



Australian Government



# PRODUCER OFFSET GUIDELINES

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UPDATED 1 December 2018 Screen Australia reserves the right to change these guidelines from time to time. Please ensure you check the website for the latest version.

See last page for an update log.

## IMPORTANT NOTES

These guidelines are not a legal document. This means that:

- You are encouraged to seek professional advice when preparing an application, and
- You should consult Division 376 of the [Income Tax Assessment Act 1997](#) (ITAA, as amended) and the [Producer Offset Rules 2018](#) (the **Rules**). If there is an inconsistency between the guidelines and the ITAA or the Rules, the provisions in the ITAA and the Rules prevail.

### Do these guidelines apply to you?

These guidelines reflect amendments to the Producer Offset that were made by Schedule 9 to the *Tax Laws Amendment (2011 Measures No. 7) Act 2011* and Schedule 1 to the *Tax and Superannuation Amendment (2013 Measures No. 2) Act 2013*.

- These guidelines are written for: Projects without Screen Australia production funding that started pre-production on or after 1 July 2011, and
- Projects with Screen Australia production funding that were approved (i.e. a Letter of Approval issued) before 1 July 2011 (even if they started pre-production after that date), and

For other projects, please [can contact Screen Australia's Producer Offset and Co-production Unit \(POCU\)](#).

# PRODUCER OFFSET

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## CONTENTS

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<b>SECTION 1: INTRODUCTION</b>	<b>3</b>
1.1 What is the Producer Offset?	3
1.2 How it works	4
1.3 Tax secrecy	5
<b>SECTION 2: ELIGIBILITY</b>	<b>6</b>
2.1 Significant Australian content	6
2.2 Eligible entity	9
2.3 Company responsibility	9
2.4 Completed project and commencement	10
2.5 Formats, QAPE thresholds and duration	10
2.6 Exclusion of access to other Australian Government incentives	16
<b>SECTION 3: PROCESS</b>	<b>18</b>
3.1 Provisional certificate	18
3.2 Final certificate	19
3.3 Statutory declaration	21

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# PRODUCER OFFSET

## SECTION 1: INTRODUCTION

The Producer Offset is administered by Screen Australia under Division 376 of the [Income Tax Assessment Act 1997 \(ITAA\)](#), as amended) and the [Producer Offset Rules 2018 \(Rules\)](#). These guidelines have been prepared to assist applicants for [provisional certificate](#) and [final certificate](#) for the Producer Offset. The guidelines should be read in conjunction with the 'QAPE Spreadsheet' that should be used to calculate qualifying Australian production expenditure ([QAPE](#)), and the [At a Glance](#), an A-Z guide to QAPE.

Throughout these guidelines, 'we' refers to Screen Australia, and 'you' to a company applying for a provisional or final certificate. Highlighted words are hyperlinks to websites or other sections of the guidelines.

### 1.1 What is the Producer Offset?

The Producer Offset is a refundable tax offset (i.e. a rebate) for producers of Australian films, worth:

- 40 per cent of the QAPE incurred by the applicant company in the making of a [feature film](#), and
- 20 per cent of QAPE incurred by the applicant company in the making of TV and other eligible projects, other than feature films.

Films are only eligible for the 40% offset if they are feature films produced for exhibition to the public in cinemas and meet all offset requirements. A film will only be eligible for the feature film offset if the primary release strategy for the film is a release in public cinemas. Films produced for home entertainment, TV or VOD release are not eligible for the 40% offset but are eligible for the 20% offset if they meet all offset requirements. The higher offset is available for feature films because they generally have higher production costs and it can also be more difficult to finance feature films because they are one off projects. Refer to [Feature films and distribution](#).

The Producer Offset is one of three refundable tax offsets for film production; the others are administered by [the Department of Communication and the Arts](#) (the **Department**):

- The Location Offset, a 16.5 per cent offset on QAPE for film and television projects filmed in Australia with an Australian spend of over \$15 million, and
- The Post, digital and visual effects (**PDV**) Offset, a 30 per cent offset on the QAPE that relates to post, digital and visual effects production for a film.

Please note that the ITAA uses the term 'film' to refer to all eligible formats. These guidelines use the term 'project', unless quoting the ITAA.

