of the Producer Offset;
  - (ii) must be the subject of a separate application; and
  - (iii) must separately meet the expenditure thresholds.

#### 2.5.1.2 The 65-commercial-hour cap

- (a) Series which exceed 65 commercial hours are not eligible for the Producer Offset. We refer to this as *the 65-commercial-hour cap*, which:
  - (i) does not apply to drama series (see (c) below); and
  - (ii) applies to the entire series, whether or not any seasons or episodes of the series were made without the Producer Offset or by different companies and individuals.
- (b) The [QAPE spreadsheet](#) will calculate whether your series has met the 65-commercial-hour cap.
- (c) A drama series is the only format excluded from the 65-commercial-hour cap. In determining if a project is a drama series, we rely on the definition of an Australian drama program under Part 2, section 8 of the [Broadcasting Services \(Australian Content and Children's Television\) Standards 2020](#).

#### 2.5.1.3 New creative concept

- (a) Sometimes a new series emerges from an existing series (for example, a re-boot or spin-off). Where the applicant can demonstrate that the new project has a new creative concept, the project will be treated as a season of a new series, and the 65-commercial-hour cap resets.
- (b) In determining whether the series has a new creative concept, we consider the degree of difference in the below factors against previous other series (see section 376-70(2) of the ITAA):
  - (i) the title (although a mere change of name is not a new creative concept);

- (ii) the principal characters, the setting, production locations and the individuals involved in the making of the series; and
  - (iii) any other matters that we consider to be relevant.
- (c) Where one company takes over the making of a series from another company – even if the companies have completely different personnel and management – but the series is still clearly identifiable as a continuation of the same series, it is unlikely to have a new creative concept (see [Beyond Productions Pty Ltd and Screen Australia \[2011\] AATA 39](#) at paragraph 71).

#### 2.5.1.4 Documentary

- (a) In determining whether a project is eligible for the Producer Offset as a documentary, we consider (see section 376-25 of the ITAA):
- (i) the extent and purpose of any contrived situation featured in the film;
  - (ii) the extent to which the film explores an idea or a theme;
  - (iii) the extent to which the film has an overall narrative structure; and
  - (iv) any other relevant matters.
- (b) An applicant must satisfy us that the project is a creative treatment of actuality that is not an infotainment or lifestyle program, or a magazine-style program.
- (c) A magazine-style program is not a documentary. A magazine-style program is one that:
- (i) presents factual information;
  - (ii) has two 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.
- (d) An infotainment or lifestyle program is also not a documentary, and is defined in Schedule 6 to the [Broadcasting Services Act 1992](#) as a program, the sole or dominant purpose of which is to present factual information in an entertaining way, where there is a heavy emphasis on entertainment value.

#### 2.5.2 Ineligible projects

- (a) The following types of projects are not eligible for the Producer Offset (see section 376-65(2)(d) of the ITAA):
- (i) a reality TV program (other than a documentary);
  - (ii) an advertising program or commercial;
  - (iii) a discussion, quiz, panel or game show, or variety program, or a program of a like nature;
  - (iv) a film of a public event;
  - (v) a training film;
  - (vi) a news or current affairs program;

- (vii) a computer game within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*.

### 2.5.3 Completed project

- (a) A project must be completed prior to applying for a [final certificate](#). For the purposes of the Producer Offset, a project is completed 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 (see section 376-55(2) of the ITAA). This means:
  - (i) *if the project is a feature film*: when the first Digital Cinema Package (DCP) or Digital Cinema Distribution Master (DCDM) is mastered;
  - (ii) *for other projects*: on completion of a fully mixed digital master.
- (b) We require proof of the completion date for final certification, for example, a dated final technical check or letter of confirmation from the post-production house, or anything else we or you consider relevant.

## 2.6 Impact of other Australian government incentives on eligibility

- (a) The Producer Offset, the location offset and the PDV offset are mutually exclusive. Therefore, a company is not eligible to claim the Producer Offset for a project if that project has received a final certificate for the location or PDV offsets.
- (b) A provisional certificate does not limit eligibility for another offset.
- (c) A project will also be ineligible for the Producer Offset if it has benefitted from any former Australian Government film incentives (that is, incentives that have been discontinued) or has received support under Screen Australia's Producer Equity Program (see section 376-55(4) of the ITAA).
- (d) Funding from state and territory incentives does not impact a project's eligibility for the Producer Offset.

