Australian Government

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Post, Digital and Visual Effects (PDV) Offset glossary

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Director—Creative Services Communication Branch
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
Canberra ACT 2601 Australia

Email: publishing@infrastructure.gov.au

Website: www.infrastructure.gov.au

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This Glossary is a combination of terminology and a general description of what is, and is not, considered Qualifying Australian Production Expenditure (QAPE) for the Post, Digital and Visual Effects (PDV) Offset.

The legislation which governs the PDV Offset is Division 376 of the Income Tax Assessment Act 1997, as amended (ITAA97). This Glossary should be read in conjunction with the ITAA97 and the Post, Digital and Visual Effects Offset Rules 2018 (as amended by the PDV Offset Amendment Rules 2023) (the Rules) as made by the Minister for the Arts (the Minister) pursuant to section 376-260 of the ITAA97. These legislative instruments are available from the Federal Register of Legislation website: www.legislation.gov.au.

In the case of any inconsistency with the Glossary, the provisions of ITAA97 and the Rules take precedence.

Please note that:

- QAPE in relation to PDV activity is also referred to as PDV-QAPE in this document
- consistent with the ITAA97, the term 'film' is used generically and unless otherwise indicated, 'film' applies to all Offset-eligible projects. In addition, the term 'production' is used in this reference guide to refer to all eligible projects.

The Glossary is intended to supplement what is set out in the PDV Offset Guidelines, and to offer practical, general guidance to applicants and their advisers. Each project is different and the Glossary provides guidance on QAPE issues in general terms and is not to be considered legal or tax advice. You are encouraged to seek professional legal and / or accounting advice when preparing an application.

Contact

For further information regarding the PDV Offset please contact the Screen Incentives Section of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts at:

Email: filmenquiries@arts.gov.au Tel: +61 2 6136 8012

Web: www.arts.gov.au

Screen Incentives Section
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 2154
Canberra ACT 2601 Australia

For information about taxation and the other obligations of companies commencing business in Australia, registering for an ABN, filing business activity statements and annual income tax returns, please consult the ATO website at www.ato.gov.au. Alternatively, the ATO enquiry line for businesses is 13 72 26 (or +61 137286 for tax agents).

Acronyms

ACN	Australian Company Number
ABN	Australian Business Number
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
E&O	Errors and Omissions Insurance
FBT	Fringe Benefits Tax
FPI	Film Producers' Indemnity Insurance

GST	Goods and Services Tax
IFPC	Independent Film Production Consultant
ISAN	International Standard Audiovisual Number
ITAA97	*Income Tax Assessment Act 1997*, as amended
ITAA 36	*Income Tax Assessment Act 1936*, as amended
PIA	Production Investment Agreement
PDV	Post, Digital and Visual Effects
QAPE	Qualifying Australian Production Expenditure
RBA	Reserve Bank of Australia
SAG	Screen Actors Guild of America
SAP	Substituted Accounting Period
SPA	Screen Producers Australia SPVSpecial Purpose Vehicle

Useful links

PDV Offset Guidelines and Application

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

Other programs

Producer Offset website—www.screenaustralia.gov.au/producer_offset

Screen Australia's International Co-production Program website—
www.screenaustralia.gov.au/coproductions/

Producer Equity Program (PEP)

https://www.screenaustralia.gov.au/funding-and-support/documentary/production/producer- equity-program

A–Z of terms

A B C D E F G H, I J, K, L M N O P Q R S T U V W

A

Accounting, audit and tax advice (all subject to the accrual basis of expenditure)

[see ITAA97 subs.376-150(1) item 6]

Expenditure on an annual company tax return that is not part of the incorporation or liquidation of the applicant company is not considered part of the making of the film and is therefore non-QAPE.

The cost of an audit provided in Australia, in relation to raising and servicing the financing of the production (including for the purpose of a PDV Offset application), which is incurred by the company that is responsible for making the production can be considered QAPE.

Fees for the incorporation and liquidation of the company that makes or is responsible for making the film are QAPE to the extent that they relate to PDV activity. For example, accountant and ASIC fees directly relating to incorporation and liquidation may be QAPE.

For the purpose of the PDV Offset these expenses may need to be apportioned in accordance with the amount of PDV activity in the production. For example, where a company is established solely to undertake a parcel of PDV work and does not undertake other activity the expenses may be fully claimable, whereas if a company is undertaking principal photography and PDV activity then the establishment / liquidation of the company may not be eligible or only eligible to a small percentage.

Accounting and audit advice directly in relation to QAPE performed by a registered Australian accountant or auditor may be QAPE.