## 1.2 How it works

### 1.2.1 Final certificates

In order to claim the Producer Offset, you must be issued with a [final certificate](#) by us. We will issue a final certificate if the production meets the relevant requirements set out in Division 376 of the ITAA. In summary:

1. The project must have [Significant Australian content \(SAC\)](#) or be an official co-production (section 376-65(2)(a))
2. The applicant must be an [Eligible entity](#) (section 376-55(1)(d))
3. The applicant must have the requisite [Company responsibility](#) – i.e. have been responsible for the making of the project (section 376-65(1)(a))
4. The project must be of an eligible format (section 376-65(2)(c)-(d)) and duration (section 376-65(3)-(5)), and meet or exceed the relevant [QAPE thresholds](#) for that format (section 376-65(6))
5. The project must be [Completed](#) in the income year of the applicant's tax return (section 376-55(1)(a)), and
6. The project or any entity in relation to the project must not have accessed other [Exclusion of access](#) to other Australian Government incentives or support as specified in section 376-55(4).

When we issue a final certificate, it states our determination of QAPE. You then claim the Producer Offset in your income tax return for the financial year in which the project is completed. The offset is calculated at either 20% or 40% of the determined QAPE. The Australian Taxation Office (**ATO**) will credit the Producer Offset against any existing income tax liabilities, and refund the remainder.

Screen Australia has produced a useful animation which explains how the Producer Offset works. It is available on our [website](#).

### 1.2.2 Provisional certificates

You may also apply for a [provisional certificate](#) for a project before you complete it. The provisional certificate provides an indication of whether the project is likely to qualify for the Producer Offset, based on the information provided to Screen Australia at the provisional stage.

Applicants can contact Screen Australia's Producer Offset and Co-production Unit (**POCU**) to discuss the 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: [www.screenaustralia.gov.au/producer\\_offset](http://www.screenaustralia.gov.au/producer_offset)

Even if you don't intend to apply for a Provisional Certificate, we recommend that you contact us early, ideally during pre-production. This will help clarify any issues, particularly related to tracking expenditure, and make the final application process smoother.

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.

## 1.3 Tax secrecy

Division 355 of the [Taxation Administration Act 1953](#) imposes stringent secrecy obligations and restrictions on the staff of Screen Australia.<sup>1</sup> These are the same requirements that apply to ATO officers assessing a company or individual tax return. All information provided by an applicant to the POCU will be held by POCU officers on a confidential basis and dealt with in accordance with Division 355.

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<sup>1</sup> The [Explanatory Memorandum to the Bill](#) introducing Division 355 provides a useful guide to how tax secrecy operates.

## SECTION 2: ELIGIBILITY

### 2.1 Significant Australian content

To be eligible for the producer offset a project must have a significant Australian content. We refer to this as 'meeting the SAC test'. Screen Australia must have regard to the following elements of a project, as set out in section 376-70 (1) of the ITAA, to determine whether a project meets the SAC test:

- The subject matter of the film
- The place where the film was made
- The nationalities and places of residence of the persons who took part in the making of the film
- The details of the production expenditure incurred in respect of the film, and
- Any other matters that we consider to be relevant.

We examine the level of Australian content for **each** of these elements of a project. This is a holistic test and no single element is determinative.

The SAC test reflects the cultural policy objectives of the producer offset to support the production of significant Australian content.

'Australia' in this context does not include New Zealand.<sup>2</sup>

Note that you should not expect that your project meets the SAC test merely because it is undertaking pre, production and post in Australia, and crew and below-the-line cast are Australian nationals. Such a project may be eligible for the Location Offset if it fails to meet the SAC test.

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

##### *Subject matter of the film*

Subject matter relates to what the film is about. When assessing the **subject matter of the film** we determine the extent to which the 'look and feel' of the project is Australian or the project has a significant creative connection with Australia.

For example:

- Is the film 'about' Australia or Australians
- Does it reflect a cultural background that is particular to Australia or Australians
- Does it reveal some aspect of Australia's or Australians' cultural background or experience, or
- Did the project originate in Australia and/or was it developed by Australians?

In assessing this Screen Australia considers some or all of the following factors:

<sup>2</sup> [Acts Interpretation Act 1901](#)

- Whether the film is based on an Australian story
- The extent to which the film is about Australian characters
- The extent to which the film is set in Australia
- Whether the core origination of the project took place in Australia or under Australian control, and
- The length and extent of association Australian citizens or residents have had in the film's development.
- Other relevant factors may be identified which are peculiar to an individual project.

In relation to the 'length and extent of association', Screen Australia would require the applicant to demonstrate a meaningful and substantial Australian involvement in the development of the 'subject matter of the film'. Generally Screen Australia would expect the applicant to demonstrate that the project is written by Australian citizens or residents according to normal Australian film industry usage of the term (i.e. credits approved by the Australian Writers' Guild).

