

Australian Screen Production Incentives and Official International Co-Productions

An overview by national Australian law firm, Holding Redlich | 2017



Introduction

There are three principal Australian Government incentives which support screen production in Australia:

- the Producer Offset;
- the Location Offset; and
- the Post, Digital and Visual Effects (PDV) Offset.

Each of the three offsets is a refundable tax offset which entitles an eligible applicant to receive a tax refund where the amount of the offset claimed exceeds the applicant's tax liabilities. A project is only entitled to one of the offsets – they cannot be combined.

In addition to the incentives, Australia has formal arrangements in place with the governments of other countries for official co-productions. Australia has entered into co-production treaties with the United Kingdom, Canada, Italy, Ireland, Israel, Germany, South Africa, Singapore and China, and has entered into memoranda of understanding (MOUs) with France and New Zealand. Australia has also entered into a co-production arrangement with Korea.

Film and television projects which are approved as official international co-productions under a treaty or MOU qualify as local content for the purpose of free-to-air television quotas, and the qualifying Australian production expenditure on the co-production will be eligible for the Producer Offset.

The Australian Government screen agency Screen Australia administers the Producer Offset and Australia's international co-production arrangements. The Location Offset and the PDV Offset are administered by the Department of Communications and the Arts (Department).

Screen productions may also be eligible for investment by Screen Australia and/or incentives or other support from Australian State and Territory Government screen agencies (which can be combined with the offsets).

Producer Offset

The Producer Offset is a 40% offset on the 'qualifying Australian production expenditure' (QAPE) (see below) incurred on a feature film and a 20% offset on the QAPE incurred on other types of film and television projects. The Producer Offset is only available for film and television projects with 'significant Australian content' (see below).

Eligible applicants - who may apply for the Producer Offset?

The Producer Offset is available to a company in relation to a film or television project where the following conditions are met:

- the company is either: (i) an Australian company; or (ii) a foreign company with an Australian permanent residency and an Australian Business Number;
- the offset is claimed by the company in its income tax return for the income year in which the project was completed (i.e. in a state ready to be distributed, broadcast or exhibited to the general public); and
- a final certificate has been issued for the project by Screen Australia.

Only one company may claim the Producer Offset in relation to a project. The company that is eligible to claim the Producer Offset is the one that carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the 'making of the project'. However, in the case of an official international co-production, the Australian co-producer need only satisfy this requirement in respect of its own activities and not the activities of its foreign co-production partner.

Eligible projects - what types of projects qualify for the Producer Offset?

i. Project must satisfy format requirements

For a project to be eligible for the Producer Offset it must be produced for exhibition to the public in cinemas (for feature films) or by way of television broadcasting or distribution to the public as a video recording (for other programs).

Feature films (which may be theatrical animations or documentaries) may be eligible to receive an offset of 40% of the QAPE. Programs

other than feature films, e.g. single episode telemovies and direct-to-DVD, internet or mobile films, series, seasons of series and short-form animations may be eligible to receive an offset of 20% of the QAPE.

Each type of project must also satisfy certain duration requirements (e.g. at least 60 minutes for a feature film to be screened in commercial cinemas).

The Producer Offset is not available for other types of projects such as reality, discussion, quiz, panel and variety programs, and news and current affairs programs.

ii. Project must have 'significant Australian content' or be an official international co-production

For a project to be eligible for the Producer Offset it must have 'significant Australian content' (SAC), unless it is an official international co-production between an Australian co-producer and a co-producer from another country (or countries) with which Australia has entered into a co-production treaty or MOU (in which case the project is considered to meet the SAC test).

In determining whether a project has SAC, Screen Australia must have regard to the following: the subject matter of the project; the place where the project was made; the nationalities and places of residence of the persons who took part in the making of the project; details of the 'production expenditure' (see below) incurred in respect of the project; and other matters that Screen Australia considers to be relevant. Screen Australia will consider all relevant factors on a case-by-case basis and no single factor is determinative.

iii. Project must meet minimum QAPE threshold

For a project to be eligible for the Producer Offset it must spend above a specified minimum amount of QAPE. For example, the minimum QAPE threshold for a feature film is AUD\$500,000. Other thresholds apply to other types of formats.

