



Producer Offset Rules 2018

I, Graeme Mason, Chief Executive Officer of Screen Australia, make the following instrument.

Dated 24 January 2018

Graeme Mason
Chief Executive Officer of Screen Australia

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Part 1—Preliminary

1 Name

This instrument is the *Producer Offset Rules 2018*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under subsections 376-265(1) and (2) of the *Income Tax Assessment Act 1997*.

4 Purpose of this instrument

The purpose of this instrument is:

- (a) to provide for the issue of provisional certificates in relation to the producer offset (see subsection 376-265(1) of the Act); and
- (b) to specify how applications for certificates (including provisional certificates) in relation to the producer offset are to be made (see subsection 376-265(2) of the Act).

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

6 Definitions

- (1) In this instrument:

Act means the *Income Tax Assessment Act 1997*.

application for a certificate for the producer offset means an application made under subsection 376-230(3) of the Act.

certificate for the producer offset means a certificate issued by the film authority under section 376-65 of the Act.

commercial hour has the same meaning as in Division 376 of the Act.

estimated qualifying Australian production expenditure means an amount worked out having regard to the matters in Subdivision 376-C of the Act.

independent line producer means a person who, in the film authority's opinion:

- (a) has recent relevant experience in film production management; and
- (b) is independent of the company in relation to which he or she is asked, under subrules 13(3) or 24(2), to provide a report.

indexation factor, for a financial year, has the meaning given by rule 12.

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of the quarter.

official co-production means a film that has been, or will be, made under an arrangement entered into between the Commonwealth (or any authority of the Commonwealth) and a foreign country (or an authority of a foreign country).

producer offset means the tax offset mentioned in subsection 376-55(1) of the Act.

provisional certificate means a certificate issued by the film authority under rule 17.

registered company auditor has the meaning given by section 9 of the *Corporations Act 2001*.

related body corporate has the meaning given by section 9 of the *Corporations Act 2001*.

statutory declaration means a statutory declaration made under the *Statutory Declarations Act 1959*.

Note: A number of expressions used in this instrument are defined in subsection 995-1(1) of the Act, including the following:

- (a) arm's length;
- (b) arrangement;
- (c) associate;
- (d) Australian resident;
- (e) completed;
- (f) development assistance;
- (g) film;
- (h) film authority;
- (i) make;
- (j) qualifying Australian production expenditure;
- (k) total film expenditure.

- (2) For the purposes of this instrument, if a company (the ***incoming company***) takes over the making of a film from another company (the ***outgoing company***) any of the activities carried out, or arrangements made, by the outgoing company in relation to the film are taken to have been carried out or made by the incoming company in relation to the film.

Part 2—Provisional certificates for the producer offset

7 Definition for Part 2

In this Part:

applicant means a company that has applied for the producer offset in accordance with this Part.

8 Application for provisional certificate

A company may apply to the film authority for a provisional certificate for the producer offset for a film if:

- (a) either:
 - (i) the company is an Australian resident; or
 - (ii) the company:
 - (A) is a foreign resident; and
 - (B) has a permanent establishment in Australia; and
 - (C) has an ABN; and
- (b) the company:
 - (i) is the company that is carrying out, or is making the arrangements for the carrying out of, all the activities that are necessary for the making of the film; or
 - (ii) is the company developing the film prior to the establishment of a production company.

9 Form of application for provisional certificate

Information in application

- (1) An application for a provisional certificate for the producer offset must:
 - (a) be made to the film authority in writing; and
 - (b) include the information specified in clauses 1.1 to 2.30 of Part A of Schedule 1; and
 - (c) be signed on behalf of the applicant.
- (2) If the film is a series or a season of a series, the application must also include:
 - (a) the information specified in clauses 2.31 and 2.32 of Part A of Schedule 1; and
 - (b) if the series or season is similar to another series – the information specified in clause 2.33 of Part A of Schedule 1.
- (3) If any of the information specified in Division 3 of Part A of Schedule 1 is available and is relevant to the film, the application must also include that information.

Documents attached to application

- (4) The following documents must be attached to the application:
- (a) if the film is an official co-production – the documents specified in Part B of Schedule 1;
 - (b) if the film is not an official co-production – the documents specified in Part B of Schedule 1, other than the documents specified in clause 1.3 of that Part;
 - (c) an expenditure statement, prepared in accordance with rule 27, for the total film expenditure, and the estimated qualifying Australian production expenditure, on the film.

Waiver of requirement

- (5) The film authority may waive a requirement specified in this rule for an application.

10 Delivery of application for provisional certificate

An application for a provisional certificate for the producer offset must be sent to the film authority.

11 Fee for application for provisional certificate

- (1) A fee (the *application fee*) is payable by an applicant in relation to an application for a provisional certificate.

