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## ***General outline and financial impact***

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### **Film tax offsets**

Schedule # to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to make two changes to the eligibility criteria for accessing the film tax offsets. The minimum qualifying expenditure threshold for the post, digital and visual effects (PDV) offset is reduced from \$5 million to \$500,000. The requirement for films with qualifying Australian production expenditure (QAPE) of less than \$50 million to have at least 70 per cent of the total of all the company's production expenditure on the film as QAPE, in order to qualify for the location offset, is removed.

***Date of effect:*** The amendments apply from 1 July 2010.

***Proposal announced:*** This measure was announced in the 2010-11 Budget.

***Financial impact:*** This measure is estimated to increase expenditure on the film tax offsets by \$6.9 million over the forward estimates.

<b><i>2010-11</i></b>	<b><i>2011-12</i></b>	<b><i>2012-13</i></b>	<b><i>2013-14</i></b>
0.7	1.1	2.2	2.9

***Compliance cost impact:*** This measure is expected to reduce compliance costs for affected taxpayers.



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## **C**hapter # **Film tax offsets**

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### **Outline of chapter**

1.1 Schedule # to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to relax certain eligibility requirements for the film tax offsets, with the aim of enabling more companies to benefit from these offsets.

### **Context of amendments**

1.2 Companies may be entitled to one of three refundable tax offsets in relation to qualifying Australian production expenditure (QAPE) they incurred in making films.

1.3 The relevant provisions are contained in Division 376 of the ITAA 1997.

1.4 The three tax offsets are:

- the producer offset, which is available for Australian expenditure incurred in making an Australian film;
- the location offset, which is available for Australian expenditure incurred in making a film; and
- the PDV offset, which is available for Australian expenditure incurred on post, digital and visual effects production for a film.

1.5 The rate of the location and PDV offsets is 15 per cent of QAPE. The rate of the producer offset is 40 per cent of QAPE for feature films or 20 per cent of QAPE otherwise.

1.6 Division 376 of the ITAA sets out the minimum expenditure thresholds which apply for the offsets and for different types of films. A company's QAPE on a film must be at least as much as the relevant threshold for the film to be eligible for a film tax offset.

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### **PDV offset**

1.7 The minimum expenditure threshold for the PDV offset is \$5 million (paragraph 376-45(5)(a) of the ITAA 1997).

1.8 The Government has decided to reduce this threshold to \$500,000.

### **Location offset**

1.9 The minimum expenditure threshold for the location offset is \$15 million (paragraph 376-20(5)(a) of the ITAA 1997).

1.10 An additional requirement applies if the company's QAPE on the film is less than \$50 million (paragraph 376-20(5)(b) of the ITAA 1997). For such films to be eligible for the location offset, the total of the company's QAPE on the film must be at least 70 per cent of the total of all the company's production expenditure on the film.

1.11 No such condition applies to films where the company's QAPE is at least \$50 million.

1.12 The Government has decided to remove the 70 per cent requirement which applies to films with QAPE between \$15 million and \$50 million. The result will be a single minimum expenditure threshold for the location offset of \$15 million.

1.13 For further information refer to the joint media release from the Minister for Environment Protection, Heritage and the Arts and the Assistant Treasurer of 11 May 2010.

### **Summary of new law**

1.14 A company can be eligible for the PDV offset for a film if it incurs at least \$500,000 QAPE on that film.

1.15 A company can be eligible for the location offset for a film if it incurs at least \$15 million QAPE on that film.

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### Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A company can be eligible for the PDV offset once it has incurred at least \$500,000 QAPE on post, digital and visual effects work on a film.	A company must incur at least \$5 million of QAPE on post, digital and visual effects work on a film before it can be eligible for the PDV offset.
A company must incur at least \$15 million of QAPE to be eligible for the location offset.	A company must incur at least \$15 million of QAPE to be eligible for the location offset. If the QAPE incurred is less than \$50 million, then the company must also demonstrate that the amount of QAPE represents at least 70 per cent of the total of the company's production expenditure on the film.

### Detailed explanation of new law

#### *PDV offset*

1.16 The minimum expenditure threshold for the PDV offset is reduced from \$5 million of QAPE to \$500,000 of QAPE, to the extent that it relates to post, digital and visual effects production for the film.  
*[Schedule #, item 6, paragraph 376-45(5)(a) of the ITAA 1997]*

#### **Example 1.1 Company benefits from lower PDV threshold**

Alpha Film is a small visual effects company based in Australia.

