

Producer Offset and Co-Production Unit – Frequently Asked Questions (FAQs)

The Producer Offset and Co-Production Unit (POCU) is currently receiving a high level of applications and enquiries. If you have an enquiry regarding your Producer Offset or Co-Production application, information to assist applicants is provided at Screen Australia’s website [here](#), including detailed guidance set out in the [Producer Offset Guidelines](#). These FAQs are to be read in conjunction with the [Producer Offset Guidelines](#).

It is important that you read the [Producer Offset Guidelines](#) before reading these FAQs. These FAQs are non-binding.

These FAQs will be updated from time to time. If you contact POCU, please be aware that POCU staff are not able to advise you on the likely outcome of your application until the application has been fully assessed and determined by an authorised decision-maker. Any information provided by POCU prior to a determination is strictly non-binding, and applicants are advised to seek independent advice on their applications.

1. What is the Producer Offset?

The Producer Offset is a refundable tax offset for Australian expenditure in making Australian feature films, television and other projects. It is designed to encourage investment in the screen sector and, subject to the satisfaction of statutory criteria, can be a source of funds for producers of eligible Australian projects.

Screen Australia is the Commonwealth government agency that assists in administering the Producer Offset in conjunction with the Australian Tax Office (**ATO**).

The certification process for the Producer Offset is administered by the Producer Offset and Co-Production Unit (**POCU**) within Screen Australia under the *Income Tax Assessment Act 1997* (Cth) (the **Act**). The ATO administers the rebate and/or payment of the Producer Offset as part of a company’s income tax assessment.

If Screen Australia is satisfied that the applicant company’s project meets the requirements of the Act, Screen Australia issues a final certificate and determines the company’s total qualifying Australia production expenditure (**QAPE**) on the film.¹ Screen Australia provides the Final Certificate and QAPE determination to the ATO and the ATO calculates the company’s Producer Offset based on Screen Australia’s QAPE determination. The ATO will then apply the company’s Producer Offset against the company’s Australian tax liability for the income year in which the project was completed, and refund any remainder to the company.

2. What is the Producer Offset and Co-Production Unit (POCU) within Screen Australia and what is its role?

POCU is a specialised unit of Screen Australia that performs an assessment function for the purpose of Screen Australia’s administrative decision-making process under the Act.

¹ For further explanation of QAPE, see the Producer Offset Guidelines at section 2.3.4.

Although POCU personnel are employed by Screen Australia and are subject to Screen Australia's policies and practices, POCU personnel are functionally separate to other Screen Australia staff as a result of their specific administrative decision-making functions under the Act. Under the Act, POCU assesses whether an applicant is eligible for the Producer Offset and, if they are eligible, their total QAPE. In turn, the assessments performed by POCU assist the ATO to perform its income tax assessment functions and to administer the Producer Offset rebate and/or payment (as relevant).

POCU personnel are subject to stringent tax secrecy requirements. Applications and information in connection with applications are kept strictly confidential and separate from the rest of Screen Australia.

POCU's role is to administer the Producer Offset and Co-Production programs under the relevant legislative criteria. POCU cannot provide legal or accounting advice, or advice to applicants on how to structure their affairs.

3. Who can apply for the Producer Offset?

The applicant must be the company responsible for all activities involved in making the production in Australia. Under the Act, in some circumstances, an applicant may be considered to have been responsible for activities arranged by a prior production company, though we recommend applicants seek expert advice if intending to rely on that provision.

Individuals are not eligible to apply for the Producer Offset.

4. When should I apply?

Due to increasing volumes of applications being received by POCU, applicants are strongly advised to apply as soon as practicable after the completion of a project to allow for the possibility of additional processing times. Applications should be made as soon as you have the application information and attachments ready for submission. A list of the application attachments currently required is set out in these FAQs.

5. Do I have to apply for a Provisional Certificate?

There is no requirement to apply for a Provisional Certificate prior to applying for a Final Certificate. A Provisional Certificate is an indication only of eligibility based on information considered at that time. It is not binding and is not a guarantee that a Final Certificate will be issued.