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## 3 KEY POLICY AREAS

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### 3.1 Exhibition and distribution requirements

#### 3.1.1 Feature films – commercial exhibition to the public in cinemas

- (a) To be eligible for the 40% Producer Offset, your project must be (see section 376-2(3)(a)(i) of the ITAA):
- (i) a feature film (see section 3.1.2 below); and
  - (ii) produced for commercial exhibition to the public in cinemas (see section 3.1.3 below).
- (b) Films which are not produced for commercial exhibition to the public in cinemas may be eligible for the 30% Producer Offset (see section 376-60(b) of the ITAA). For example, films produced for a television or a subscription service.

#### 3.1.2 Feature films

- (a) In order to be a feature film which is eligible for the 40% Producer Offset, your project must meet these duration and QAPE requirements:
- (i) it must be *feature length*, which means it must be -
    - A. more than 60 minutes (excluding large formats); or
    - B. at least 45 minutes for a large format feature film (such as IMAX),and
  - (ii) it must meet the minimum QAPE threshold of \$500,000.

(See sections 2.4.1 and 2.4.2 for duration and minimum QAPE requirements for other formats.)

#### 3.1.3 Produced for commercial exhibition to the public in cinemas

- (a) We will examine a project's exhibition and distribution arrangements to determine if it is being or was produced for commercial exhibition to the public in Australian cinemas.
- (b) We must be satisfied that the exhibition to the public in cinemas is genuinely commercial and not token or contrived.
- (c) In determining this, we will assess the application against the following principles and against the [Distribution Evidence](#) and your [Statement](#) as outlined at section 3.1.4 below. Our assessment of this requirement is a holistic one and no single element is determinative.
- (d) We expect the planned release of the film to earn a meaningful proportion of the project's revenue from the Australian theatrical box office.
- (e) We can make an assessment of whether the film is being produced for commercial exhibition to the public in cinemas at the [provisional certificate](#) stage, if requested by you. Alternatively, an assessment of whether the film is being or was produced for commercial exhibition to the public in cinemas can occur at the [final certificate](#) stage.

### 3.1.4 Distribution Evidence, Statement & supporting documentation

- (a) If you are seeking the 40% Producer Offset in respect of your project, you must provide us with the following (“**Distribution Evidence**”):
- (i) Marketing and sales plan(s) (including projections of box office, print and advertising (“**P&A**”) budget and number of locations as set out at (c) below);
  - (ii) Distribution agreement (or, for some provisional certificates, a comprehensive deal memo);
  - (iii) Cast and crew agreements;
  - (iv) Finance plan;
  - (v) Documents substantiating the theatrical release of the film (at **final certificate** stage only, where the film has been released); and
  - (vi) Any other documents you or we think are relevant, including any additional documentation we ask you to provide for **final certificate** determinations.
- (b) Applicants must also provide a statement with their application, which persuasively addresses each of the questions and related factors set out at (c)-(h) below (“**Statement**”):
- (c) *Is there a theatrical sales and marketing plan prepared by the distributor with a realistic strategy to release the film for commercial exhibition to the public in Australian cinemas?* Key terms to be considered include:
- (i) **BOX OFFICE**: gross box office projections;
  - (ii) **MARKETING/P&A SPEND**: an estimated P&A budget (the costs of marketing the film) commensurate with the box office projections;
  - (iii) **AUDIENCE**: the anticipated cinema audience and how it will be reached;
  - (iv) **LOCATION COUNT**: the draft sales strategy including expected/projected location count;
  - (v) **EXHIBITION STRATEGY**: how the film will be positioned to exhibition as an indication of its availability for audiences to watch the film;
  - (vi) **THEATRICAL WINDOW**: the theatrical window for the film and how it relates to windows for other exploitation;
  - (vii) **COMPARATIVE TITLES**: comparative titles used to set the projected box office and P&A estimate; and
  - (viii) **ADDITIONAL INFORMATION**: any other information the distributor considers relevant.
- (d) *What is the track record of the distributor in distributing Australian feature films for commercial exhibition to the public in cinemas? We will consider, for example:*
- (i) **THEATRICALY RELEASED TITLES**: information which shows the distributor’s experience in the exploitation of theatrical rights across a slate of films, including but not limited to the following details of the distributor’s previous releases:
    - A. *titles*;

- B. *reported box office (see (ii) below);*
  - C. *screen count; and*
  - D. *release dates.*
- (ii) **BOX OFFICE DATA:** the track record of the distributor which should ideally be from independently verified box office data. Box office data which is independently verified (for example, data from an industry accepted third party box office reporting service) will generally be more persuasive than data which is not.
  - (iii) **MEETING PAST REPRESENTATIONS:** whether the distributor has a track record of delivering on the past theatrical plans for Australian films it has proposed to Screen Australia.