Accrual basis of expenditure

[see ITAA97 subs.376-125(5)]

The PDV Offset operates on an accrual basis of accounting. Applicants should note that:

- QAPE must be incurred in the income / financial year for which the PDV Offset is claimed or an earlier year (the relevant income year is the year in which the PDV activity for the production ceased to be incurred which is often, but not necessarily, the year the film is completed).
- Expenditure can only be claimed as Production Expenditure or QAPE where a liability to pay is in place before the end of the income year in which the tax offset is sought (or in the year in which QAPE ceased to be incurred in Australia).
- Generally, where expenditure is claimed as QAPE, but payment has not actually been made, applicants must ensure a liability to pay is in place and supply supporting documentation to demonstrate the liability. Relevant documentation could include:
    - tax invoices for the confirmed amount; and / or
    - an executed contract for the work relating specifically to the production, dated before the end of the relevant income year (or 30 June of the relevant financial year).

An example of this would be expenditure on an audit, invoiced before the end of the financial year in which the film is completed, but which takes place in the subsequent financial year.

Also see Financial year / income year.

Acknowledgement

See Credits (acknowledgement of Australian Government support).

ACN and ABN

[see ITAA97 para.376-35(1)(d)]

All applicants must be either Australian resident companies or foreign resident companies with permanent establishment in Australia and an ABN. This applies when the company incurs PDV expenditure, lodges its income tax return and when the PDV Offset is due to be credited.

Each applicant will need to provide an ASIC company statement which includes the registered address of the applicant and the names and addresses of directors and shareholders of the company.

A company acting in the capacity of a trustee of a trust is not eligible for the PDV Offset and therefore can neither be certified, nor incur QAPE (see Trusts).

Additional content

[see ITAA97 subs.376-150(1) item 4]

With the exception of permitted expenditure on general business overheads, the general rule is that expenditure that is not incurred in the 'making of the film' is not QAPE (as it is not directly attributable to the production of the first copy of the film).

However, the legislation allows some expenditure to be considered QAPE where it is PDV activity incurred in producing additional content for a release of the film, if it is incurred in Australia before the completion of the film. This could apply to, for example, PDV activity undertaken in Australia for a 'behind the scenes' documentary for inclusion on a Blu-ray or DVD release of a film.

'Additional content' must still be for a subsequent release of the same film and does not mean content which itself amounts to, or is for, a completely different film. If additional content amounts to a different film, not material associated with a release of the same film, then the PDV activity expenditure would not form part of the application for the film. The work would need to take place in Australia and the expenditure would need to be incurred before the completion of the film.

This provision also acts as a specific exception to the general exclusion on marketing, publicity and promotion expenditure (see Marketing). For example, where PDV activity is undertaken in Australia during production of the film for a trailer to promote the film, expenditure incurred may be considered QAPE if all other conditions are met.

Advances

[see ITAA97 subs.376-135 items 6-9]

All payments made by way of an advance on a payment in respect of deferments, profit participation or residuals are excluded from Production Expenditure and QAPE unless the residuals are paid out before the film is completed (and non-recoverable from the payee).

If the payment is non-recoverable, the advance may be included as Production Expenditure providing it otherwise qualifies because it is not related to the production's commercial performance or earnings. Where such advances are included as Production Expenditure and claimed as QAPE, a separate schedule detailing their payment to individual cast and non-cast members must be included as an attachment to your Application Form.

Agency fees

[see ITAA97 s.376-135 item 1]

Administration fees paid to state and federal funding bodies (for example ScreenWest, VicScreen, Screen Australia) are non-QAPE, as they are expended in obtaining financing.

There are some exceptions in relation to certain financing expenditure. These are outlined in section 376-150 of the ITAA97 at item 6.

Animated productions

For animated productions costs incurred in the production of the images and any subsequent manipulation of the images can be QAPE for the PDV Offset. Costs for voice and sound recording are also QAPE if it occurs after, or separately from, the creation of the images for the animated production (see voice recording).

While development expenditure that is for goods and services provided in Australia can be counted as Production Expenditure on the film (see Production Expenditure and Development expenditure) it is generally not counted as QAPE for the purposes of the PDV Offset as it is not considered PDV production.

Applicant company

[see ITAA97 para.376-45(5)(b)]

There can only be one applicant company. This is the company that either carried out, or arranged the carrying out of all the activities in Australia that were necessary for the PDV production for the film.

The applicant company must be the entity that incurs the Production Expenditure (unless the circumstances outlined in Prior company expenditure apply).

A company acting in the capacity of a trustee of a trust is not eligible for the PDV Offset and therefore can neither be certified, nor incur QAPE (see Trusts).

There is **no requirement** that a provisional and final certificate for the same production must be held by the same entity. For example, a production company, often the producer's own company, that intends to set up an SPV to make the film may apply for and obtain a provisional certificate before the incorporation of the SPV.

Apportionment of expenses related to PDV

Where fees and services relate to pre-production, production and post-production, only the amount directly related to the PDV activities on the production can be claimed as QAPE for the purposes of the PDV Offset.

In order to establish the correct apportionment of fees for services (such as for accounting, audit, legal, producer, director) each case needs to be considered in the context of the individual production and the relative amount of PDV activity. For some activities the appropriate apportionment may be calculated based on production schedules (i.e. time spent undertaking tasks).

The method of apportionment needs to be justified in the application materials for assessment and the decision maker's consideration.