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 issue of a Final Certificate, if it is made in accordance with the information provided.

If elements of your film change after a Provisional Certificate has been issued, including the level of significant Australian content (**SAC**)² or the distribution arrangements, you should contact POCU, as the Provisional Certificate may no longer be a relevant provisional indication of eligibility. If the changes are material you may wish to apply for a re-assessment of the Provisional Certificate that takes into account the changed circumstances of your film.

² For further explanation of SAC, see the Producer Offset Guidelines at section 2.2

You may apply for a Provisional Certificate at any time during development, financing or production.

6. What does POCU take into account in its assessment of applications for the Producer Offset?

POCU administers the Producer Offset in accordance with the statutory framework set out in Division 376 of the Act. Each application is assessed on its individual circumstances and merits.

The eligibility criteria and qualifying tests for QAPE are set out in Division 376 of the Act. POCU does not have discretion to alter or depart from the Act. It is also not entitled to consider information or material that is irrelevant to its decisions or beyond the scope of the requirements of the Act (e.g. the success of a project or its artistic merit). Further information is set out in the [Producer Offset Guidelines](#).

Applications made to POCU vary in complexity and size and are assessed on a case by case basis.

More complex applications (including those that claim a large amount of “interested party” expenditure as QAPE) may require POCU to seek additional information from applicants or to consult with independent experts and may require additional assessment time.

7. Can Screen Australia determine my total QAPE at an amount lesser than my claimed QAPE?

Yes.

POCU administers the Producer Offset in accordance with the statutory framework set out in Division 376 of the Act, which includes rules regarding whether certain expenditure is allowable as QAPE. These rules are strictly applied by POCU so that Screen Australia’s QAPE determinations provided to the Applicant and the ATO are an accurate reflection of your entitlement under the Act. POCU takes very seriously its obligations to safeguard the delivery of Commonwealth monies in accordance with the Producer Offset regime.

Among other provisions, the Act requires Screen Australia to take expenditure under non-arm’s-length transactions or arrangements to be only the amount, if any, that would have been incurred at arm’s length. This means that Screen Australia may reduce QAPE claimed for interested party service providers (e.g. investors in the film) if the expenditure exceeds reasonable market rates or is otherwise inconsistent with arm’s length dealings.

POCU’s assessments of the project’s total QAPE are approved by an appropriate delegate. Depending on matters such as the offset amount and nature of the project, this may be the Producer Offset and Co-Production Committee or, in some circumstances, the Screen Australia Board.

If POCU intends to recommend to the delegate a material reduction to your claimed QAPE, it will provide you with an opportunity to make a submission and/or provide further information or documentation in support of your QAPE claim. Those submissions and/or additional information will be taken into account before a final QAPE determination is made.

8. Do the assessments made by POCU differ from case to case?

The application and effect of Division 376 of the Act is not discretionary. However applications made to POCU vary in their individual circumstances, complexity and size and are assessed on a

case by case basis. No application or project is identical and accordingly each of POCU's assessments will necessarily differ from case to case.

Each assessment is conducted on the circumstances of each individual project and application. In some cases, expenditure approved as QAPE on one film may not be approved as QAPE on another film because the individual circumstances of each film warrants a different result. For example, the assessment of whether interested party transactions reflect amounts of expenditure that would have been incurred at arm's length will often depend on the particular features of the film in question and the work provided. For more information see section 3.2 of the [Producer Offset Guidelines](#).

9. What is involved in the logging (receipting) process for Producer Offset applications?

When your application is first received by POCU, POCU staff carry out a preliminary check to ensure that the application is complete and contains the information and attachments required for a POCU assessor to assess the application. This is known as the logging (or receipting) process. The logging (or receipting) process usually takes approximately 3 to 5 weeks but can be delayed when information is missing from your application. The assessment timeframe is not measured from the date that you submit your application form but is measured from the time that POCU has received a complete application.