Working out the application fee

- (2) For an application made in the financial year starting on 1 July 2017, the application fee is the amount specified in the following table:

Item	If the total film expenditure of the film (excluding GST) is ...	the fee is ...
1	no more than \$1,000,000	\$127
2	more than \$1,000,000 but no more than \$5,000,000	\$634
3	more than \$5,000,000 but no more than \$15,000,000	\$1,269
4	more than \$15,000,000 but no more than \$30,000,000	\$2,538
5	more than \$30,000,000	\$4,441

- (3) For the purposes of this Instrument, the application fee payable by an applicant in relation to an application for a provisional certificate made in:
- (a) the financial year beginning on 1 July 2018; or
 - (b) a later financial year;

is worked out using the following formula:

Previous applicable application fee × Indexation factor

where:

indexation factor means the indexation factor for the financial year.

previous applicable application fee means the application fee payable for the previous financial year.

Other matters relating to the fee

- (5) The film authority must not consider the application unless the application fee has been paid.
- (6) If the applicant withdraws the application before a provisional certificate, or notice of refusal to issue a provisional certificate, is issued, the film authority must refund the application fee to the applicant.
- (7) If the film authority refuses to issue a provisional certificate, the application fee is not refundable.

12 Indexation factor

- (1) For the purposes of this Instrument, the ***indexation factor*** for a financial year is the number calculated, to 3 decimal places (rounding up if the fourth decimal place is 5 or more), using the formula:

$$\frac{\text{Index number for the reference March quarter}}{\text{Index number for the base March quarter}}$$

where:

base March quarter means the last March quarter before the reference March quarter.

reference March quarter means the last March quarter before the financial year.

- (2) Subject to subsection (3), if (whether before or after the commencement of this section) the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published in respect of that quarter, the publication of the later index number must be disregarded for the purposes of this rule.
- (3) If (whether before or after the commencement of this section) the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of the application of this rule after the change took place or takes place, regard must only be had to the index number published in terms of the new index reference period.

13 Film authority to consider application for provisional certificate

- (1) On receiving an application for a provisional certificate for the producer offset, the film authority must:
 - (a) consider the application; and
 - (b) decide whether or not to issue a provisional certificate to the applicant.
- (2) For paragraph (1)(a), in considering the application, the film authority:

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- (a) may seek information or advice from any person or source; and
 - (b) may take into account the knowledge and experience of:
 - (i) the members of the board of the film authority; and
 - (ii) employees of the film authority; and
 - (c) must consider all relevant information, including the following information:
 - (i) the application and attached documents;
 - (ii) any written report requested by the film authority under subrule (3) and any written submission made by the applicant in response to that report;
 - (iii) any additional information provided by the applicant under rule 14;
 - (iv) any other relevant information or advice obtained by the film authority.
- (3) Without limiting paragraph (2)(a), the film authority may ask an independent line producer to provide a written report to the film authority about any matter that is relevant to whether a condition set out in subsections 376-65(2) to (6) of the Act will be met or is likely to be met.
- (4) If a request under subrule (3) relates to the conditions set out in subsection 376-65 (6) of the Act, the report may include advice about any of the following matters:
- (a) whether the applicant's expenditure statement is commercially reasonable;
 - (b) whether specific items claimed in the applicant's expenditure statement are reasonably attributable to the estimated qualifying Australian production expenditure;
 - (c) whether costs that are charged for specific items indicate that the parties to the transaction will be dealing with each other at arm's length.
- (5) If the film authority intends to use information or advice from a third party to support a decision to refuse to issue a provisional certificate for the producer offset to an applicant, the film authority must give the applicant reasonable opportunity to comment on the substance of that information or advice.
- (6) If the film authority asks an independent line producer to provide a written report under subrule (3), the film authority must:
- (a) give a copy of the report to the applicant to whom it relates as soon as practicable; and
 - (b) give applicant reasonable opportunity to make a written submission to the film authority in response to the report.

14 Film authority may request additional information from applicant

- (1) If, in the opinion of the film authority, it requires additional information in order to decide whether or not to issue a provisional certificate for the producer offset to an applicant, the film authority may ask the applicant, in writing, to provide that information to the authority.
- (2) The request must specify:

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- (a) the information required by the film authority (the *additional information*); and
 - (b) the period within which the information must be provided to the film authority (the *notification period*).
 - (3) An applicant may ask the film authority to extend the notification period.
 - (4) A request under subrule (3) must be made:
 - (a) in writing; and
 - (b) within 28 days of the applicant's receipt of the request under subrule (1).
 - (5) If a request is made by an applicant under subrule (3), the film authority may extend the notification period.
 - (6) If an applicant does not provide the additional information within the notification period, or within the notification period as extended under subrule (5), the film authority may refuse to issue a provisional certificate to the applicant.

15 Refusal to issue provisional certificate

The film authority may refuse to issue a provisional certificate for the film if it is not satisfied that the conditions set out in subsections 376-65 (2) to (6) of the Act will be met, or are likely to be met, if the film is completed in accordance with the information supplied in the application.

Note: The film authority may refuse to issue a provisional certificate on other grounds. For example, the Board may refuse to issue a provisional certificate under subrule 14(6) where the applicant does not provide additional information within the notification period or extended notification period.