### ***The place where the film was made***

We assess whether the project is to be primarily produced in Australia, including pre-production, production and post-production. Generally speaking, a film which undertakes most or all of its work in Australia will have a strong claim against this element.

If a substantial period of production is not undertaken in Australia the project will have a weaker claim against this element.

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

We consider someone to be 'Australian' if that person is a citizen of Australia (no matter where they reside) **or** if they are an Australian permanent resident (regardless of their nationality). However, for people who are not Australian citizens or permanent residents, but are nonetheless resident in Australia, we may take the period of their residency in Australia into account.

The nationalities and place of residence of the producer, writer and director will be considered to be particularly important. The general rules crediting such roles used by the Australian film and television production industry and represented by the appropriate industry bodies (Screen Producers Association of Australia, Australian Writers' Guild and Australian Directors Guild) will be used to verify claimed roles, if there is any doubt.

The nationality and place of residence of lead cast members is also considered to be very important and the proportion of Australian actors in lead roles is generally expected to be material. Screen Australia will seek the applicant's views as to which roles are lead characters, but will exercise its own judgement, principally based on the screenplay provided.

Screen Australia will also consider the nationality and place of residence of key creative heads of department, such as director of photography, production designer, editor, costume designer and composer.

The proportion of other cast, crew and service providers (such as post production houses) that are Australian residents and citizens will also be considered.

The higher the proportion of Australian citizens or residents involved in the project, the stronger the applicant's claim against this element, particularly considering the proportion of Australian citizens and residents filling the roles of producer(s), writer(s) and director(s).

*Please note that the nationality and residency of cast in the context of an application for the Producer Offset is separate to the Australian Government's Foreign Actors Certification Scheme (FACS).*

*[http://www.arts.gov.au/film/film\\_foreign\\_actors\\_for\\_film\\_or\\_television](http://www.arts.gov.au/film/film_foreign_actors_for_film_or_television). Applicants should contact FACS early in the production process if they intend to bring in foreign actors.*

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

We will take into account the extent to which **the project's production expenditure** contributes to the Australian film industry. The following factors are taken into account:

- The extent to which expenditure is made to Australian citizens or residents, and
- The extent to which expenditure is incurred within Australia (i.e. on goods and services provided in Australia).

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

We must take into account any other matter that we consider to be relevant in the circumstances of the project. For example, we may take into account:

- Policy issues associated with 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
- The extent to which copyright ownership resides with Australians, in particular whether this is commensurate with the proportion of the budget provided by Australians
- The extent to which creative control rests with Australian citizens or residents, and
- 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.

However, we will also consider any other factors we consider relevant to whether a specific project has significant Australian content on a case-by-case basis. In your application, you may set out any matters that you consider will increase your project's claim against the SAC test.

## **2.1.3 Official co-productions**

An official co-production is also eligible for the Producer Offset and is not required to meet the SAC test; by definition it is considered to be an 'Australian film'.



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](#), and [can contact Screen](#) Australia's Producer Offset and Co-production Unit (POCU).

#### 2.1.4 Administration of the SAC test

If your project has a number of non-Australian elements, you should anticipate that we may need additional information in order to assess the project's claim against the SAC test.

Such information may include:

- A development timeline demonstrating the length of association of Australians with the project
- Agreements with key creatives which define their length of association and level of creative control and input
- Copies of earlier screenplays which demonstrate the length of association and extent of impact of Australians in the development of the project
- Location survey photos that identify the impact of the Australian landscape on the project, and
- Anything else that you consider relevant.

## 2.2 Eligible entity

The ITAA specifies that, in order to be eligible for the Producer Offset, a company must either be:

- An Australian resident company,<sup>3</sup> or
- A foreign resident company with an ABN that is operating through a permanent establishment in Australia<sup>4</sup>.

You must meet this criterion at the time of application and also when the tax return is submitted and the Producer Offset paid by the ATO. This requirement means that partnerships and sole traders are ineligible for the Producer Offset.

Further, under tax law, when a legislative provision refers to an entity, it means that the entity must be acting in that capacity, and not in any other capacity. This means, for example, that a company which is acting in the capacity of a trustee of a trust is ineligible for the Producer Offset.<sup>5</sup>

## 2.3 Company responsibility

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 film.

<sup>3</sup> The ATO's interpretation of residency when the company is not incorporated in Australia is outlined in [TR 2004/15](#).

<sup>4</sup> Taxation Ruling [TR 2002/5](#) provides the ATO's interpretation of 'permanent establishment'.