Arm's length arrangements

[see ITAA97 s.376-175]

Expenditure can only be claimed as QAPE when it is worked out on an 'arm's length' basis. Where a transaction is not conducted at arm's length, the expenditure able to be claimed as QAPE will only be the amount that would have been incurred if the parties were dealing at arm's length.

The basis of the arm's length principle is to ensure that amounts charged between the applicant company and any related companies (including parent and subsidiary companies) for the provision of goods/services are commercially reasonable.

In determining whether parties are 'dealing with each other at arm's length', an assessment must be made as to whether the parties deal with each other as arm's length parties normally do, so that the outcome of their dealing is a matter of real bargaining, reflecting a true market price.

Often the reason why parties do not transact at arm's length is because of a corporate or business relationship between those parties. Such parties have previously been referred as 'related parties'. To avoid confusion with the definition in the Corporations Act 2001, these parties are described as 'interested parties' in this document.

Interested Parties

An interested party is a party who has an interest in the receipt of the PDV Offset by the applicant company. The mere fact that goods or services are provided to the applicant company does not itself make the provider an interested party. A clear example of an interested party is the parent or sister company of an applicant established as a special purpose vehicle (SPV). Other examples of an interested party on a project would include:

- an Executive Producer
- an equity investor
- a company with common directors with the applicant, or its parent company
- any party associated with the project that has a financial interest in the applicant's receipt of the PDV Offset.

This list is not exhaustive, and other aspects of a transaction may give rise to a connection or association which would classify it as an interested party transaction. For example, if the applicant company were to retain the services of a post-production house and in addition to those services, one of the company principals of the post-production house were to take an executive producer role on the film, the service provider would be regarded as an interested party for the purposes of the PDV Offset.

Some common examples of transactions between 'interested parties':

- an applicant company hiring or leasing equipment or facilities from a parent company or sister company (e.g. camera and lighting, office space)
- an applicant company purchasing post-production services from a parent company or company in a corporate group
- a parent company providing the services of in-house personnel to the applicant company
- reinvestment deals with post-production houses.

As part of its recommendation to the Minister or the Minister's delegate, the Film Certification and Advisory Board (the Board) must be satisfied that expenditure incurred by an applicant on acquiring goods or services from an interested party is commercially reasonable, reflecting a fair market price. The Board may also seek advice on this by independent film production consultants (IFPCs).

In considering whether expenditure has been incurred on an arm's length basis, there are several elements for the Board and the Minister to consider:

- Was the expenditure genuinely incurred?
- What was the expenditure incurred for (i.e. what goods or services were provided in exchange for this expenditure)?
- Would a company acting at arm's length actually contract for those particular goods and/or services?
- Once satisfied of the above, is the quantum of the fees paid at an arm's length price, that is, are the fees/rates paid higher than those that would be paid to an independent, non- interested party?
- If the fees/rates have been inflated, only the arm's length price for those goods or services will be considered QAPE.

What needs to be submitted for assessment purposes?

Where an interested party is involved in a project, the onus is on the applicant to substantiate its claim that the transaction with the interested party meets the arm's length principle (i.e. is commercially reasonable). At final certification stage, an applicant should supply the following documentation:

- **Interested Party Expenditure Breakdown**—at final certification applicants must provide detail of all interested party expenditure transactions. This breakdown should not simply be a 'dump down' of the general ledger and must provide details of any transactions between the applicant and an interested party, broken down to clearly identify the date, the payee, the services, the period of time, the weekly rate and the overall total paid.

- **Detailed general ledger**—the general ledger needs to accurately record the details of all transactions and be coded under the appropriate budget categories (such as Development, Producer Fees, Camera Equipment & Stores, and Accommodation, Living & Catering). If there are any lump sum payments with a single line entry in the general ledger, the Board may require a detailed breakdown itemising the individual transactions which comprise the lump sum.

In some cases (and always where the expenditure being paid to an interested party or parties exceeds 50 per cent of total expenditure on a film), an applicant company may also need to present the detailed general ledger of each interested party to which a payment was made, clearly outlining all expenditure line by line.

Applicants may also be asked to supply third party quotes or valuations from alternative (arm's length) providers for the same or equivalent goods/services.

Applicants may also be asked to supply supporting documentation such as invoices, purchase orders, work orders and change orders to substantiate the lump sum amount.

If an applicant does not adequately break down interested party expenditure or substantiate any lump sum payments claimed as QAPE, the expenditure will be deemed as non-QAPE. For example, if an applicant supplies a general ledger with a line item in post-production titled 'editing room',

paid to an interested party for $100,000 with no further detail, this would not be acceptable and would be considered non-QAPE without further substantiation.

The Department or IFPC on behalf of the Board may request additional information in connection with interested party expenditure and may ask the applicant to supply relevant third party quotes.

Assets

See Depreciating assets.

Audit fees

[see ITAA97 s.376-135 item 1, subs.376-150(1) item 6(b)]

See Accounting, audit and tax advice (all subject to the Accrual basis of expenditure).