16 Notice of refusal to issue provisional certificate

- (1) If the film authority decides not to issue a provisional certificate for the producer offset for a film, the film authority must give the applicant written notice of the decision.
- (2) The written notice must set out each condition specified in section 376-65 of the Act that the film authority was not satisfied would be met, or likely to be met, if the film was completed in accordance with the information specified in the application.
- (3) The film authority must give the written notice to the applicant no later than 28 days after the film authority's decision not to issue the provisional certificate.

17 Issue of provisional certificate

- (1) The film authority must issue a provisional certificate for the film to the applicant if it is satisfied that the conditions set out in subsections 376-65 (2) to (6) of the Act will be met, or are likely to be met, if the film is completed in accordance with the information supplied in the application.
- (2) A provisional certificate is subject to any condition specified by the film authority in the certificate.

18 Content of provisional certificate

- (1) The provisional certificate must state that the film authority is satisfied that the conditions set out in subsections 376-65(2) to (6) of the Act will be met or are likely to be met, if the film is completed in accordance with:
 - (a) the information supplied in the application; and
 - (b) the conditions (if any) specified in the provisional certificate.
- (2) A provisional certificate must also state that it:
 - (a) does not entitle an applicant to claim a tax offset under Division 376 of the Act; and
 - (b) does not prevent a decision by the film authority to refuse to grant a certificate under Division 376 of the Act; and
 - (c) is not a guarantee that the film authority will issue a certificate to the applicant under section 376-65 of the Act.

Note: A provisional certificate should also identify any condition that the film authority specifies that the certificate will be subject to, under subrule 17(2).

19 Effect of provisional certificate

- (1) A provisional certificate for the producer offset:
 - (a) does not entitle an applicant to claim a tax offset under Division 376 of the Act; and
 - (b) does not prevent a decision by the film authority to refuse to grant a certificate under Division 376 of the Act; and
 - (c) is not a guarantee that the film authority will issue a certificate to the applicant under section 376-65 of the Act.

Part 3—Certificates for the producer offset

20 Definition for Part 3

In this Part:

applicant means a company that has applied for a certificate for the producer offset in accordance with this Part.

21 Form of application for certificate for the producer offset

Information in application

- (1) An application for a certificate for the producer offset must:
 - (a) be made to the film authority in writing; and
 - (b) include the information specified in clauses 1.1 to 2.32 and Division 3 of Part A of Schedule 2; and
 - (c) be signed on behalf of the applicant.
- (2) If the film is a series, or a season of a series, the application must also include:
 - (a) the information specified in clauses 2.33 and 2.34 of Part A of Schedule 2; and
 - (b) if the series or season is similar to another series – the information specified in clause 2.35 of Part A of Schedule 2.

Documents attached to application

- (3) The following documents must be attached to the application:
 - (a) if the film is an official co-production – the documents specified in Part B of Schedule 2;
 - (b) if the film is not an official co-production – the documents specified in Part B of Schedule 2, other than the documents specified in clause 1.5 of that Part;
 - (c) an expenditure statement, prepared in accordance with rule 28, for the total film expenditure, and the estimated qualifying Australian production expenditure, on the film;
 - (d) an auditor's statement that:
 - (i) provides audited figures for:
 - (A) qualifying Australian production expenditure; and
 - (B) total film expenditure; and
 - (ii) includes a statement that the audit was conducted in compliance with rule 30; and
 - (iii) is signed by a person who:
 - (A) is a registered company auditor; and
 - (B) is not an officer, employee or partner of the applicant or of a body corporate that is a related body corporate in relation to the applicant;

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- (e) a completed budget spreadsheet, in the form approved by the film authority.
 - (4) If expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the film is claimed, by the applicant, as estimated qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1) of the Act, the following documents must also be attached to the application:
 - (a) evidence that the copyright is held by an Australian resident;
 - (b) proof of the acquisition of the copyright or the licence (including any agreement in relation to the acquisition).
 - (5) If the expenditure statement contains an amount of estimated qualifying Australian production expenditure that has been translated into Australian currency using the special translation rule in item 9 or 9B of the table in subsection 960-50(6) of the Act, a foreign currency statement, prepared in accordance with rule 29, must also be attached to the application.

Waiver of requirement

- (6) The film authority may waive a requirement specified in this rule for an application.

22 Delivery of application for certificate for the producer offset

An application for a certificate for the producer offset must be sent to the film authority.

23 Adjustment of fee for application for provisional certificate

- (1) This rule applies if a company makes an application for a certificate for the producer offset and:
 - (a) the company holds a provisional certificate in relation to the film; and
 - (b) the total film expenditure of the film (excluding GST) when the application for a certificate for the producer offset is made (the *new total*) is higher than the total film expenditure of the film (excluding GST) that was provided in the application for the provisional certificate; and
 - (c) the application fee that was worked out under subrules 11(2) or (3) would have been higher if the new total had been taken into account.
- (2) The film authority may notify the applicant, in writing that an additional fee worked out in accordance with subrule (3), is payable for the service.
- (3) The additional fee is the difference between the application fee that was paid for in relation to the provisional certificate and the application fee that would have been payable in relation to the provisional certificate had the new total been used to calculate the application fee at the time the application for the provisional certificate was made.