If information is missing, a POCU officer will ask you for that missing information. Any information requested should be provided to POCU within 2 weeks. Any failure to provide the information within that time may impact the estimated timeframes for assessment of your application. A failure to provide vital information may result in Screen Australia refusing to issue a certificate or asking you to withdraw your application until you are able to provide that information.

The logging process is carried out by trained POCU officers and is designed to streamline the assessment process and avoid unnecessary delays caused by missing documents or information. The logging process has been in place for approximately ten years and is not an additional or new process. It was introduced because a significant number of applications are (and continue to be) submitted without all required information or contain errors or inconsistencies in the information provided.

Further information about the application stages is available at Screen Australia's website [here](#).

10. Where can I get application forms?

Application forms are available from the Screen Australia website:
<https://screenaustralia.smartygrants.com.au/>.

Application forms are updated from time to time.

11. What attachments are required?

The current application forms require the following attachments to be provided:

Provisional Certificate applications	Final Certificate applications
One page synopsis	Current Applicant Company ASIC Extract
Outline of episodes (for Season of a series productions)	Current Parent Company ASIC Extract (if applicable)
Budget	Statutory declaration
QAPE spreadsheet (in Excel format)	One page synopsis
Chain of title documents (including option agreement, PIA, writer, script editor and director agreements) and solicitor's opinion letter, if available.	Outline of episodes (for Season of a series productions)
Copy of the script or treatment	All agreements to substantiate the finance plan
Finance plan	Contracts for all above-the-line production personnel (fully executed)
Statutory declaration	Contracts for all above-the-line cast OR narrators and/or presenters for documentaries (fully executed)
Transaction statement confirming the application fee has been paid	A listing of all production personnel and cast (or narrator/on-screen presenters for documentaries) with name, role, nationality and residency
Theatrical sales and marketing plan prepared by the Distributor (for Feature Film & Large Format productions)	Copy of the front and end credits
Document outlining the track record of the distributor in distributing Australian feature films (for Feature Film & Large Format productions)	Solicitor's opinion letter on chain of title, if available
Distribution Agreement or Deal Memo for theatrical distribution in Australia (for Feature Film & Large Format productions)	Other chain of title documents
Document outlining the track record of the key personnel in the production of feature films (for Feature Film & Large Format productions)	Production schedule, including pre, shoot and post production
Applicant's statement addressing Pathway to Audience (for Feature Film & Large Format productions)	Letter of Representation for each post-production provider
Any available cast and crew contracts (for Feature Film & Large Format productions)	Evidence of completion date of the film
	Fully executed Australian television/online licence agreement (for all formats other than Feature Film & Large Format productions)
	Fully executed Australian theatrical distribution agreement (for Feature Film & Large Format productions)
	Applicant's statement addressing Pathway to Audience (for Feature Film & Large Format productions)
	Evidence of theatrical release (if applicable, for Feature Film & Large Format productions)

Provisional Certificate applications	Final Certificate applications
	Marketing plan (for Feature Film & Large Format productions)
	Rest of World sales agent agreement (if applicable)
	Itemised breakdown of contracted deliverables claimed as QAPE
	Contracts and invoices for all music copyright licensed and claimed as QAPE (if applicable)
	Itemised breakdown of all music claimed as QAPE (if applicable)
	Composer's agreement (if applicable)
	Contracts and invoices for all archival footage licensed and claimed as QAPE (if applicable)
	Itemised breakdown of all archival footage claimed as QAPE (if applicable)
	Full General Ledger for the project in PDF
	General Ledger in excel format
	Subset of the General Ledger for production expenditure (this document can be listed as a separate tab within the QAPE spreadsheet)
	Final Cost Report
	List of any Estimates to Complete included in the Final Cost Report (if applicable)
	Invoices and Contracts to substantiate the Estimates to Complete (if applicable)
	Final QAPE spreadsheet that contains the completed relevant worksheets (i.e. development, interested party, travel, Season of a Series, and all other relevant worksheets)
	Non-QAPE report (if this information is not included in the subset of the General Ledger)
	Auditor's Statement
	Invoice from the company auditor for the QAPE audit
	Production audit (if available)
	Statement of Investor Funds or Balance Sheet (if available)
	Breakdown of overseas expenditure claimed as QAPE under the Gallipoli clause if applicable

Please ensure that any attachments are submitted as separate documents as instructed in the application form.