#### **EXAMPLE**

It may be detrimental to the assessment of the distributor's track record in releasing Australian feature films for commercial exhibition to the public in cinemas if the distributor has not delivered on its past theatrical plans for Australian films by instead directly releasing them on other platforms such as subscription video-on-demand (SVOD) or where the distributor has significantly reduced the release, or not released the film at all in cinemas.

- (e) *Is there a distribution agreement with terms that support the commercial exhibition of the film to the public in Australian cinemas?* We will look at the whole of the distribution agreement including, for example, to see if it is an arm's length arrangement (which may assist the application) and whether there is a distribution advance which is reasonably commensurate with the film's total budget.
- (f) *What is the film's finance plan?* We may consider, for example, the extent to which the project has third party market support.
- (g) *On what terms has the cast been engaged?* We expect to see evidence that all cast are engaged under the relevant performers' contracts, with appropriate buy-outs of residual rights, consistent with a feature film.
- (h) *What is the theatrical experience of the key production personnel working on the film?* Having key personnel (including Heads of Department) on the project with a track record of producing films for commercial exhibition to the public in Australian cinemas may assist your application. You should submit a list of each person's theatrical feature film credits with your application.
- (i) *Are there any other relevant factors?* Screen Australia can also take into account information from its own records or enquiries about the distributor's history and involvement in previous films and other factors that it considers relevant.

#### **3.1.4.1 Other forms of distribution (four-walling, festivals and cinema-on-demand)**

- (a) Where a cinema is hired for screenings by a party connected to the project, we refer to this as "four-walling". Four-walling arrangements will not generally be indicative of commercial exhibition to the public in cinemas.
- (b) We will consider other distribution arrangements, including exhibition of a project at festivals or through cinema-on-demand. However, festival releases on their own will not

generally be indicative of commercial exhibition to the public in cinemas. Films proposed for release on cinema-on-demand are unlikely to be approved at [provisional certificate](#) stage, but can be assessed at [final certificate](#) stage taking into account the details of the actual theatrical campaign.

#### **3.1.4.2 Issue of provisional certificate and re-assessment**

- (a) Where we determine that a film is not being produced for commercial exhibition to the public in cinemas at provisional certificate stage, we will issue a [provisional certificate](#) on the basis that the criteria for the higher rebate has not yet been met. This decision will be outlined in the Schedule to the provisional certificate.
- (b) Applicants in this position may apply for:
  - (i) a re-assessment of the project prior to lodging a [final certificate](#) application, but we will only accept the application if there have been substantial changes to the project; and/or
  - (ii) a [final certificate](#) for the 40% Producer Offset, and we will determine whether the project is eligible for the 40% or 30% Producer Offset.

#### **3.1.4.3 Assessment of feature film exhibition – final certificate stage**

- (a) You can ask us to assess a project's eligibility for the 40% Producer Offset at the final certificate stage where:
  - (i) a project does not have a [provisional certificate](#);
  - (ii) you did not ask us to assess the project for eligibility for the 40% Producer Offset at the provisional certificate stage; or
  - (iii) we did not approve the project for the 40% Producer Offset at the provisional certificate stage and there have been changes to the distribution arrangement or there is evidence of a theatrical release.
- (b) When assessing a project's eligibility for the 40% Producer Offset at the final certificate stage, we will consider the factors set out above at section [3.1.4](#).

#### **3.1.4.4 Requirements at the final certificate stage where the project has a provisional certificate for the 40% Producer Offset**

- (a) At the time of your application for the final certificate, you will be asked to provide updated [Distribution Evidence](#) including the following:
  - (i) Distribution agreement (fully executed);
  - (ii) *(If your film is yet to be released)* Sales and marketing plan (updated) including dates of anticipated release (see also section [3.1.4\(c\)](#) above for key terms) and any additional documentation which confirms the details of the release;
  - (iii) *(If your film has already been released)* The following details:
    - A. gross box office (note section [3.1.4\(d\)\(ii\)](#) above);
    - B. screens;
    - C. locations;
    - D. session policy for each location;

- E. P&A budget and actual spend; and
- F. length of run.

### 3.1.5 Other eligible formats – distribution

- (a) Films which are not produced for commercial exhibition to the public in cinemas may be eligible for the 30% Producer Offset (see section 376-60(b) of the ITAA).
- (b) To be eligible for the 30% Producer Offset, the film must be distributed, broadcast or exhibited to the public in Australia, including for instance by making the project available through television broadcasting, DVD or subscription video-on-demand (SVOD).
- (c) Fully executed distribution agreements and evidence of the release, platform and date must be provided when applying for a [final certificate](#).