<sup>5</sup> ITAA [sections 960-100\(1\) and \(4\)](#).

In an [official co-production](#), the signature of the co-producers' agreement is considered to fulfil the requirement for carrying out all the activities for the making of the film in relation to the co-production partner's activities.

In most cases, the proper applicant company is the company that incurs the expenditure, which is often a special purpose vehicle (**SPV**) incorporated to make and complete the project. Note that the use of an SPV is not a requirement, and ongoing companies may be eligible.

There is no requirement that a [provisional certificate](#) and [final certificate](#) for the same project must be held by the same entity. For 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 prior to incorporation of the SPV. The final certificate would then be applied for by the SPV.<sup>6</sup>

## 2.4 Completed project and commencement

The Producer Offset has a commencement date of 1 July 2007, so [QAPE](#) can only be claimed for expenditure incurred on or after 1 July 2007. This means that you cannot claim any development expenditure incurred before this date as QAPE.

However, these guidelines take into account several amendments made to the ITAA<sup>7</sup> and therefore assume that a project commenced production on or after 1 July 2012.<sup>8</sup> If your project commenced principal photography before that date, you must [can contact](#) Screen Australia's Producer Offset and Co-production Unit (**POCU**).

A project must be *completed* prior to applying for a Producer Offset 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.<sup>9</sup> This means:

- If the project is a feature film: the manufacture of a release print or digital equivalent (i.e. DCP); or
- For other distribution platforms, a fully mixed digital master.

We require proof of the completion date for final certification. This would take the form of a 'tech check' or letter of confirmation from the post house.

## 2.5 Formats, QAPE thresholds and duration

An eligible project must be of a minimum duration and incur a minimum level of QAPE, depending on the format.

The [At a Glance](#) offers a detailed dictionary of expenditure issues and applicants must consult it for the QAPE treatment of specific expenses and a full understanding of QAPE and how it is calculated.

<sup>6</sup> under the 'take-over' provisions in [section 376-180](#) of the ITAA. Also, see the [At a Glance](#) at 'Copyright acquisition and licensing'.

<sup>7</sup> Including by the *Tax Laws Amendment (2011 Measures No. 7) Act 2011* and the *Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013*.

<sup>8</sup> The date of the commencement of the definition of documentary (item 12(1) in Schedule 1 to the *Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013*).

<sup>9</sup> [Section 376-55\(2\)](#) of the ITAA.

## 2.5.1 Expenditure

There are two general expenditure concepts relevant to the Producer Offset, which are outlined below: production expenditure and QAPE.

### 2.5.1.1 Production expenditure

A project's 'production expenditure' is defined in [section 376-125\(1\)](#) of the ITAA as the expenditure incurred by the applicant company in, or that is reasonably attributable to, the 'making of the film' (i.e. the project).

The making of the film means doing the things necessary for the production of the first copy of the project. This includes development, pre-production, principal photography and post-production activities and any other activities that are necessary to bring a production up to the state that it is ready to be distributed, broadcast or exhibited to the general public.

The making of the film does *not* include any aspect of financing the project, developing the proposal for the project (e.g. pitching), distribution, marketing or promotion of the project.

An applicant company may incur production expenditure and QAPE in the financial year for which the Producer Offset is sought or in earlier financial years. Expenditure incurred prior to 1 July 2007, or incurred in a subsequent financial year to that of completion of the project, cannot be production expenditure or QAPE.

### 2.5.1.2 QAPE

QAPE is a subset of [production expenditure](#). It has a dual role for the purposes of the Producer Offset:

- It is the basis for determining whether the minimum expenditure thresholds have been met (see [below](#)), and
- It provides the basis of the Producer Offset itself, as the amount of the refund is a fixed percentage (20% or 40%) of QAPE on a certified project.

QAPE is defined by [section 376-145](#) of the ITAA as the company's production expenditure that is incurred for, or is reasonably attributable to:

- Goods and services provided in Australia
- The use of land located in Australia, and
- The use of goods that are located in Australia at the time they are used in the making of the project.

This means that QAPE may include, for example:

- Remuneration of all cast and crew for work undertaken in Australia (regardless of their citizenship or residency), but see the [At a Glance](#) at 'Two week rule'
- Expenditure on legal services provided in Australia
- Post-production undertaken by post houses in Australia
- Non-depreciable goods purchased in Australia
- The cost of hiring items for use in the project, to the extent that the item was used in Australia

- The decline of value of a depreciating asset used in Australia for the making of the project, and
- In limited circumstances where Screen Australia determines that the subject matter of the film reasonably requires overseas shooting, certain expenses on location shoots outside Australia – see the [At a Glance](#) at ‘Gallipoli clause’.