We expect that all agreements that are submitted as supporting documents for Final Certificate applications be properly executed and include an accurate date of execution. This includes but is not limited to above-the-line agreements, distribution agreements and financing agreements.

Criminal and civil penalties may apply for the making of any false or misleading statement to Screen Australia or the ATO in connection with a Final Certificate application.

12. What are the current timeframes for assessing Provisional and Final Producer Offset certificate applications?

The assessment stages and timeframes for applications are outlined on the [Screen Australia website](#).

Unfortunately, the majority of applications currently being submitted to POCU are incomplete or contain errors. This slows down the processing of all applications.

The current estimated assessment timeframes for *complete* applications are set out in the following table. However, larger or more complex applications and applications that contain a large amount of interested party expenditure will always need a more detailed review and those timelines are lengthier.

Application Type	Indicative assessment timeframe
Provisional Certificates	8-10 weeks
Final Certificates	12-16 weeks

Please note that the indicative assessment timeframes are not measured from the date that you submit your application form but are measured from the time that POCU has received a complete application. The first day counted towards the assessment timeframe will be when the application has been logged (or receipted) and deemed complete. The last day counted is when POCU issues a certificate to the applicant or advises an applicant that a certificate will not be provided. Days will not be counted when waiting for an applicant to respond to questions from a POCU officer or an IFPC

A complete application is an application that does not contain any material errors or omissions (e.g. has completed all mandatory fields of the application form) and that includes all of the relevant supporting documentation that POCU requires in order to make its assessment against the Act as well as any other documentation that you wish to provide to POCU to take into account. If you provide documents in support of your application on multiple occasions, the date that POCU will treat as the date that a completed application is provided is the latest date on which you provide any such document or information.

13. If I submit my application to POCU earlier, even though it is incomplete, does that mean I will get priority over other applications that are received by POCU afterwards?

No. As noted above, POCU measures the timeframes for applications from the date of a complete application and not from the date of submission. POCU considers an application to be

complete only when all of the relevant information and documents required for POCU to make its assessment is provided, including any late information or documents provided to POCU.

If your application is complete at the time of submission then generally it will be treated as complete at the date that POCU is satisfied through the logging/receipting process that the application is indeed complete. In some limited cases, where a further review of the application has identified additional missing information or errors, the application will not be deemed complete until the missing information is supplied or errors are corrected.

POCU will assess each complete application in the order it was deemed complete. This does not, however, necessarily mean that assessments will be completed in the same order. Complex or large cases may require additional assessment time.

In certain cases where applications are materially incomplete, POCU may instruct or recommend applicants to withdraw their application and to re-enter their application once they have collected the information and documents required for POCU to properly assess the application.

14. Why have there been delays in assessing applications for producer offset applications?

The volume of producer offset applications received by POCU has risen significantly over the last year. The number of applications received for Producer Offset Final Certificates increased by 31% in the 2021-22 financial year (compared with 2020-21). Applications for Producer Offset Provisional Certificates increased by 13% in the 2021-22 financial year (compared with 2020-21).

We have responded to the significant increase in applications by adding additional resources. In August 2022, Screen Australia engaged external contractors from several of the Big Four professional consultancy firms working in the capacity of secondee assessors. The additional resourcing has resulted in a 35% to 40% reduction to the application waitlist.

Over the next 6 to 12 months, POCU will implement enhancements to the online application system. These updates to the system are in response to feedback received from industry and are intended to streamline existing processes and reduce delays in assessing applications. POCU will continue to consult with the screen sector and industry participants regarding these enhancements and welcomes feedback from applicants on their experiences with the application system to inform the changes that are proposed and/or implemented.