QAPE is the 'production expenditure' (see below) for a project incurred for, or reasonably attributable to:

- goods and services that are provided in Australia;
- the use of land or goods located in Australia in making the project; and
- other specified expenditure,

however, there are specific inclusions and exclusions.

'Production expenditure' is expenditure incurred in, or reasonably attributable to, the 'making of a project' up to completion, and may be revenue or capital in nature. 'Production expenditure' also includes certain expenditure incurred after the project's completion but prior to the end of the income year in which the project is completed.

There is a cap of 20% of a project's total 'production expenditure' for 'above the line' costs (i.e. costs relating to development and remuneration for the principal director, the producers, the producers' unit and the principal cast) that can be claimed as QAPE for the Producer Offset (except for non-feature documentaries).

iv. Documentaries

For a project to be eligible for the Producer Offset as a documentary, Screen Australia must be satisfied that the project is a documentary as defined in the relevant legislation, being a creative treatment of actuality other than an infotainment program, lifestyle program or magazine program. The legislation requires that Screen Australia must consider the extent and purpose of any contrived situation featured in the project and the extent to which the project has an over-arching narrative structure when determining whether the project is considered to be a documentary.

How to obtain the Producer Offset

To obtain the Producer Offset for a project an eligible applicant must obtain a "final certificate" from Screen Australia by submitting an application to Screen Australia.

A company may speak to Screen Australia about the Producer Offset and/or apply for a provisional certificate as to whether the project qualifies under the SAC test and/or is likely to meet the minimum QAPE threshold and the estimated QAPE for the project.

Location Offset and PDV Offset

The Location Offset is a 16.5% offset on the QAPE incurred on films and eligible television projects shot in Australia with a minimum total QAPE of AUD\$15 million. The Location Offset is designed to ensure Australia remains competitive in attracting shoots for large-budget film and television productions, and is aimed at providing increased opportunities for Australian cast, crew, post-production companies and other screen production service providers to participate in these productions.

The PDV Offset is a 30% offset on the QAPE incurred on eligible productions with at least AUD\$500,000 Qualifying Australian PDV Expenditure. The PDV Offset is aimed at enabling the Australian visual effects, post production and animation sector to continue to develop its reputation as one of the best in the world, regardless of whether or not the project shoots in Australia.

The general test for QAPE is set out above, however, there are a few special rules that apply to the Location Offset and the PDV Offset (just as there are for the Producer Offset).

Eligible applicants - who may apply for the Location and PDV Offsets?

The Location Offset or the PDV Offset is available to a company in relation to a film or television project where the following conditions are met:

- the company is either (i) an Australian company; or (ii) a foreign company with an Australian permanent residency and an Australian Business Number;
- in respect of the Location Offset - the offset is claimed by the company in its income tax return for the income year in which QAPE ceased being incurred;
- in respect of the PDV Offset - the offset is claimed by the company in its income tax return for the income year in which QAPE in relation to PDV production ceased being incurred; and
- a final certificate has been issued for the project by the Department.

Only one company may claim the Location Offset or the PDV Offset in relation to a project.

The company that is eligible to claim the Location Offset is the one that carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the 'making of the project'.

The company that is eligible to claim the PDV Offset is the one that carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for PDV production for the project.

Eligible projects - what types of projects qualify for the Location and PDV Offsets?

i. Project must satisfy format requirements

The following types of projects may be eligible for the Location Offset or the PDV Offset:

- feature films (including direct-to-DVD, but excluding documentaries);
- telemovies (excluding documentaries);
- mini-series (excluding documentaries); and
- television series (including reality series and documentaries).

These formats may include animated or live-action productions or a combination of the two. However, the Location Offset and PDV Offset are not available for other types of projects such as advertising programs or commercials, or discussion, quiz, panel or variety programs.

ii. Project must meet minimum QAPE threshold

For a project to be eligible for the Location Offset it must incur a minimum of AUD\$15 million QAPE on the production of the film. In addition, in respect of television series, projects must spend an average of at least AUD\$1 million of QAPE per hour across the length of the series in order to qualify.