You should note that because QAPE is for services provided in Australia, where a company contracts an Australian firm to provide production services and that firm subcontracts to a non-Australian firm or undertakes some of the service outside of Australia, the proportion of the expenditure that is undertaken outside Australia is non-QAPE.

Note that if QAPE is incurred under an arrangement or transaction is not at ‘arm’s length’, we are required under the ITAA to determine the QAPE attributable to that arrangement or transaction to be the arm’s length amount – see the [At a Glance](#) at ‘Arm’s length arrangements’.<sup>10</sup>

## 2.5.2 QAPE thresholds

All formats must meet or exceed a ‘total QAPE’ threshold with some formats also required to meet a ‘per hour’ QAPE threshold.

The ‘per hour’ QAPE is calculated by dividing the total QAPE of the project by its *actual* duration in hours (for series, the total duration = the number of episodes x the actual duration of each episode, expressed in hours).

Format	Minimum duration	‘Total’ QAPE threshold	‘Per hour’ QAPE threshold
<b>Feature films, including theatrical documentaries, animation and IMAX (offset=40%)</b>			
Feature	60 mins	\$500,000	n/a
Large format (e.g. IMAX)	45 mins	\$500,000	n/a
<b>Non-feature programs other than documentaries or animations (offset=20%)</b>			
Single-episode	Commercial hour	\$500,000	n/a
Season of a series (at least 2 episodes)	Commercial ½ hour per episode	\$1,000,000	\$500,000 per actual hour
<b>Non-feature documentaries (offset=20%)</b>			
Single-episode or season of a series	Commercial ½ hour per episode	\$500,000	\$250,000 per actual hour
<b>Non-feature animation (offset=20%)</b>			
Season of a series (at least 2 episodes)	Commercial ¼ hour per episode	\$1,000,000	\$500,000 per actual hour
Single-episode	Commercial hour	\$500,000	n/a
<i>Or, if the project is not a season of a series or single episode:</i>			
Short-form animation (single episode or series)	Commercial ¼ hour <u>in total</u>	\$250,000	\$1,000,000 per actual hour

<sup>10</sup> [Section 376-175](#) of the ITAA.

The QAPE spreadsheet, which must be lodged with all applications, will automatically calculate whether your project meets the QAPE thresholds.

For the purposes of meeting the QAPE thresholds, the ITAA allows official co-productions to count expenditure incurred in the co-producing country by its co-producer 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.

### 2.5.3 Ineligible formats

The following formats are ineligible for the Producer Offset:

- An advertising program or commercial
- A discussion, quiz, panel or game show,<sup>11</sup> or variety program, or a program of a like nature
- A film of a public event
- A training film
- A news or current affairs program
- A reality TV program (other than a documentary),<sup>12</sup> or
- A computer game within the meaning of *Classification (Publications, Films and Computer Games) Act 1995*.

### 2.5.4 Feature films and distribution

A feature film is the only format which receives a 40 per cent Producer Offset. A feature film must be made for screening as the main attraction in commercial cinemas. As such, it should be at least 60 minutes in length (or 45 minutes for large-format, such as IMAX). A feature film may be an animated feature film or a documentary.

As a guide, applicants should plan to earn a meaningful proportion of the project's revenue from the Australian theatrical box office.

Factors that are relevant in determining whether a project is a feature film and is produced for exhibition to the public in cinemas are:

- A draft or executed bona fide deal memo, letter of offer, or long form agreement for an Australian theatrical release with a theatrical distributor (acting on an arm's length basis) with a genuine and credible plan for the release of the project in cinemas
- Financial contribution to the project's budget from the distributor, such as a distribution advance or guarantee, commensurate with the total budget
- A financial commitment towards prints & advertising made by the distributor
- A marketing plan that includes theatrical release and demonstrates a realistic pathway to a cinema audience

<sup>11</sup> Game shows were added to the list of ineligible formats by the *Tax and Superannuation Amendment (2013 Measures No. 2) Act 2013*, for projects which commence principal photography on or after 28 June 2013.

<sup>12</sup> [Section 376-25](#) of the ITAA gives the meaning of documentary.

- Financial contribution from an arm's length investor made on the basis of the project being a feature film
- Evidence that all cast are engaged under the relevant performers' contracts, with appropriate buy-outs of residual rights, consistent with a feature film
- A finance plan and budget, including theatrical delivery items, consistent with that of a feature film
- The track record of the distributor in the theatrical distribution of feature films in Australia, particularly the distribution of Australian feature films
- The track record of the producer, director, writer and other principals in producing feature films that have received a successful theatrical release in Australia, and
- The attachment of an international sales agent and any international theatrical pre-sales.