15. What level of communication about the progress of my application can I expect?

A POCU officer will contact you to notify you when your application has been logged and is ready to be assessed. POCU is happy to answer questions regarding the progress of your application. The best way to contact POCU is by emailing the POCU officer assigned to your application. POCU cannot answer questions about the likely outcome of your application until your application has been assessed.

A POCU officer will contact you if further information or substantiation is required in order to assess your application. A POCU officer will also contact you if there is likely to be any material reduction to the QAPE amount you have claimed.

Due to Tax Secrecy, in most circumstances POCU officers are not able to provide information about an application to any person who is not an applicant or an authorised contact person

listed on the application form. Please make sure that your authorised contact person(s) is a person who you wish to authorise to receive information regarding your application, which may include confidential information about your tax and company affairs and that their contact details are correct and up to date.

16. What level of record-keeping or supporting documentation is required for my project in relation to the producer offset?

Applicants must keep accurate records. A valid record for the purposes of claiming the Producer Offset is any record that verifies or contributes to calculating your claim.

It is your responsibility to provide adequate supporting information to support the amount of QAPE that you are claiming on your Final Certificate application. Your records must be sufficient to verify the amount of the expenditure incurred on your project, when it was incurred, and the production activities for which it is attributable to demonstrate that it is eligible as QAPE.

QAPE must be incurred by the company applying for the Producer Offset or by a prior production company from which the applicant company took over the making of the film. In instances where there is a parent company/SPV relationship we recommend applicants seek their own expert advice to ensure the company applying for the Producer Offset has incurred the expenditure being claimed as QAPE.

You should keep documents to show the relationship of the expenditure to production activities on the project and to show how you apportioned expenditure between your eligible QAPE expenditure and your expenditure on non-QAPE activities. It is your responsibility to satisfy Screen Australia that you use reasonable methods to differentiate between your QAPE and non-QAPE expenditure.

You should keep records that:

- show that the amounts you are claiming relate to the making of your project
- detail the activities you carried out in making your project
- specify and explain all transactions in detail
- show when amounts have been paid to associates or interested parties
- are made as soon as transactions occur or as soon as possible after they occur
- show that you have correctly apportioned between QAPE and non-QAPE expenditure

17. What is an Official Co-Production?

Official Co-Productions are made under formal arrangements between Australia and the governments of various countries. These formal arrangements are in the form of either a Treaty or a Memorandum of Understanding. A project made as a Co-Production is treated as a national project of Australia and also the other partner country (or countries) and can access the Producer Offset if it is deemed to be eligible.

Screen Australia is Australia's Competent Authority in relation to the international Co-Production system. POCU administers the official Co-Production program in Australia. Applicants may apply to POCU for official Co-Production status.

More information is available on the Screen Australia website [here](#).

18. Can lender's legal fees be claimed as QAPE?

Legal fees charged by financiers (such as cash-flow lenders) may be considered QAPE if they fall into a category of expenditure set out in section 376-150(1) of the Act, which outlines specific inclusions of expenditure constituting QAPE. See in particular item 6(b) of section 376-150(1), which provides that the following expenditure is QAPE: *expenditure incurred in Australia prior to the end of the income year in which completion of the film occurs in respect of ... fees for audit services and legal services provided in Australia in relation to raising and servicing the financing of the film which are incurred by the company that makes, or is responsible for making, the film.*

Applicants will be asked to provide the agreement with the financier, the name of the legal service provider and the invoice for this work to confirm it is QAPE.

19. Does the ATL cap apply to feature documentaries?

QAPE for certain expenditure (broadly, development and above-the-line expenditure) is capped at 20% of total film expenditure (see section 376-170(4)(b) of the Act). This is referred to as the "ATL cap".

The ATL cap does not apply to feature documentaries. If you are working from an old version of the Final QAPE Spreadsheet that automatically deducts expenditure for exceeding the ATL cap, this will be reinstated as QAPE during the course of your assessment.

A new Final QAPE Spreadsheet for feature documentaries that does not apply the ATL cap is available [here](#).