For a project to be eligible for the PDV Offset it must incur a minimum of AUD\$500,000 PDV-related QAPE.

How to obtain the Location and PDV Offsets

To obtain the Location Offset or the PDV Offset for a project an eligible applicant must obtain a final certificate by submitting an application to the Department.

A company may speak to the Department about the Location Offset and the PDV Offset and/or, prior to commencing a project, or at any time during a project, a company may seek a provisional certificate to identify those costs which can be counted towards QAPE/PDV-related QAPE.

Official International Co-Productions

Official international co-productions are film or television projects made in accordance with one or more international co-production treaties or similar arrangements.

As referred to above, Australia has official co-production treaties with each of the United Kingdom, Canada, Italy, Ireland, Israel, Germany, South Africa, Singapore and China, and MOUs with France and New Zealand (all countries together, **Treaty Countries**). Australia has also entered into a co-production arrangement with Korea.

Eligibility

An official co-production must be made under, and comply with the terms of, the treaty or MOU between Australia and the relevant Treaty Country. An official co-production must also comply with the "International Co-Production Program Guidelines" of Screen Australia (**Australian Guidelines**) and the guidelines and other requirements of the competent authority of the relevant Treaty Country.

It is acceptable for an official co-production to involve a co-producer from a third country which has an official co-production treaty or MOU with either Australia or the other Treaty Country.

Finance

The treaties and MOUs each provide that the co-producers must together contribute all the financing for an official co-production, although the financing may be sourced by the co-producers from any country.

Contributors

Generally, persons involved in the making of an official co-production must be 'nationals' or 'residents' of one of the co-producing countries, as those terms are defined in the relevant treaty or MOU. However, a project may be based on an underlying work (e.g. a book or concept) originating from any country.

A limited degree of flexibility in relation to the nationality or residency of participants in official co-productions is permitted under each of the treaties and MOUs with the agreement of the competent authorities. For example, in exceptional circumstances, where script or financing dictates, the competent authorities may allow an actor from a country other than the co-producing countries. An executive producer is not considered part of the making of an official co-production so, provided the role is not creative, there can be an executive producer/s from a country other than the co-producing countries. Other exceptions are set out in the Australian Guidelines.

Contribution levels

Each treaty and MOU requires a minimum creative and financial contribution from each of the co-producers, usually 20% or 30%, and an overall balance of all creative and financial elements of an official co-production.

The Australian creative contribution is determined in two ways:

- Australian points – being the proportion of Australian nationals in key roles, allocated in accordance with the applicable points test set out in the Australian Guidelines; and
- Australian spend – being the proportion of expenditure on Australian elements of the project.

The Australian Guidelines provide that the proportion of the Australian points and the proportion of Australian spend must not be more than 5% below the Australian financial contribution (but always must be above the minimum required by the relevant treaty or MOU).

Applying for official co-production status

To apply for official co-production status, the Australian co-producer must submit an application to Screen Australia, first, for provisional approval and second, once the project is completed, for final approval.

Screen Australia will assess an application based on whether or not the application complies with the relevant treaty or MOU and the Australian Guidelines.

Final approval will only be granted when Screen Australia and the competent authority of the relevant Treaty Country have approved the completed project as eligible for official co-production status.

Important Note

Every effort has been made to ensure that this document is accurate. However, it is not intended to be, and is not, a substitute for obtaining competent legal advice.

Further information

Further information about the Producer Offset and Official International Co-Productions is available from:

Screen Australia

T: +61 2 8113 1042

E: info@screenaustralia.gov.au

Internet: www.screenaustralia.gov.au/producer_offset and

www.screenaustralia.gov.au/coproductions

Further information about the Location Offset and the PDV Offset is available from:

Department of Communications and the Arts

T: +61 2 6271 1543

E: filmenquiries@arts.gov.au

Internet: www.arts.gov.au/funding-and-support/tax-rebates-film-and-television-producers

About Holding Redlich

Holding Redlich has over 30 years experience and a reputation as Australia's leading national media and entertainment law firm. For more information please contact:

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