In all cases, the film must be a normal full-length feature film of a type commonly shown in commercial cinemas, and produced in a format suitable for theatrical release as the primary attraction to an audience in commercial cinemas. Cinema-on-demand plans will be assessed on a case-by-case basis, with a particular emphasis placed on the pathway to audience identified by the application materials. 'Four-walled' arrangements are unlikely to be satisfactory.

Applicants may request Screen Australia assess their claim that the film is a feature film at the provisional certificate stage. If a project has been assessed and, based on the factors above, is not considered to be a feature film, a provisional certificate will be issued on the basis that the feature film format has not yet been established.

If an applicant would like to seek a re-assessment of the format of their project, they must demonstrate substantial changes since the previous submission. See [Provisional Certificate process](#).

### 2.5.5 Distribution for all other eligible formats

For all other eligible formats, the film must be available to the Australian public in order to receive the 20% rebate. Acceptable distribution could include making the film available through television broadcasting, DVD, video on demand (VOD) or subscription video on demand (SVOD).

Fully executed distribution agreements and/or evidence of the release, platform and date must be provided when applying for a final certificate.

### 2.5.6 What is a 'documentary'?

'Documentary' is defined in [section 376-25](#) of the ITAA. This definition applies to projects that commenced principal photography on or after 1 July 2012.<sup>13</sup>

For certification as a documentary, you must be able to satisfy us that the project is a creative treatment of actuality that is not an infotainment or lifestyle program, or a magazine-style program.

<sup>13</sup> For projects commencing before this date, we will utilise the test outlined by the Administrative Appeals Tribunal (AAT) in the *Lush House* case ([EME Productions No 1 Pty Ltd v Screen Australia](#)).



In making this decision, we have regard to:

- The extent and purpose of any contrived situation featured in the film
- The extent to which the film explores an idea or a theme
- The extent to which the film has an overall narrative structure, and
- Any other relevant matters.

#### **2.5.6.1 Magazine and infotainment programs**

A magazine-style program is not a documentary. It is a film that:

- Presents factual information
- Has two or more discrete parts, each dealing with a different subject or a different aspect of the same subject, and
- Does not contain an over-arching narrative structure or thesis.

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’.

### **2.5.7 What are series and seasons of series?**

Each season of a series is treated as a different ‘film’ for the purposes of the Producer Offset, is the subject of a separate application, and must separately meet the expenditure thresholds. However, once a series (as made up by all of its seasons) totals 65 commercial hours, the series ceases to be eligible for certification.<sup>14</sup>

The following criteria apply to series and seasons thereof:

- The series/season must contain at least two episodes
- The episodes must be at least a commercial half hour in length (commercial quarter hour for animated series), and
- The series (but not each season) must have a ‘new creative concept’.

Note that the 65 commercial hours applies to the entire series whether or not any seasons or episodes in the series were made without the Producer Offset’s support, prior to the Producer Offset’s commencement, and/or by different companies and individuals.

The QAPE spreadsheet will calculate whether your series has met the 65-commercial-hour cap.

#### **2.5.7.1 New creative concept**

Sometimes, a new series emerges from an existing series (e.g. re-boot or spin-off). The ITAA contemplates this and, where the applicant can demonstrate that the new project has a ‘new creative concept’, it will be treated as a season of a *new* series, and the 65-commercial hour cap ‘re-sets’.

In assessing whether there is a new creative concept we must have regard to the degree of difference in the following factors, in comparison to other series which have previously been produced:

<sup>14</sup> Sections 376-55(2)(b) and 376-170(4)(c).

- The title (although a mere change of name is not a new creative concept)
- The principal characters, the setting, production locations and the persons involved in the making of the series, and
- Any other matters that we consider to be relevant.<sup>15</sup>

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.<sup>16</sup>

### 2.5.8 Administration of the format tests

In most cases, the completed Producer Offset application form and its attachments should provide enough information for Screen Australia to make a decision on format questions.

However, where there is uncertainty, we may require more information, and may also ask you to provide a submission as to how the project, for example, is a [documentary](#) or has a [new creative concept](#).

If you foresee a format issue arising, you should append a statement to the application addressing the relevant test, and attach any additional supporting material. This will speed up the assessment process.