20. Is expenditure on archival footage considered QAPE?

Expenditure on archival footage may be considered QAPE if it meets the requirements of section 376-150(1) item 2 of the Act. Note that this provision requires that the copyright be held by an individual or company that is an Australian resident.

Where footage is acquired from an interested party (such as a parent company), Screen Australia will assess whether the arrangement and fees charged are at arm's length. The Act requires Screen Australia to take expenditure under non-arm's-length transactions or arrangements to be only the amount, if any, that would have been incurred at arm's length.

Applicants may be requested to 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.

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 generally expected to be applied. The following sliding scale is used by Screen Australia to reflect an arm's length rate however Screen Australia will consider evidence of negotiated rates on a case by case basis and taking into consideration industry practice and norms:

Discounting
First 5 minutes at base rate
Next 10 minutes = base rate less 15%
Following 85 minutes = base rate less 40%
After 100 minutes = base rate less 60%

Please contact POCU for a template excel spreadsheet that can be used for this calculation.

Applicants who consider that a different methodology should be applied must provide material and submissions in support of their claim.

21. What are the rules around foreign currency translation?

All production expenditure and QAPE must be worked out in Australian dollars.

If a film's QAPE is \$15 million or above, and the applicant company incurs any production expenditure in a foreign currency (whether QAPE or non-QAPE), that expenditure must be converted into Australian dollars and recorded as follows:

- EXCHANGE RATE #1 - For the purposes of meeting the QAPE thresholds, the expenditure must be converted into Australian dollars using the foreign exchange rate for the day on which principal photography or production of the animated image commenced. This is to provide certainty to applicants that they have met the requisite QAPE threshold.
- EXCHANGE RATE #2 - For the purposes of calculating the final QAPE figure upon which the Producer Offset is based, the expenditure is to be translated to Australian dollars at the average of the exchange rates applicable during the period that QAPE is incurred on the film.

If a film's QAPE is less than \$15 million, for the purpose of calculating the final QAPE figure upon which the Producer Offset is based, foreign currency amounts are to be translated to Australian dollars at the exchange rate applicable at the time when expenditure is incurred on the film.

Please refer to worksheet D of the Final QAPE spreadsheet for further information.

22. What is a substituted accounting period (SAP) and what do I need to provide to substantiate a SAP?

An entity's accounting period is ordinarily the 12 month period ending on 30 June. A substituted accounting period (SAP) is an alternative annual accounting period. In order to adopt a SAP, an entity must have permission from the Commissioner of Taxation. Information about applying for a SAP can be found on the ATO's website [here](#).

In the Final Certificate application form you will be asked to identify whether or not the applicant company operates under a SAP, the project's completion date and the income year for which the Producer Offset is sought.

This information is important because only expenditure incurred prior to the end of the income year in which the project was completed will meet the general tests for production expenditure and QAPE.

In order to substantiate a SAP you must provide the letter issued to the applicant company by the ATO that confirms approval of a SAP.

If however the applicant company is a member of a tax consolidated group of companies that operates under a SAP, you may be asked to provide evidence of the SAP in the form of an ATO approval letter issued to the head company of the group or a letter from the group accountant.

23. What is ‘incurred’ expenditure and why does this matter for my QAPE claim?

In order to meet the general test for production expenditure (s 376-125(1) of the ITAA) and hence the general test for QAPE (s 376-145 of the ITAA), expenditure must be *incurred* by the applicant company.

POCU applies a legal test for whether relevant expenditure has been incurred, 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 company is *definitely committed*. Definite commitment requires a complete subjection on the part of the applicant company 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 company receiving the Producer Offset rebate or payment from the ATO), there is not a definite commitment.

The recent Administrative Appeals Tribunal decision in the matter of [Quirky Mama Productions Pty Ltd \(Subject to Deed of Company Arrangement\) and Screen Australia \(Taxation\) \[2023\] AATA 3089](#) provides guidance on the concept of incurred expenditure in the Producer Offset context.

Applicants are encouraged to seek legal advice in advance of contracting in relation to incurred expenditure, particularly if the project will involve reinvestment arrangement(s).