## 3.2 Arm's length dealings and interested parties

- (a) Where a transaction is not conducted at arm's length, the expenditure able to be claimed as [QAPE](#) will only be the amount, if any, that would have been incurred if the parties were dealing at arm's length (see section 376-175 of the ITAA). We refer to this as *the arm's length principle*.

### 3.2.1 The arm's length principle

- (a) The arm's length principle ensures that:
  - (i) expenditure incurred by the applicant for goods and services is commercially reasonable;
  - (ii) the transactions between the parties have involved real bargaining; and
  - (iii) the outcome is not inflated compared to the market price.
- (b) The scope for determining that a transaction is conducted at less than arm's length is broad, and we may look at any connection between the parties (either direct or indirect) and any other relevant circumstance.
- (c) Often parties do not transact at arm's length because the party with whom the applicant is contracting is an interested party. This means the party has an interest in the receipt of the Producer Offset or an interest with respect to the applicant because of a corporate or business relationship with the applicant.

### 3.2.2 Who is an interested party?

- (a) Some examples of interested parties are:
  - (i) a company with common directors with the applicant (for example, its parent company);
  - (ii) an equity investor in the project;
  - (iii) any party associated with the project that has a financial interest in the applicant's receipt of the Producer Offset, including because it has or will trigger a benefit to the associated party.

- (b) This list is not exhaustive, and other aspects of a transaction may give rise to us identifying a connection or association which would classify it as an interested party transaction.
- (c) Projects with interested party arrangements should anticipate longer processing times than those with arm's length arrangements.

### 3.2.3 Reinvestment

- (a) The term 'reinvestment' is not defined in the ITAA. It is an expression often used to define an arrangement where a person or company providing services for a project (such as the individual producer, director or post-production house for the project) chooses to invest a portion of their fee towards the cost of production of the project. In those circumstances the payment of the fee, if claimed as QAPE, will be expenditure between interested parties.
- (b) In order for this expenditure to be considered QAPE:
  - (i) the expenditure must be properly incurred, and in particular the expenditure and the investment must not be expressed as being contingent on one another (see section 2.3 above);
  - (ii) it is important that the expenditure is fully and properly documented (see section 2.3.2 above); and
  - (iii) the expenditure will be assessed in accordance with the principles set out below in this section.

### 3.2.4 What does this mean for the Producer Offset?

- (a) Where QAPE is claimed for expenditure between interested parties, Screen Australia will test the transaction using the following principles:
  - (i) was the expenditure genuinely incurred?
  - (ii) what goods or services was the expenditure incurred for?
  - (iii) would a company acting at arm's length contract for those particular goods and services?
  - (iv) is the quantum of the fee paid an arm's length price, including in consideration of the rate charged and length of time engaged?
- (b) If the quantum of the fees, rates charged and/or length of time of the engagement are considered inflated, only the arm's length price, if any, will be considered QAPE.

### 3.2.5 Assessment of interested parties

- (a) Interested party expenditure claimed as QAPE is reviewed as part of the final certificate assessment process. The onus is on the applicant to substantiate any claim involving interested parties.
- (b) As part of the final certificate application, applicants must provide the following:
  - (i) a list of all interested parties involved in the making of the film and a description of the relationship between the parties;

- (ii) all agreements between the applicant and interested parties including a detailed breakdown of the work to be completed (see general requirements for contracts at section 2.3.2 above);
  - (iii) the completed worksheet 'e' of the final [QAPE spreadsheet](#), providing a breakdown of all interested party expenditure including the role, rates charged, number of weeks and total fee paid. (This must not be a copy of the general ledger, but a summary of this expenditure so we can clearly see the rates charged and length of engagement);
  - (iv) in respect of personnel, facilities and supplies – two arm's length quotes obtained at the time of budgeting for the film and/or evidence of benchmarking against market rates. Any bid or tender documentation should also be provided;
  - (v) the general ledger, as outlined at section 1.2.4 above, which must clearly detail interested party expenditure; and
  - (vi) any other relevant information requested by us.
- (c) The arm's length quotes provided must be for comparable goods and services and for a similar type and scale of project in order to be accepted.
- (d) If the scope of work changes during production – for example, in relation to the post-production or VFX work required on the project – an amended agreement, change orders or similar written evidence must be provided. The applicant must be able to substantiate the final costs claimed as [QAPE](#).
- (e) In considering the question of arm's length rates and what is commercially reasonable, we will take into account substantiation provided by the applicant, the recommendations of the IFPC (if engaged) and the knowledge and experience of the members of the board and employees of Screen Australia.
- (f) The assessment of non-arm's length expenditure is distinct from the assessment of the above-the-line cap.