24 Consideration of application for certificate for the producer offset and other information

- (1) In determining whether or not to issue a certificate for the producer offset to the applicant, the film authority:
 - (a) may seek information or advice from any person or source; and
 - (b) may take into account the knowledge and experience of:
 - (i) the members of the board of the film authority; and
 - (ii) employees of the film authority; and
 - (c) must consider all relevant information, including the following information:
 - (i) the application and attached documents;
 - (ii) any written report requested by the film authority under subrule (2) and any written submission made by the applicant in response to that report;
 - (iii) any additional information provided by the applicant under rule 25;
 - (iv) any other relevant information or advice obtained by the film authority.
 - (2) Without limiting paragraph (1)(a), the film authority may ask an independent line producer to provide a written report to the film authority about any matter that is relevant to:
 - (a) determining whether the applicant either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the film; or
 - (b) whether a condition set out in subsections 376-65(2) to (6) of the Act has been met.
 - (3) If a request made under subrule (2) relates to the conditions set out in subsection 376-65(6) of the Act, the report may include advice about any of the following matters:
 - (a) whether the applicant's expenditure statement is commercially reasonable;
 - (b) whether specific items claimed in the applicant's expenditure statement are reasonably attributable to the estimated qualifying Australian production expenditure on the film;
 - (c) whether costs that are charged for specific items indicate that the parties to the transaction were dealing with each other at arm's length.
 - (4) If the film authority intends to use information or advice from a third party to support a decision to refuse to issue a certificate for the producer offset to an applicant, the film authority must give the applicant reasonable opportunity to comment on the substance of that information or advice.
 - (5) If the film authority requests that an independent line producer provide the film authority with a written report under subrule (2), the authority must:
 - (a) give a copy of the report to the applicant to whom it relates as soon as practicable; and
 - (b) give the applicant reasonable opportunity to make a written submission to the film authority in response to the report.
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25 Film authority may request additional information from applicant

- (1) If, in the opinion of the film authority, it requires additional information in order to decide whether or not to issue a certificate for the producer offset to an applicant, the film authority may ask the applicant, in writing, to provide that information to the film authority.
- (2) The request must specify:
 - (a) the information required by the film authority (the ***additional information***); and
 - (b) the period within which the information must be provided to the film authority (the ***notification period***).
- (3) An applicant may ask the film authority to extend the notification period.
- (4) A request under subrule (3) must be made:
 - (a) in writing; and
 - (b) within 28 days of the applicant's receipt of the request under subrule (1).
- (5) If a request is made by an applicant under subrule (3), the film authority may extend the notification period.
- (6) If an applicant does not provide the additional information within the notification period, or within the notification period as extended under subrule (5), the film authority may refuse to issue a certificate to the applicant.

Part 4—Expenditure statements and foreign currency statements

26 Definition for Part 4

In this Part:

applicant means a company that has applied, or that intends to apply, for a provisional certificate, or a certificate, for the producer offset.

27 Expenditure statements for provisional certificates

- (1) For paragraph 9(4)(c), an expenditure statement for a provisional certificate for the producer offset must comply with subrules (2) to (6).
- (2) An expenditure statement must:
 - (a) distinguish expenditure that has been, or will be, incurred on film production activity carried out in Australia from expenditure that has been, or will be, incurred on film production activity carried out outside Australia; and
 - (b) specify any estimated qualifying Australian production expenditure claimed under item 2 of the table in subsection 376-170(2) of the Act (expenditure for travel to Australia and other countries); and
 - (c) specify any expenditure incurred by an outgoing company.
- (3) An expenditure statement must also include:
 - (a) a statement of the estimated qualifying Australian production expenditure, and the total film expenditure, on the film; and
 - (b) a description of each budget item; and
 - (c) the amount of projected expenditure on each budget item; and
 - (d) details of each service provider by budget item; and
 - (e) details of the location in which, and the period over which, each service or good has been, or will be, provided; and
 - (f) details of the location of any land to be used in making the film, and the period of use of the land.
- (4) An amount in an expenditure statement must be expressed in Australian currency.
- (5) For the purposes of an expenditure statement, an amount in foreign currency that is relevant for a purpose mentioned in column 2 of item 9 of the table in subsection 960-50(6) of the Act must be translated into Australian currency using the special translation rule in that item as if:
 - (a) a reference in that item to qualifying Australian production expenditure were a reference to estimated qualifying Australian production expenditure; and
 - (b) a reference to the time when principal photography commences or production of the animated image commences were a reference to the date

estimated by the applicant for paragraph 2.4(a) or (b) (as applicable) of Part A of Schedule 1.

- (6) If an expenditure statement includes an amount in foreign currency that has been translated into Australian currency using the special translation rule in item 9 of the table in subsection 960-50(6) of the Act, as applied in accordance with subrule (5), the expenditure statement must also include the estimated exchange rate used to translate the amount.