Australian resident

The concept of Australian residency is outlined in the Income Tax Assessment Act 1936 and explained on the ATO website: www.ato.gov.au.

The ATO explains that generally a person is an Australian resident for tax purposes if any of the following applies:

- the person has always lived in Australia
- the person has moved to Australia and lives here permanently
- the person has been in Australia continuously for six months or more, and for most of the time has been in the same job and living in the same place
- the person has been in Australia for more than half of the relevant financial year, unless:
  - their usual home is overseas, and
  - they do not intend to live in Australia. Some examples:
- An Australian citizen who lives permanently in Los Angeles would not be considered an Australian resident for the purposes of calculating QAPE.

- A United Kingdom citizen, who has lived in Australia for 12 months and intends to stay in Australia permanently, but who does not hold permanent residency, would be an Australian resident for the purposes of calculating QAPE.

The most current advice on residency for tax purposes can be found on the ATO's website: www.ato.gov.au/business/international-tax-for-business/working-out-your-residency/.

Australian resident company

[see Income Tax Assessment Act 1936, as amended, subs.6(1)]

This requirement is defined under the Income Tax Assessment Act 1936 (ITAA36), as a company which:

- is incorporated in Australia; or
- if not incorporated in Australia, it carries on business in Australia and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia.

Taxation Rule TR 2018/5 provides the ATO's interpretation of residency where the company is not incorporated in Australia (as at the date of publication).

The term 'permanent establishment' is also defined in subsection 6(1) of the ITAA36 which refers to 'a place at or through which [a] person carries on any business'. The ITAA36 includes examples of permanent establishment.

Taxation Ruling TR 2002/5 (including the amendments created by TR2002/5A—Addendum) provides the ATO's interpretation of the meaning of the phrase 'a place at or through which [a] person carries on any business' in the definition of 'permanent establishment'. The ruling provides guidance to a non-resident who carries on business in Australia as to whether they have a place for the purposes of the definition of 'permanent establishment'.

To ensure you have the most recent ATO advice, visit www.ato.gov.au/law/view/document?DocID=TXR/TR20025/NAT/ATO/00001.

If you have any doubt about these residency tests, including whether they are modified by any Double Tax Agreement with any other countries, you should contact the ATO to seek advice. Also make sure you are relying on the most current guidance.

Where several production companies are involved in making a production, the company that is eligible to claim the PDV Offset is the one that meets the above requirements. Although there may be a number of entities that make arrangements for, or carry out activities necessary for making a production, only one company can be eligible for the PDV Offset, and that is the company that is responsible for all of the aforementioned activities or Australian activities.

In practice this means that the applicant company must be the company through which all transactions are channelled. For example, the expenditure incurred in contracting a company to undertake PDV work (that is, its fees for that service) qualifies as Production Expenditure as long as the applicant company is able to account for these costs in its audited expenditure statement.

A company acting in the capacity of a trustee of a trust is not eligible for the PDV Offset and can neither be certified, nor incur QAPE (see Trusts).

B

Bank fees

Bank fees incurred in Australia on the applicant's account maintained for the production may be QAPE to the extent that the fees relate to QAPE expenditure. If an applicant incurs bank fees that relate to non-QAPE expenditure, those fees are also non-QAPE. Fees that amount to financing expenditure such as overdrawn fees or interest charges are non-QAPE (ITAA97 s.376-135 item1).

In regards to the PDV Offset, claimed bank fees must be in relation to PDV activity (e.g. the portion of fees incurred in relation to the payment of PDV expenses).

An example would be where an applicant company is paying a fee by telegraphic transfer to a 'non-Australian' actor for work that took place outside Australia. As the fee for the actor is non-QAPE, the fee for the telegraphic transfer facilitating this transaction would also be non-QAPE.

Budget formats

Budgets are accepted in most formats as long as the financial presentation clearly identifies what expenditure is being claimed as PDV-QAPE.

C

Catering

Expenditure on catering in Australia can be QAPE where it is necessarily relates to PDV activity. However, entertainment expenditure including wrap parties is non-QAPE.

Closed caption

Closed caption expenditure is PDV-QAPE provided it is incurred in Australia before the completion of the PDV activity.

Company set up / company expenses

Expenditure relating to establishing and/or liquidating a company that makes, or is responsible for the making of the production, may be QAPE to the extent that it is necessarily related to PDV activity. For example, for wholly animated films or a company established solely to undertake a parcel of PDV work, the expenses may be fully claimable. However, if a company is undertaking principal photography and PDV activity then the costs may not be eligible or only eligible in proportion to the amount of PDV activity undertaken by the company versus other production expenses.

Fees in respect of the ongoing running of the company, such as annual ASIC return fees or annual tax return expenses are not considered to be directly related to the production and are non-QAPE. This type of expense may be able to be included as part of the company’s general business overheads (see Overheads (general business overheads)).

See Accounting, audit and tax advice (all subject to the accrual basis of expenditure).