24. How can I get the right legal or accounting advice with my producer offset certificate application?

In order to avoid potential problems arising with your application, it is imperative that applicants seek specialist legal or accounting advice prior to the commencement of pre-production and in advance of submitting a Provisional or Final Producer Offset application to Screen Australia. POCU is not able to provide legal or accounting advice to applicants or provide assistance to applicants to ensure that they are eligible for the Producer Offset or that their claimed expenditure is QAPE. However, if you are new to the Producer Offset or are having difficulties finding the right production accountant, external auditor or production lawyer for your project, Screen Australia can refer you to some suitable providers if you get in contact with the POCU team at POCU@screenaustralia.gov.au or (02) 8113 1042.

25. What happens if I provide incorrect information to Screen Australia?

As noted above, it is imperative that applicants seek specialist legal or accounting advice well in advance of submitting a Provisional or Final Producer Offset certificate application to Screen Australia. POCU personnel perform a specialised assessment function for the purpose of Screen Australia’s administrative decision-making functions under the *Income Tax Assessment Act 1997* and are required by law to review the information you provide in your application for compliance with the provisions of the Act. This includes ensuring that your project is eligible for the Producer Offset and the expenditure claimed as QAPE has been properly “incurred” (see FAQ 23) and satisfies the relevant provisions in the Act. If you knowingly provide false or

misleading information to POCU as part of your certificate application or QAPE claim, Screen Australia is required to report this to the ATO and this may then trigger a broader investigation into your tax affairs.

Applicants are now required to make the following declaration as part of their applications for Provisional or Final Producer Offset certificates:

Criminal and civil penalties apply to individuals or companies that provide false or misleading statements or information to any Commonwealth agency, including Screen Australia or the Australian Taxation Office. This includes potential liabilities under the Criminal Code Act 1995 and the Taxation Administration Act 1953. In addition, making a false statement in a Statutory Declaration is an offence punishable by imprisonment. If Screen Australia suspects that a producer offset certificate was fraudulently obtained or obtained through serious misrepresentation (including omissions), it is obligated to report this to the Australian Taxation Office or other relevant authorities. Such a report may trigger a broader investigation into your tax affairs and potential prosecution. Additionally, if Screen Australia determines that a certificate was obtained through fraud or misrepresentation, it may revoke the certificate at any time.

You will be asked to tick a box to confirm that you understand that providing false or misleading information to Screen Australia is a criminal offence at the time of submitting your application to Screen Australia.

26. Can I apply for the Producer Offset if I started making the film as an individual or sole trader?

Only companies are eligible for the Producer Offset, and in order to be eligible for a final Producer Offset certificate an applicant company must be able to demonstrate that it “either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the *making of the film”: s 376-65(1)(a) of the Act.

“Making of a film” is defined in s 376-125(2) of the Act to mean “the doing of the things necessary for the production of the first copy of the film” and includes pre-production, post-production and any other activities undertaken to get the film ready for public release: see s 376-125(3). It excludes certain activities such as developing the proposal for the making of the film and arranging finance: see s 376-125(4).

This eligibility requirement was recently considered in [Fragmentary Pty Ltd and Screen Australia \(Taxation\) \[2024\] AATA 3316](#). The case concerned a film project (**Film**) that was commenced by an individual film-maker who undertook various activities prior to setting up an SPV, including preparing the script, arranging cast and crew, undertaking principal photography, editing the footage and conducting a test screening. The individual then set up the SPV, which undertook further production and post-production work and completed the Film.

The Tribunal affirmed Screen Australia’s original decision that the SPV company did not satisfy the eligibility condition requiring it to be responsible for the all of the activities necessary for the making of the film. The Tribunal found that “activities” necessary for the making of a film includes storyboarding, scriptwriting, casting actors, developing a shooting schedule, directing performances by actors, shooting footage to be used in the film, and editing that footage into a first cut of the film. Applying this to the specific circumstances of the case, the Tribunal determined that the activities carried out by the individual filmmaker prior to the SPV’s incorporation went far beyond merely creating pre-existing footage and extended to development, pre-production and production

activities that were clearly part of the “making” of the Film. This meant that the SPV couldn’t be said to have arranged or carried out **all** activities necessary to make the Film. Accordingly, the SPV could not satisfy the eligibility requirement in s 376-65(1)(a), and was not eligible for a Producer Offset certificate.