28 Expenditure statements for certificates for the producer offset

- (1) For paragraph 21(3)(c), an expenditure statement for a certificate for the producer offset must comply with subrules (2) to (8).
- (2) An expenditure statement must:
- (a) distinguish expenditure incurred on film production activity carried out in Australia from expenditure incurred on film production activity carried out outside Australia; and
 - (b) specify any estimated qualifying Australian production expenditure claimed under an item of the table in subsection 376-150(1) or 376-170(2) of the Act; and
 - (c) specify any expenditure incurred by an outgoing company.
- (3) If the film is an official co-production, the expenditure statement must also specify any estimated qualifying Australian production expenditure claimed by the applicant under subsection 376-170(1) of the Act (expenditure incurred in a foreign country).
- (4) If the development expenditure on the film or remuneration provided to the principal director, producers or the principal cast associated with the film, is claimed by the applicant as estimated qualifying Australian production expenditure, the expenditure statement must also specify:
- (a) the total amount of any development expenditure claimed as estimated qualifying Australian production expenditure; and
 - (b) the total amount of any such remuneration claimed as estimated qualifying Australian production expenditure; and
 - (c) the sum of the amounts mentioned in paragraphs (a) and (b), expressed as a percentage of the total film expenditure claimed by the applicant.
- (5) If any of the expenditure on the film was paid for with development assistance received from a body listed in paragraph 376-170(4)(a) of the Act, the expenditure statement must also specify:
- (a) the expenditure that was paid for with the development assistance; and
 - (b) whether the amount or value of the development assistance has been repaid.
- (6) An expenditure statement must also include:
- (a) a statement of the estimated qualifying Australian production expenditure, and the total film expenditure, on the film; and
 - (b) a description of each budget item; and

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- (c) the amount of expenditure on each budget item; and
 - (d) details of each service provider by budget item; and
 - (e) details of the location in which, and the period over which, each service or good was provided; and
 - (f) details of the location of any land used in making the film, and the period of use of the land.
- (7) An amount in an expenditure statement must be expressed in Australian currency.
- (8) For the purposes of an expenditure statement, an amount in foreign currency that is relevant for a purpose mentioned in column 2 of item 9 or 9B of the table in subsection 960-50(6) of the Act must be translated into Australian currency using the special translation rule in the relevant item as if a reference in that item to qualifying Australian production expenditure were a reference to estimated qualifying Australian production expenditure.

29 Foreign currency statement for certificates for the producer offset

For subrule 21(5), a foreign currency statement for a certificate for the producer offset must set out:

- (a) each amount, expressed in the relevant foreign currency, of estimated qualifying Australian production expenditure that has been expended in a foreign currency (the *foreign expenditure amount*); and
- (b) for a foreign expenditure amount that is to be translated into Australian currency using the special translation rule in item 9 of the table in subsection 960-50(6) of the Act, as applied in accordance with subrule 28(8) (an *item 9 foreign expenditure amount*):
 - (i) the amount, expressed in Australian currency; and
 - (ii) the sum of all of the item 9 foreign expenditure amounts, expressed in Australian currency; and
- (c) for a foreign expenditure amount that is to be translated into Australian currency in accordance with the special translation rule in item 9B of the table in subsection 960-50(6) of the Act, as applied in accordance with subrule 28(8) (an *item 9B foreign expenditure amount*):
 - (i) the amount, expressed in Australian currency; and
 - (ii) the sum of all of the item 9B foreign expenditure amounts, expressed in Australian currency.

Part 5—Audit requirements

30 Conduct of audit

A company that has applied, or that intends to apply, for a certificate for the producer offset must ensure that an audit that is conducted for paragraph 21(3)(d) is conducted in accordance with all applicable accounting standards, including any standards relating to the independence of auditors.

Part 6—Transitional provisions

31 Definition for Part 6

In this Part:

2007 rules means the *Producer Offset Rules 2007*, as in force immediately before the commencement of this instrument.

32 Application of the 2007 rules

The 2007 rules continue to apply in relation to:

- (a) an application for a provisional certificate for the producer offset made under rule 6 of the 2007 rules; or
- (b) a provisional certificate for the producer offset issued under rule 13 of the 2007 rules; or
- (c) an application for a certificate for the producer offset made under rule 17 of the 2007 rules;

before the commencement of this instrument.

Schedule 1—Information and documents for an application for a provisional certificate

Note: See rule 9.

Part A Information to be included in an application for a provisional certificate

Division 1—Information about the applicant

- 1.1 Registered name of the company; and
- 1.2 ABN of the company; and
- 1.3 for a company that is incorporated in a State or Territory – the State or Territory in which the company is incorporated; and
- 1.4 for a company that is not incorporated in a State or Territory — the place in which the company is incorporated; and
- 1.5 registered address of the company; and
- 1.6 for a company that is a foreign resident — details of the company’s permanent establishment in Australia; and
- 1.7 names and addresses of company directors; and
- 1.8 details of the contact person for the application, including the following details:
 - (a) name;
 - (b) office or title;
 - (c) telephone;
 - (d) business address;
 - (e) mobile;
 - (g) email; and
- 1.9 The applicant’s level of responsibility for the making of the film.