Completion guarantee / completion bond

[see ITAA97 s.376-135 item 1 and s.376-150 item 6]

Expenditure on a completion guarantee or bond may be QAPE to the extent that the expenditure is incurred in Australia (i.e. Australian bond provider) and is necessarily related to PDV activity.

For example, for wholly animated films 100 per cent of completion guarantee or bond may be eligible, for other productions you will be required to apportion the expenditure to the amount of PDV activity undertaken in relation to the overall production. If the post-production component of the overall production is 30 per cent, then 30 per cent of the completion guarantee or bond expenditure may be eligible as QAPE.

Contingency

As contingency is not directly attributable to QAPE items, no contingency elements of a projected budget will be accepted for the purposes of projected PDV-QAPE for provisional certification.

Copy of completed film

[see ITAA97 s.376-245]

Within 30 days of a certified film's completion, the applicant must submit a copy of the completed production to the Minister, through the Department. The production's completion is defined as when the production material is in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public (as detailed in ITAA97 section 376-55(2)).

The copy should be provided on DVD (region 4 or unrestricted) or Blu Ray, a PC formatted USB, or via link to an online copy of the production. The copy of the production is required to verify that the production is ready for distribution or exhibition to the general public and to confirm other details of the production. The Minister may revoke a certificate if the copy is not supplied.

It is not anticipated that the Minister will revoke a certificate on this ground without first contacting the applicant (although the Minister is empowered to do so). If the PDV Offset has already been paid by the ATO and a certificate is subsequently revoked, the ATO may commence recovery of the offset as a debt.

In the case of an applicant applying for the PDV Offset before completion of production, the applicant should indicate the expected date of completion. Should the expected date of completion change at any time, the applicant should advise the Department of the change, and briefly indicate the reason(s) for the delay.

In the case where an applicant is applying for the PDV Offset after the completion of the production, the 30-day timeframe is not a requirement for when an application must be made. For example, if an application is submitted for a production which was completed a year ago, a copy of the production can be supplied when the application is made.

Should you have any concerns regarding either provision of an expected date of completion or submitting a copy of the film, you should relate these concerns to the Department when submitting your application. Such concerns will be considered on a case by case basis.

Copyright acquisition and licensing

[see ITAA97 subs.376-150(1) item 2]

Expenditure on acquiring copyright, or a licence for copyright, in a pre-existing work (such as music and/or images including maps, photographs and/or stock footage) is considered QAPE only where the copyright (in the relevant work) is held by an Australian resident individual or company and is necessarily related to PDV activity. QAPE therefore includes the cost of acquiring ownership, or a licence, of copyright from an Australian resident who owns or holds the licence of the copyright in Australia. As in other contexts, the applicant will need to supply invoices to substantiate the claim and confirm that the applicant company has incurred the costs associated with acquiring the copyright licence.

If the copyright is not held by an Australian resident, the fact that an Australian music supervisor is engaged to source the music will not suffice to make the cost of the purchase/licence of the copyright

QAPE. Similarly, if a third party acts as an Australian agent in suppling archival or stock footage, but they do not own or have the right to license the work in Australia then the expenditure is not QAPE.

The costs of commissioning music or a score is not considered to be expenditure in acquiring pre-existing copyright. Such expenditure is treated as any other production expenses (it may be Production Expenditure and, if the composition is undertaken in Australia, it may be QAPE).

The costs of acquiring or licensing the underlying copyright or option to make a production is considered Development expenditure and therefore not QAPE for the purposes of the PDV Offset. Similarly, sequel fees for a series are not eligible QAPE.

Where the purchase or licensing of Australian-held copyright is being claimed as QAPE you must attach the relevant legal agreement verifying the transfer of ownership or the licensing of copyright to your Application Form.

Credit card interest

Interest paid on credit card purchases is considered financing and is therefore non-QAPE.

Credits (acknowledgement of Australian Government support)

Acknowledgment of Australian Government support is welcome.

There is no requirement to credit the Australian Government in the completed film in order to receive the PDV Offset.

Where the applicant chooses to include a credit or publicly acknowledge the support of the Australian Government, the Government may in turn publicise the information that the film was made with the support of the PDV Offset.

If an applicant chooses to credit the Australian Government please contact the Screen Incentives Section to discuss wording and/or use of the Australian Government logo.

D

Deductibles

Deductibles on insurance claim payouts with Australian insurers are QAPE if the claim relates to PDV activity. In a situation where, for example, damage to equipment carries an excess, this excess may be PDV-QAPE (assuming the premium itself is PDV-QAPE).

Deferments/deferrals

[see ITAA97 s.376-135 item 6]

Production Expenditure is limited to expenditure that is independent of a production's commercial performance and its earnings. Amounts that are only payable out of the profits, receipts or earnings of a film, in this context commonly referred to as deferments or deferrals, are excluded from Production Expenditure and therefore QAPE (see Investment of fees).

Deliverables

Deliverables need to form part of the first-copy distribution arrangements to be considered QAPE. At the time of applying for final certification, the relevant documentation needs to be provided to substantiate the QAPE claims.