In April 2011, Alpha Film performs some 3D animation work for a popular feature film, and incurs \$3 million of qualifying Australian production expenditure (QAPE).

Because Alpha Film's QAPE on this film is not less than \$500,000, it is eligible for the PDV offset for its work. The amount of the offset available is \$450,000 (15 per cent of \$3 million).

If the minimum threshold had instead remained at \$5 million of QAPE, Alpha Film would not have been eligible for the PDV offset.

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### ***Location offset***

1.17 The minimum expenditure threshold for the location offset is \$15 million of QAPE. No additional requirements apply regarding the ratio of a company's QAPE to all of its production expenditure on the film. The additional requirement which can apply under the existing law is repealed. *[Schedule #, items 2 and 3]*

1.18 To be eligible for the location offset, a company must have either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film. It is not necessary for the company to be responsible for the entire production. This condition applies to all films and not just to those with at least \$50 million of QAPE as under the existing law. *[Schedule #, item 4, paragraph 376-20(5)(c) of the ITAA 1997]*

1.19 The notes to subsection 376-20(5) and section 376-130 of the ITAA 1997 are amended to reflect that the total amount of all production expenditure is no longer relevant to a company's eligibility for the location offset. For the same reason, the note to section 376-140 of the ITAA 1997 is deleted. *[Schedule #, items 5, 7 and 8]*

1.20 Similarly, paragraph 376-180(1)(d) of the ITAA 1997 is amended to reflect the deletion of paragraph 376-20(5)(b) of the ITAA 1997. *[Schedule #, item 9, paragraph 376-180(1)(d)]*

### **Example 1.2 Company benefits from removal of 70 per cent test in the location offset**

Omega Film is a company established in Australia to carry out the Australian component of a feature film, *Sigma Sun*. This film is shot in 2011 in both Australia and New Zealand, taking account of the scenery requirements of the script.

Omega Film incurs \$80 million of expenditure in making the film, comprising \$40 million of qualifying Australian production expenditure (QAPE) and \$40 million of other production expenditure.

Because the amount of QAPE is at least \$15 million, Omega Film is eligible for the location offset for this film. The amount of the offset is \$6 million (15 per cent of \$40 million).

If the 70 per cent test had continued to apply, Omega Film would not have been eligible for the location offset. This is because its QAPE is less than \$50 million and the ratio of its QAPE to the total of all its production expenditure on the film is less than 70 per cent

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(\$40 million / \$80 million = 50 per cent). Further, because Omega Film is responsible only for the Australian component of the film and not for the entire production, it would have been unable to benefit from the location offset.

1.21 As discussed at 1.17, there are no longer any requirements relating to the ratio of a company's QAPE to the total of its production expenditure on the film. Accordingly, it is no longer necessary to require that all of a company's production expenditure on a film (including production expenditure incurred outside of Australia) be completed before it can be eligible for the location offset. [*Schedule #, items 1, 10 and 11*]

1.22 However, it remains the case that, under paragraph 376-10(1)(b) of the ITAA 1997, a condition of a company being entitled to the location offset for a film for an income year is that the company's QAPE on the film ceased being incurred in that income year.

### **Example 1.3 Company receives location offset before film is completed**

Building on example 1.2, Omega Film finishes shooting the Australian component of *Sigma Sun* in November 2011. That is, Omega Film ceases to incur QAPE on the film in the 2011-12 income year. Post-production work on the film is undertaken outside of Australia and is finalised in August 2012. That is, Omega Film ceases to incur production expenditure on the film in the 2012-13 income year.

Omega Film is eligible to receive the location offset in the year it ceases to incur QAPE on the film, 2011-12.

Prior to the amendments in this schedule, Omega Film could only receive the location offset once it had ceased to incur all production expenditure on the film. In this example, this would mean that Omega Film could not receive the offset until the 2012-13 income year.

## **Application and transitional provisions**

1.23 The item of Schedule # which relates to the PDV offset applies to films which commence post, digital and visual effects production in Australia on or after 1 July 2010. [*Schedule #, item 12(2)*]

1.24 The items of Schedule # which relate to the location offset apply to films which commence principal photography or production of the animated image in Australia on or after 1 July 2010. [*Schedule #, item 12(1)*]

1.25 No transitional provisions are required.

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