Division 2—Information about the film

General information

- 2.1 Working title of the film;
- 2.2 Format of the film;
Note: See paragraph 376-65(2)(c) of the Act.
- 2.3 Estimated duration of the film, in:
 - (a) running time (minutes); and
 - (b) for a film other than a feature film — commercial hours;
- 2.4 Estimated date of commencement of:

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- (a) for an animated film — the production of animated images; or
(b) otherwise — principal photography on the film.
- 2.5 Estimated date of completion of the film.
- Subject matter of the film*
- 2.6 Synopsis of the film.
Note: If the film is a series, a synopsis of the series must be provided. If the film is a season of a series, a synopsis of the season must be provided
- 2.7 Nationality of the principal characters in the film.
- 2.8 Any settings in the film that are not Australian settings (including any setting that will be filmed in Australia but that will be presented as a setting that is outside of Australia).
- 2.9 The proportion of the film that will be set outside of Australia (including any part of the film that will be filmed in Australia but that will be presented as being set outside of Australia).
- The place where the film was made*
- 2.10 Details of:
(a) each stage of the production; and
(b) the location of each stage of the production.
- 2.11 For any stage of the production that will take place outside of Australia, the reason for the location of the stage.
- Details of persons who will take part in the making of the film*
- 2.12 For each key member of the cast:
(a) name; and
(b) nationality; and
(c) details of residency.
- 2.13 For each key member of the production personnel:
(a) name; and
(b) nationality; and
(c) details of residency
- 2.14 For a person who has creative control over the production:
(a) the name, nationality and details of residency of that person; and
(b) details of the creative control held by that person.
- 2.15 For a person who will benefit from profits recouped from the film:
(a) the name, nationality and details of residency of that person; and
(b) details of the benefit to be obtained by the person.
- 2.16 For each person who owns copyright in the film:
(a) name; and
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- (b) nationality; and
 - (c) details of residency
 - 2.17 For each person (if any) who is a beneficial owner of shares in the applicant company, his or her:
 - (a) name; and
 - (b) nationality; and
 - (c) details of residency.
 - 2.18 Details of:
 - (a) the chain of title and underlying rights in the screenplay for the film, including the source material (if any); and
 - (b) the nationality of each person cited in relation to the matters in paragraph (a).
- Financial information*
- 2.19 Whether a deduction has been claimed under Division 10B of Part III of the *Income Tax Assessment Act 1936* in relation to a unit of industrial property that relates to copyright in the film.
 - 2.20 Whether a provisional certificate, or a final certificate, has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film (whether or not the certificate is still in force).
 - 2.21 Whether a deduction has been claimed, or will be claimed, under Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film.
 - 2.22 Whether:
 - (a) the applicant, or another person, has applied for:
 - (i) a certificate for the location offset for the film under subsection 376-230 (1) of the Act; or
 - (ii) a certificate for the PDV offset for the film under subsection 376-230 (2) of the Act; or
 - (b) a certificate for the film has been issued at any time under section 376-20 of the Act (a certificate for the location offset) or under section 376-45 of the Act (a certificate for the PDV offset) (whether or not the certificate is still in force).
 - 2.23 Whether development assistance or production assistance for the film has been received by the applicant, or by anyone else, from a Commonwealth government agency or a State or Territory government agency.
 - 2.24 For any development assistance or production assistance described in clause 2.23 that has been received:
 - (a) the amount or value of that assistance; and
 - (b) whether it has been, or will be, repaid (in full or in part).
 - 2.25 Whether production assistance (within the meaning of paragraph 376-55 (4) (f) of the Act) for the film has been received from:
 - (a) the Film Finance Corporation Australia Limited; or
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- (b) Film Australia Limited; or
 - (c) the Australian Film Commission; or
 - (d) the Australian Film, Television and Radio School.
- 2.26 For any production assistance described in clause 2.25 that has been received:
- (a) the amount or value of that assistance; and
 - (b) whether it has been, or will be, repaid (in full or in part).
- 2.27 Whether the company, or someone else, has deducted money paid for shares in a film licensed investment company under Subdivision 375-H of the Act, if the film licensed investment company has invested in the film.
- 2.28 For any money described in clause 2.27 that has been deducted — the amount of money deducted.
- 2.29 Whether the applicant is likely to incur expenditure on the film as a foreign resident.
- 2.30 For any expenditure described in clause 2.29:
- (a) the estimated total amount of the expenditure; and
 - (b) the period or periods during which the expenditure was incurred; and
 - (c) whether, during the whole or a part of a period mentioned in paragraph (b), the applicant did not have a permanent establishment in Australia or an ABN.