Depreciating assets

[see ITAA97 subs.376-125(6)-(7), s.376-135 item 10 and subs.376-150(1) item 2]

Other than expenditure incurred to acquire copyright, costs incurred in acquiring a depreciating asset and any capital costs invested in that asset are not QAPE.

Where a production company holds a depreciating asset and uses it when making a production, the Production Expenditure includes as much of the decline in value (depreciation to be worked out in accordance with Division 40 of the ITAA97) of the depreciating asset that is reasonably attributable to the asset's use in making the project. In order to qualify as Production Expenditure a deduction in relation to the asset must also be available under Division 40 of the ITAA97.

Note that under the PDV Offset a claim made regarding depreciation must be demonstrated to be in relation to equipment used for PDV activity and only for the period of PDV activity for that production. If equipment is used for multiple productions or used for only part of the post- production period then the depreciation must be apportioned and the application must demonstrate how this apportionment has been made.

It is only the decline in value of the asset that is included in Production Expenditure. The expenditure incurred in acquiring or improving a depreciating asset is not directly included in Production Expenditure and neither is the difference between the purchase and sale price of the asset. However, a balancing adjustment may be made in certain circumstances.

The decline in value of a depreciating asset is worked out using either the prime cost or diminishing value method and is based upon the cost and effective life of the asset. Deductions for depreciating assets are based on an asset's effective life. Effective life can be determined by Australia's Commissioner of Taxation. The Commissioner's determination regarding the effective life of depreciating assets used in production can be found on the ATO's Legal Database: https://www.ato.gov.au/law/view/document?Docid=TXR/TR20073/NAT/ATO/00001 (TR2007/3). You may use these determined values in calculating your Production Expenditure.

Alternatively, applicants also have the option of self-assessing the effective life of a depreciating asset based on their particular circumstances. Effective life is worked out by estimating the period (in years) that the asset can be used by any entity to produce income, having regard to the wear and tear expected from the circumstances of use and assuming that the asset will be maintained in reasonably good order and condition. If, in working out that period, it is concluded that the asset is likely to be scrapped, sold for no more than scrap value, or abandoned before the end of that period, its effective life ends at the time it is either scrapped, sold or destroyed.

Division 40 of the ITAA97 also reconciles an assumed loss of value to the actual change in value worked out when a 'balancing adjustment event' occurs. A balancing adjustment event occurs for the asset before the film is completed if:

- the asset's termination (e.g. disposal or sale) value is more than its adjustable value just before the event (disposal/sale) occurred—the Production Expenditure of the company on the film is reduced by the film proportion of the difference (e.g. the difference is credited), or
- the asset's termination value is less than its adjustable value just before the event occurred—the Production Expenditure of the company on the film includes the film proportion of the difference (e.g. the difference can be claimed as an expense).

Please note that expenditure incurred in acquiring or improving assets such as buildings and structures are unlikely to be Production Expenditure. In general, such buildings and structures are not held by production companies and, where needed, are leased for the period required for the project (lease costs can be included in Production Expenditure and may be QAPE where related to PDV activity).

Information about the availability of deductions and the treatment of depreciating assets under the uniform capital allowance rules (set out in Division 40 of the ITAA97) may be downloaded from the ATO's website at www.ato.gov.au. It is recommended that applicants consult with their accountants or seek advice from the ATO about depreciation of assets used in filmmaking.

Development expenditure

[see ITAA97 s.376-40, s.376-135, subs.376-150(1) item 1 and s.995-1]

Expenditure on development work undertaken outside of Australia is not QAPE and cannot be counted as part of Production Expenditure for the purposes of the PDV Offset.

While development expenditure that is for goods and services provided in Australia can be counted as Production Expenditure on the production (see Production Expenditure), development expenditure is generally not QAPE for the purposes of the PDV Offset as it is not considered related to PDV production.

Development expenditure is defined as including expenditure to the extent to which it is incurred on any of the following:

- location surveys and other activities undertaken to assess locations for the possible use in the film
- storyboarding (see below for animated productions)
- scriptwriting
- purchase of story rights
- research
- casting actors
- developing a budget
- developing a shooting schedule.

For animated productions, to the extent storyboarding is used specifically as a tool to create and manipulate the film's visual and audio elements and not to develop a film's plot, costs incurred / or the appropriate portion of costs may be QAPE.

While legal services provided in Australia that relate to writers' contracts or to copyright issues including chain of title are specifically included in the definition of general QAPE, they are considered development expenditure and are not sufficiently related to PDV production to be eligible for the PDV Offset.

The purchase of story rights/options or sequel fees are considered part of development costs and therefore may be included as Production Expenditure if the copyright is held by an Australian resident individual or company but are not considered QAPE for the PDV Offset (see Copyright acquisition and licensing).

Digital declaration

Applicants to the PDV Offset are required to make a digital declaration under Part B of Schedule 2 of the Rules. The declaration is on the final page of the application form.