Please note that eligibility for the Producer Offset is dependent on being issued with a final certificate. For example, if a project is provisionally certified as a feature film and the completed project is not in fact a feature film, we will not be able to issue a final certificate for a feature film. Similarly if the film is provisionally certified as a documentary but the completed film does not meet the legislative requirements for a documentary, and is instead a non-eligible format, we cannot issue a final certificate for the film.

## 2.6 Exclusion of access to other Australian Government incentives

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 Offset.

Further, a project that has benefitted from any former Australian Government film incentives (i.e. incentives that have been discontinued) or has received support under Screen Australia's [Producer Equity Program](#) is ineligible.

Applicants are only entitled to one offset in relation to a film. This means that where a substantial part of a film that has already received an offset is used in a new film, that part will not be QAPE and the film as a whole will need to be a new film in order to qualify for the Producer Offset.<sup>17</sup>

Screen Australia direct funding and state and territory support have no bearing on a project's eligibility, but may impact on a QAPE claim if it

<sup>15</sup> Drawn from [section 376-70\(2\)](#) of the ITAA97.

<sup>16</sup> The Administrative Appeals Tribunal (**AAT**) judgement in [Beyond Productions Pty Ltd and Screen Australia](#) [2011] AATA 39 provides a useful guide at paragraph 71.

<sup>17</sup> For the QAPE implications of this, see the [At a Glance](#) at 'Prior company expenditure'



amounts to expenditure not being incurred. See [At a Glance](#) at 'Payroll tax' for further information.

### 2.6.1 Stock footage

Where footage is acquired from a related entity to the applicant (e.g. parent company), Screen Australia must test whether the arrangement is at arm's length, and only an arm's length amount can be QAPE.

Further, as it is a principle of the ITAA97 that each film can only access one offset once, where a significant amount of footage is reused from a previous film (for example in a 'best of' episode of a series), the film may not qualify for the Producer Offset as it is not a new 'film'. Such applications cannot be certified.

See [At a Glance](#) at 'Copyright acquisition & licensing' for further information.

## SECTION 3: PROCESS

### 3.1 Provisional certificate

#### IMPORTANT INFORMATION

It is the responsibility of the producer and, where involved, financier to assess and manage the risk that a project may not be eligible for a final certificate or not entitled to the claimed QAPE even where the project has been provisionally certified. This is because the final certificate must be based on a full assessment of the completed project, including information on distribution, evidence of incurred expenditure, audited cost reports and the completed film. Importantly:

- If there are changes to your project after provisional certification these changes may affect your 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 your Producer Offset or QAPE claim
- You can manage this risk by ensuring that your project complies with all eligibility requirements for the Producer Offset and tracking incurred expenditure to ensure it is QAPE

A provisional certificate states that, based on the information presented in the application, we consider that the proposed project would meet the eligibility requirements for the Producer Offset, if it is made in accordance with the information provided.

A provisional certificate does not guarantee that a project will qualify for the Producer Offset. An application must be made for a [final certificate](#) (and a final certificate must be issued) once the project is completed in order to claim the Producer Offset. If a provisional certificate is not issued for a project this does not prevent you applying for a final certificate in relation to that project.

You may apply for a provisional certificate at any time during development, financing or production. To apply for a provisional certificate, an applicant company must complete an [application form](#) and provide it, and all attachments, to the POCU. We aim to complete our assessment within six weeks of receipt of a complete application, including all relevant attachments and the specified [statutory declaration](#). Incomplete applications will not be assessed.

Fees are payable for provisional certificate applications, which are scaled to the project's budget in accordance with the Rules and are outlined in the application form.

It is important to note that for provisional certification, we will not:

- Assess an applicant's estimated QAPE. Applicants are encouraged to obtain their own independent QAPE opinion if required.

- Certify that interested party transactions are budgeted in accordance with the arm's length principle, or
- Audit the claims in your application form and associated documentation.

As a provisional certificate is based solely on information provided in the application, if any material changes to the film or its structure are made which decrease the level of [Significant Australian content](#), you must notify us of any proposed changes which may impact on the project's eligibility within a reasonable time before implementation.

A re-assessment fee will be payable if you require re-assessment of a provisional certificate. This includes a re-assessment of distribution and SAC. See [Feature Films and Distribution](#).

We aim to complete a re-assessment within six weeks of receipt of all relevant additional information.

Further, as both a project and the administration of the Producer Offset develop over time, if a project does not enter production within two years of the issue of a provisional certificate, the applicant must seek a re-assessment of the project.

## 3.2 Final certificate

A final certificate entitles a company to receive the Producer Offset.