Further information required if the film is a series or a season of a series

- 2.31 The number of previous episodes in the series (if any).
- 2.32 Whether the series has substantially different characters, settings, production locations and individuals involved in the making of the series than any other series.
- 2.33 Details of creative similarities and differences between the current series or season and any previous series.

Division 3—Other information

- 3.1 Details of the production company for the film, including the following details:
- (a) registered name of the production company;
 - (b) ABN of the production company;
 - (c) registered address of the production company; and
 - (d) names and addresses of directors of the production company.
- 3.2 For any provider of goods or services that will be used in the making of the film who is:
- (a) an associate of the applicant; or
 - (b) an associate of a company that is an associate of the applicant;
- the details of the provider.

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- 3.3 Details of any company that is an outgoing company in relation to the film.

Part B Documents to be attached to an application for a provisional certificate

- 1.1 A statutory declaration stating:
- (a) that it is made for rule 9; and
 - (b) that:
 - (i) the information contained in the application for the provisional certificate; and
 - (ii) each document attached to the application; is correct and true in every particular.
- 1.2 Evidence, if it is available, that:
- (a) for an applicant that is an Australian resident — the applicant is an Australian resident; or
 - (b) for an applicant that is not an Australian resident — the applicant has:
 - (i) a permanent establishment in Australia; and
 - (ii) an ABN.
- 1.3 For a film that is an official co-production, evidence from the Commonwealth (or the relevant Commonwealth authority) that the film is an official co-production.

Schedule 2 Information and documents for an application for a certificate for the producer offset

Note: See rule 21.

Part A Information to be included in an application for a certificate for the producer offset

Division 1—Information about the applicant

- 1.1 Registered name of the company.
- 1.2 ABN of the company.
- 1.3 For a company that is incorporated in a State or Territory — the State or Territory in which the company is incorporated.
- 1.4 For a company that is not incorporated in a State or Territory — the place in which the company is incorporated.
- 1.5 Registered address of the company.
- 1.6 For a company that is a foreign resident — details of the company's permanent establishment in Australia.
- 1.7 Names and addresses of company directors.
- 1.8 Details of the contact person for the application, including the following details:
 - name
 - office or title
 - telephone
 - business address
 - mobile
 - email.
- 1.9 The applicant's level of responsibility for the making of the film.

Note: The film authority must be satisfied that the applicant either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the film (see paragraph 376-65 (1) (a) of the Act).

Division 2—Information about the film

General information

- 2.1 Title of the film.
- 2.2 Format of the film.

Note: See paragraph 376-65 (2) (c) of the Act.

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- 2.3 Duration of:
- (a) for a film that is a series, or a season of a series — each episode of the film, in:
 - (i) running time (minutes); and
 - (ii) commercial hours; or
 - (b) for a film that is not a feature film and is not covered by paragraph (a) — the film, in:
 - (i) running time (minutes); and
 - (ii) commercial hours; or
 - (c) for a feature film — the film, in running time (minutes).

- 2.4 Date of commencement of:
- (a) for an animated film — the production of animated images; or
 - (b) otherwise — principal photography on the film.

- 2.5 Date of completion of the film.

Subject matter of the film

- 2.6 A synopsis of:
- (a) for a film that is a series, or a season of a series — each episode of the film; or
 - (b) otherwise — the film.

- 2.7 Nationality of the principal characters in the film.

- 2.8 Any settings in the film that are not Australian settings (including any setting that was filmed in Australia but that is presented as a setting that is outside Australia).

- 2.9 The proportion of the film that is set outside Australia (including any part of the film that was filmed in Australia but that is presented as being set outside Australia).

The place where the film was made

- 2.10 Details of:
- (a) each stage of the production; and
 - (b) the location of each stage of the production.

- 2.11 For any stage of the production that took place outside Australia, the reason for the location of the stage.

Details of persons who took part in the making of the film

- 2.12 For each key member of the cast:
- (a) name; and
 - (b) nationality; and
 - (c) details of residency.

- 2.13 For each key member of the production personnel:

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- (a) name; and
 - (b) nationality; and
 - (c) details of residency.
- 2.14 For a person who has creative control over the production:
- (a) the name, nationality and details of residency of that person; and
 - (b) details of the creative control held by that person.
- 2.15 For a person who will benefit from profits recouped from the film:
- (a) the name, nationality and details of residency of that person; and
 - (b) details of the benefit to be obtained by the person.
- 2.16 For each person who owns copyright in the film:
- (a) name; and
 - (b) nationality; and
 - (c) details of residency.
- 2.17 For each person (if any) who is a beneficial owner of shares in the applicant company, his or her:
- (a) name; and
 - (b) nationality; and
 - (c) details of residency.
- 2.18 Details of:
- (a) the chain of title and underlying rights in the screenplay for the film, including the source material (if any); and
 - (b) the nationality of each person cited in relation to the matters in paragraph (a).