The information provided in your application (and in any subsequent requests for additional information) will be used by the Department to administer the PDV Offset. The *Taxation Administration Act 1953* imposes administrative penalties on any entity that makes a false or misleading statement, or takes positions that are not reasonably arguable, to the Commissioner of Taxation or another entity exercising powers or performing functions under a taxation law. When submitting information to support an application to the PDV Offset, it will be deemed to be made as a tax declaration. Any such statement could attract substantial penalties under taxation laws.

Distribution expenditure

[see ITAA97 para.376-125(4)(c)]

Expenditure on distribution of the production is specifically excluded from the definition of Production Expenditure and therefore is not QAPE.

Distribution for eligibility

[see ITAA97 s.376-45]

In order to qualify for the PDV Offset a production must be:

produced for exhibition to the public in cinemas or by way of television broadcasting (including delivery of a television program by a broadcasting service as defined by the *Broadcasting Services Act 1992*) or produced for distribution to the public as a video recording (whether on DVDs, online distribution or otherwise).The requirement of exhibition to the public can be satisfied by distribution anywhere in the world. Evidence of an end-user agreement with an eligible platform, such as a broadcaster or streamer, is required to support an application. Evidence can include the end-user agreement or a letter from the eligible platform confirming the intent to release the production.

Distribution of eligible formats can include direct-to-DVD, television broadcast or online distribution.

Please note that a sales agent agreement does not meet the intent to distribute requirement.

Distribution Online

For the distribution requirement to be fulfilled, there needs to be an end-user agreement in place between the producer and an eligible platform. Eligible online exhibition platforms are considered to be curated platforms where there is an agreement in place between the producer and the platform. Curated platforms are considered to be those where the content is commissioned/acquired through a contract. Generally, consumers pay a fee to access this content.

Free posted content and general access online platforms, such as Youtube, would not be considered an eligible platform because there is no contract in place between the producer and distributor.

Documentary

[see ITAA97 s.376-25]

The meaning of documentary is defined by the ITAA97.

A production is a documentary if it is a creative treatment of actuality, having regard to:

- the extent and purpose of any contrived situation featured in the film, and
- the extent to which the film explores an idea or a theme, and
- the extent to which the film has an overall narrative structure, and
- any other relevant matters. A film is not a documentary if it is:
- an infotainment or lifestyle program (as defined by Schedule 6 to the *Broadcasting Services Act 1992*); or
- a film that presents factual information and has two or more discrete parts, each dealing with a different subject or a different aspect of the same subject and does not contain an over-arching narrative structure of thesis.

Dubbing

[see ITAA97 subs.376-125(2)]

Dubbing costs associated with the making of the first copy of the film may be eligible PDV-QAPE. However, dubbing expenditure related to additional copies for distribution is not Production Expenditure or QAPE.

E

Electronic press kit (EPK)

See Marketing.

Eligible formats

[see ITAA97 subs.376-45(2)]

The formats which are **eligible** for the PDV Offset are:

- feature films or films of a like nature (e.g. telemovies) (unless a documentary)
- mini-series of television drama
- television series (including documentary) (see Television series (including mini-series)).

Distribution of eligible formats can include direct-to-video, direct-to-DVD, television broadcast or online distribution.

The following formats are **ineligible** for the PDV Offset:

- short films
- documentary features (documentary television series are eligible)
- advertising programs or commercials
- discussion, quiz, game, panel or variety programs, or a program of a like nature
- a film of a public event
- training films
- computer games (defined by the Classification (Publications, Films and Computer Games) Act 1995 (Classification Act)).

Section 5A of the Classification Act defines a computer game as:

- a computer program and any associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows the playing of an interactive game, or
- a computer program, data associated with a computer program or a computer program and any associated data that:
    - is capable of generating new elements or additional levels into a game (the original game) that is a computer game under subsection (1) of the Classification Act and
    - is contained in a device separate from that containing the original game.

Entertainment

Entertainment expenses (for example wrap party, crew and cast screenings, press screenings, the purchase of alcohol and birthday cakes) are always non-QAPE.

Errors and omissions insurance (E&O)

[see ITAA97 s.376-135 item 1]

See Insurance.

Executive Producer fees

Where an Executive Producer (EP) fee is solely a requirement of a financing or distribution arrangement (regardless of whether an individual is receiving an EP credit), the fee is considered to be a financing cost and is non-QAPE.

EP fees, or a portion of them, may be PDV-QAPE if the EP in question provides his or her services in Australia and the services are relevant to PDV activity. Where an EP is working across the entire production the applicant will be required to apportion the EP fees to relate to PDV activity only.

Evidence in the form of contracts, credit listings and production schedule may be required for final certification.

Expenditure on an EP who is not an Australian resident is only QAPE when the work by the EP takes place in Australia and meets the Two week rule.