The decision highlights the importance of carefully considering offset eligibility and other requirements **prior to commencing production of a project**. Producers should:

- Consider who will be responsible for each of the activities necessary for the making of the project, and who the offset applicant will be – for example, is there an existing production company? Will a SPV be set up? Producers should also familiarise themselves with s 376-180 of the Act, which addresses when one company takes over the making of a film from another company;
- Seek expert advice in relation to the arrangements for the making of the project, as early as possible; and
- Be aware that attempts to re-characterise events and commercial dealings after the fact are unlikely to be accepted.

Producers and financiers should also be aware that Screen Australia cannot assess the s 376-65(1)(a) eligibility requirement at the provisional certificate stage. Under the Act and the *Producer Offset Rules 2018* this particular requirement is only assessed at final certificate stage, including because many films the subject of provisional certificate applications are not yet completed.

27. Will reinvested fees meet the ‘incurred’ expenditure requirement?

A person or company providing services for a project (such as an individual producer or a post-production house) may choose to invest all or part of their service fees towards the cost of production of the project. This is often referred to as a ‘reinvestment’ arrangement.

If contracted properly, reinvested service fees may satisfy the general requirement that expenditure be ‘incurred’ by the applicant company (see FAQ 23 above).

However, a common pitfall for applicants is when a reinvested service fee is claimed to have been set off but the supporting documentation provided does not substantiate that.

For example, where applicants claim that amounts owing under service agreements and investment agreements were set off against each other or that the respective payments were met by an ‘exchange of invoices’ (as opposed to being paid by way of cash payment), but the relevant contracts and supporting materials provided do not in fact support there being a legally valid set-off, it is unlikely that the reinvested fee can be considered ‘incurred’ at law.

A legally valid set-off requires:

- ***Independent*** obligations to pay each of the amounts that are to be set off against one another so that if the conditions for one payment obligation (Payment A) are met but the conditions for the other payment obligation (Payment B) are not, payment (for Payment A) is or can nevertheless be met in another way (i.e. other than by way of set-off against Payment B); and
- That the quantum (i.e. dollar sum) of each amount can be quantified independently ***and is not dependent on the other***. For example, Payment A can be for a dollar amount that is the same as the dollar amount of Payment B, but Payment A should not be quantified by reference to Payment B or vice versa.

If these requirements are not met, definite commitment to make payment is unlikely to exist and the reinvested service fee amount will not be 'incurred'. If an amount is not 'incurred' then it is not considered to be production expenditure, or QAPE (see FAQ 23 above).

It is also important for applicants to be aware that the ability to infer a right of set-off is *extremely limited without an express contractual provision providing for set-off*. Accordingly, if a set-off is intended, applicants should ensure their contracts are explicit in providing for that set-off.

It is also important to remember that accounting treatment is not determinative of the legal position and so entries in books of accounts or financial statements alone will not be conclusive evidence of a legally valid set-off.

Applicants should also be aware that Screen Australia's ability to rely on the contracts supplied is limited in some circumstances. For example, as a general rule Screen Australia can only rely upon the terms of a contract that is signed **before** performance of the contracted services commences. In limited cases, a contract signed **after** performance of the contracted services has commenced will be relevant where it specifies an earlier effective date and the terms of the contract are consistent with the parties' conduct prior to the contract being signed.

For completeness, it should be noted that there are specific exclusions from QAPE where expenditure (including reinvested service fees) is agreed to be deferred and paid out of receipts, earnings or profits from the film, or is otherwise dependent on the commercial performance of the film. The Act **expressly excludes** such amounts from being production expenditure and accordingly as QAPE: see section 376-135 items 6 and 7 of the Act.