Financial information

- 2.19 Dates for:
- (a) the start of estimated qualifying Australian production expenditure on the film; and
 - (b) the end of estimated qualifying Australian production expenditure on the film.
- 2.20 For a film other than a feature film — estimated qualifying Australian production expenditure on the film (in Australian dollars) divided by the running time of the film (in hours).
- 2.21 Whether a deduction has been claimed under Division 10B of Part III of the Income Tax Assessment Act 1936 in relation to a unit of industrial property that relates to copyright in the film.
- 2.22 Whether a provisional certificate, or a final certificate, has been issued at any time under Division 10BA of Part III of the Income Tax Assessment Act 1936 in relation to the film (whether or not the certificate is still in force).
- 2.23 Whether a deduction has been claimed, or will be claimed, under Division 10BA of Part III of the Income Tax Assessment Act 1936 in relation to the film.

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- 2.24 Whether:
- (a) the applicant, or another person, has applied for:
 - (i) a certificate for the location offset for the film under subsection 376-230 (1) of the Act; or
 - (ii) a certificate for the PDV offset for the film under subsection 376-230 (2) of the Act; or
 - (b) a certificate for the film has been issued at any time under section 376-20 of the Act (a certificate for the location offset) or under section 376-45 of the Act (a certificate for the PDV offset) (whether or not the certificate is still in force).
- 2.25 Whether development assistance or production assistance for the film has been received by the applicant, or by anyone else, from a Commonwealth government agency or a State or Territory government agency.
- 2.26 For any development assistance or production assistance described in clause 2.25 that has been received:
- (a) the amount or value of that assistance; and
 - (b) whether it has been, or will be, repaid (in full or in part).
- 2.27 Whether production assistance (within the meaning of paragraph 376-55 (4) (f) of the Act) for the film has been received from:
- (a) the Film Finance Corporation Australia Limited; or
 - (b) Film Australia Limited; or
 - (c) the Australian Film Commission; or
 - (d) the Australian Film, Television and Radio School.
- 2.28 For any production assistance described in clause 2.27 that has been received:
- (a) the amount or value of that assistance; and
 - (b) whether it has been, or will be, repaid (in full or in part).
- 2.29 Whether the company, or someone else, has deducted money paid for shares in a film licensed investment company under Subdivision 375-H of the Act, if the film licensed investment company has invested in the film.
- 2.30 For any money described in clause 2.29 that has been deducted — the amount of money deducted.
- 2.31 Whether the applicant incurred expenditure on the film as a foreign resident.
- 2.32 For any expenditure described in clause 2.31:
- (a) the estimated total amount of the expenditure; and
 - (b) the period or periods during which the expenditure was incurred; and
 - (c) whether, during the whole or a part of a period mentioned in paragraph (b), the applicant did not have a permanent establishment in Australia or an ABN.
- Further information required if the film is a series or a season of a series*
- 2.33 The number of previous episodes in the series (if any).
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- 2.34 Whether the series has substantially different characters, settings, production locations and individuals involved in the making of the series than any other series.
- 2.35 Details of creative similarities and differences between the current series or season and any previous series.

Division 3—Other information

- 3.1 Details of the production company for the film, including the following details:
- (a) registered name of the production company
 - (b) ABN of the production company
 - (c) registered address of the production company
 - (d) names and addresses of directors of the production company.
- 3.2 For any provider of goods or services that are used in the making of the film who is:
- (a) an associate of the applicant; or
 - (b) an associate of a company that is an associate of the applicant;
- the details of the provider.
- 3.3 Details of any company that is an outgoing company in relation to the film.

Part B Documents to be attached to an application for a certificate for the producer offset

- 1.1 A statutory declaration stating:
- (a) that it is made for rule 21; and
 - (b) that:
 - (i) the information contained in the application for the certificate; and
 - (ii) each document attached to the application;is correct and true in every particular.
- 1.2 Details of:
- (a) fees; and
 - (b) advances that are not recoverable from the payee; and
 - (c) residuals that:
 - (i) were paid to cast members before the film's completion; and
 - (ii) are included in the estimated qualifying Australian production expenditure claimed by the applicant for the producer offset.
- 1.3 Evidence that:
- (a) for an applicant who is an Australian resident — the applicant is an Australian resident; or
 - (b) for an applicant who is not an Australian resident — the applicant has:
 - (i) a permanent establishment in Australia; and
 - (ii) an ABN.
- 1.4 Any agreement relating to:
- (a) the responsibility of the applicant for all the activities that were necessary for the making of the film; and
 - (b) the establishment of the applicant company; and
 - (c) the transfer of any film production responsibility from an outgoing company to the applicant; and
 - (d) the distribution or exhibition of the completed film.
- Examples for paragraph (d)*
- 1 A deal memorandum.
 - 2 A letter of confirmation, on official letterhead, from the distributor.
- 1.5 For a film that is an official co-production:
- (a) a copy of the agreement between the co-producers of the film; and
 - (b) evidence from the Commonwealth (or the relevant Commonwealth authority) and from the relevant foreign country (or the relevant authority) that the film is an official co-production.

Schedule 3—Repeals

Producer Offset Rules 2007

1 The whole of the instrument

Repeal the instrument.