Once a project is [Completed](#), and audited, you must complete and submit an [application form](#) along with all required attachments (including a copy of the completed project<sup>18</sup> and a specified [statutory declaration](#)) and in accordance with the instructions on the form.

You will also need to lodge expenditure statements attesting to the claimed QAPE of the project. These will include the general ledger, final cost report and a QAPE Spreadsheet. A registered company auditor must audit your QAPE claim in accordance with the pro-forma [auditor's statement](#).

We aim to assess applications within 12 weeks of receipt of a complete application, including all necessary attachments. An incomplete application will not be assessed. For particularly large or complex applications, assessment may take longer.

In the course of considering an application, Screen Australia will make two legislative determinations:

1. Whether to certify the applicant as eligible to receive the Producer Offset in relation to the project (i.e. issue a [final certificate](#)), and
2. The level of QAPE (the ATO will calculate the applicant's offset against the determined amount of QAPE).

You should be prepared for POCU officers or consultants to contact you to ask for further information to substantiate aspects of the application or ask for changes to be made where QAPE has been incorrectly claimed or excluded. We may also request any additional information from an applicant if such information is deemed necessary to undertake an assessment. When this

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<sup>18</sup> The copy of the project is important for the assessment process, and is covered by the tax secrecy provisions. Applicants should feel free to watermark the film if they wish.

examination relates to interested party transactions, we may seek information on the process and methodologies adopted to show that the amounts charged accord with the arm's length principle.

We have broad powers under the ITAA to seek information or advice from any person or source in relation to a Producer Offset assessment.

### 3.2.1 Independent film production consultants (IFPCs)

We may seek the advice of an IFPC to assist in assessing the QAPE claim.

The IFPCs contracted by us are highly experienced production managers, line producers and production accountants who are working, or who have previously worked, in the film and television industry. They are used because they possess a deep level of industry knowledge and expertise and are aware of current prices and rates of goods and services used within the industry.

The IFPC will be subject to a contractual duty of confidentiality, in addition to the tax secrecy obligations outlined [above](#). We will consult with the applicant to ensure that there are no conflict of interest issues in relation to the IFPC that is proposed.

An IFPC will work under our supervision and represents us in the course of undertaking the QAPE assessment. You must always cooperate with the IFPC's requests.

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 decision.

### 3.2.2 Notification, statement of reasons and appeal of decision

When we issue a final certificate to you, you will be notified in writing of the decision and of the formal determination of QAPE. If we refuse to issue a final certificate, we will notify you in writing of this decision. In addition to our letter of refusal, you can request a formal 'statement of reasons' for the decision by Screen Australia under [section 28](#) of the *Administrative Appeals Tribunal Act 1975*, and may seek review of a decision by the Administrative Appeals Tribunal (**AAT**). A statement of reasons or review of a decision may be sought in relation to:

- A decision not to issue a final certificate
- A determination of the amount of QAPE, or
- A decision to revoke a final certificate (see [below](#)).

Further information on the AAT's processes can be found at [www.aat.gov.au](http://www.aat.gov.au)

### 3.2.3 Submission to the ATO

We will send a copy of the final certificate to the ATO for its information. You can then claim the Producer Offset in your 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.

### **3.2.4 Revocation of a final certificate**

Screen Australia may revoke a final certificate where it was obtained by fraud or serious misrepresentation, and will notify the applicant company in writing of this decision. Screen Australia can also refer matters of suspected fraud or misrepresentation to the ATO.

The information provided to us (in an application and such other additional information requested by us or an IFPC) may be used for the purposes of considering the revocation of a final certificate.

## **3.3 Statutory declaration**

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](#)).

## ACRONYMS AND TERMS

<b>ABN</b>	Australian Business Number
<b>ACMA</b>	Australian Communications and Media Authority
<b>ATO</b>	Australian Taxation Office
<b>EM</b>	Explanatory Memorandum
<b>GST</b>	Goods and Services Tax
<b>IFPC</b>	independent film production consultant
<b>ITAA</b>	<i>Income Tax Assessment Act 1997</i>
<b>the Department</b>	Department of Communications and the Arts
<b>PDV</b>	post, digital and visual effects (production)
<b>POCU</b>	Producer Offset and Co-production Unit
<b>QAPE</b>	qualifying Australian production expenditure
<b>Rules</b>	Producer Offset Rules 2018
<b>SAC</b>	significant Australian content
<b>SPV</b>	special purpose vehicle

**NB:** All expenditure is in Australian dollars.

### UPDATE LOG

#### 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.