#### **EXAMPLE**

An applicant makes a 10 x 30 minute comedy series. The applicant's parent company provides the services of numerous personnel to work on the project, including producers, production assistant and accountants. In order to claim expenditure paid by the applicant to the parent as QAPE, the applicant should provide the following:

- contracts between the applicant and the parent company for each role, clearly outlining the services to be provided, dates the work will be performed and the fees for the relevant role;
- details within the general ledger and the interested party worksheet – including name, role, fee, date, duration for each of the personnel;
- if the personnel providing the services are working on more than one project – details of how their fees and time have been apportioned across the projects;
- employment contracts if requested by Screen Australia;
- evidence of benchmarking against industry standard rates for the work. This could include rate cards or rates charged by third party providers for the services;
- if there are any variations to the work and fees in the original contracts – variations to the contracts; and

- if requested by Screen Australia, tax invoices.

### 3.3 Above-the-line cap

- Above-the-line (**ATL**) expenditure which can be **QAPE** is capped at 20% of total film expenditure (see section 3.3.2 below and section 376-170(4)(b)(ii) of the ITAA). We refer to this as the *above-the-line cap (ATL Cap)*.
- The ATL Cap applies to all films applying for the Producer Offset, except for documentaries.
- Any expenditure in excess of the ATL Cap remains part of **total film expenditure**, but it is not considered **QAPE** for the purpose of calculating the Producer Offset.
- Exceeding the ATL Cap does not in itself have an impact on the project's eligibility for the Producer Offset, and a project may still be eligible if it satisfies all other eligibility requirements.

#### 3.3.1 What expenditure sits ATL?

- The following types of expenditure must sit ATL and are therefore subject to the 20% ATL Cap:
  - development expenditure, including expenditure on story and script;
  - remuneration (including fringes, annual leave and superannuation entitlements but excluding payroll tax and workers compensation) for services rendered by the:
    - principal director or directors for a series;
    - producers, including but not limited to executive producers and co-producers;
    - principal cast.
  - As a general rule, Screen Australia expects to see at least two of the principal cast sitting ATL. Principal cast includes:
    - any cast member who is an essential element or a requirement of financing, completion guarantee, distribution or broadcast;
    - any cast member whose remuneration is substantially above other cast members;
    - any imported cast.

#### 3.3.2 What is total film expenditure?

- The 20% ATL Cap is based on the total film expenditure of the film, which is different from **production expenditure** and **QAPE**.
- In summary, total film expenditure means the total amount of a production company's production budget for a film, including development and financing, but excluding a distributor's expenditure on promotion and distribution (save for certain expenditure on materials used in promotion and distribution). Where the project is an official co-production, this includes any expenditure in a foreign country that would have amounted

to QAPE if it had been expended in Australia, but you should refer to the definition in the section 376-170(6) of the ITAA.

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**UPDATE LOG**

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**31 OCTOBER 2024**

- Updated to include the introduction of a new per season minimum QAPE threshold of \$35 million for drama series.
- Section 1.2.9 edited to refer to new Administrative Review Tribunal (formerly Administrative Appeals Tribunal).
- Section 2.3.2 edited to provide additional guidance on incurred expenditure.
- Section 2.4 edited to streamline minimum duration and QAPE requirement information.
- Edits throughout for clarity.

**22 MARCH 2022**

- These guidelines replace the 16 November 2015 Producer Offset Guidelines.

**1 DECEMBER 2018**

- References to the Producer Offset Rules updated to reflect the Producer Offset Rules 2018 which have replaced the repealed Producer Offset Rules 2007.

**1 APRIL 2017**

- Edited section 2.5.4 - clarifying process.
- Edited section 3.1

**29 AUGUST 2016**

- 2.5.5 inserted regarding distribution for all other eligible formats other than feature films.
- Updated section 1.2 - ATO contact details.

**21 MARCH 2016**

- Edited sections 2.5.2 and 2.5.4 for clarity on the feature film duration.

**12 FEBRUARY 2016**

- Edited sections 1.1, 2.6.1 and 2.5.4 for clarity.
- Section 2 expanded to include detailed guidance on the significant Australian content test.

**16 NOVEMBER 2015**

- These guidelines replace the July 2008 Producer Offset Guidelines.