Expenditure in a foreign currency

[see ITAA97 subs.960-50(6) items 9 and 9B]

All Production Expenditure and QAPE incurred in foreign currencies must be converted into Australian dollars. For the purposes of applying for the PDV Offset this must be done in two ways:

1. For the purposes of meeting the expenditure thresholds, expenditure must be converted using the foreign exchange rate for the day on which the PDV production commenced. This is to provide certainty to applicants in being eligible for the PDV Offset.
2. For the purposes of calculating the final QAPE figure upon which the rebate is based, the exchange rate used for expenditure on foreign currency must be averaged across the period in which PDV-QAPE was incurred.

Official published exchange rates, including the monthly exchange rates, are available from the Reserve Bank of Australia at www.rba.gov.au.

For example, for a production that incurred PDV-QAPE in US dollars from April 2021 to July 2021 the monthly exchange rate can be sourced from the Reserve Bank and then averaged for the period (as demonstrated in the table below). The average rate is then used to calculate the foreign currency conversion for the QAPE incurred in US dollars.

Example—average monthly rates from the Reserve Bank of Australia

Date	Rate
30-Apr-2021	0.7776
31-May-2021	0.7725
30-Jun-2021	0.7518
30-Jul-2021	0.7381
Average for period	**0.7600**

The application requires details on the:

- dates of commencement and completion for the PDV activity/production in Australia
- dates of first and last PDV-QAPE incurred
- foreign exchange rate on the date PDV activity commenced
- average foreign currency exchange rate over the period PDV-QAPE was incurred (and the method used for calculating the average e.g. monthly or daily rates—both are acceptable)
- source from which the rates were derived (e.g. Reserve Bank of Australia or ATO).

The expenditure statements should also outline expenditures made in a foreign currency converted to Australian dollars using both methods of conversion.

Expenditure threshold

[see ITAA97 para.376-45(5)(a)]

A production must spend at least AUD$500,000 on QAPE related to PDV activity to be eligible for the PDV Offset.

F

Financial year / income year

[see ITAA97 subs.376-125(5)]

QAPE expenditure for the purposes of the PDV Offset can be incurred in any financial year (commencing from 1 July 2007) up until the end of the financial year (or applicable income year) in which QAPE ceased to be incurred (this is usually the year the production work ceased in Australia).

Expenditure incurred in a financial/income year subsequent to the income year in which the QAPE is claimed is non-QAPE.

The ITAA97 uses the term ‘income year’ as a company may have an accounting period ending on a day other than 30 June (when determined under section 18 of the Income Assessment Act 1936).

See Accrual basis of expenditure. Where relevant see Substituted accounting period (SAP).

Financing expenses

[see ITAA97 subs.376-125(4), subs.376-135 item 1 and subs.376-150(1) item 6]

Arranging or obtaining finance for a production is not considered to be the making of a film, therefore in general (subject to some exceptions) all expenditure on financing is to be excluded from Production Expenditure and QAPE. Financing expenditure specifically includes returns payable on amounts invested and expenditure connected with raising and servicing finance, such as interest payments. Financing expenditure also includes application and administrative fees paid to funding bodies to secure or acquit grants or incentives.

For the PDV Offset, QAPE opinion costs are also considered financing expenditure and are non- QAPE.

However, the legislation allows some specific aspects of financing expenses to be claimed as QAPE. These are in relation to insurances, certain legal and audit fees and company set-up and liquidation fees. For the PDV Offset these elements must also related to PDV activity, or be apportioned appropriately, to be considered PDV-QAPE. (See Insurance and Legal fees and expenses.)

Fines

Fines are non-QAPE (i.e. parking fines, late fees or penalties).

Foreign currency

See [Expenditure in a foreign currency].

Free days

Expenditure on services provided under a 'free days' arrangement can be claimed as QAPE provided that the services are provided in Australia and relate to PDV activities. Where services are provided partly in Australia and partly elsewhere (including services such as additional dialogue recording or publicity under a 'free days' arrangement), the applicant must make a reasonable apportionment of the relevant expenditure.

Freight

[see ITAA97 subs.376-165(1) item 3]

Expenditure incurred on freighting an item to Australia or in Australia is QAPE provided the goods are used in PDV related activities.

Transporting an item from Australia to another country is not QAPE.

For example, if the production were to hire a piece of equipment from New York for use in PDV activity in Australia, the freight from New York to Australia would be QAPE but not the freight from Australia back to New York. The hire cost of the equipment for the period of its use for PDV activities in Australia may also be QAPE.

Fringe Benefits Tax (FBT)

Fringe Benefits Tax (FBT) is QAPE when paid against QAPE items. For example, if FBT is paid on the purchase of alcohol for a wrap party, this portion of the FBT is non-QAPE. For final certification, applicants may be asked for a breakdown of the FBT payments. For the PDV Offset, the FBT must relate to items claimed as PDV-QAPE.

Fringes

Fringes are QAPE to the extent that the associated salary/wage/remuneration is QAPE. Fringes include annual leave and superannuation entitlements, however taxes and insurances such as payroll tax and workers compensation should be treated separately.

Where an employee's salary/wage/remuneration is part QAPE and part non-QAPE, the fringes must be pro-rated accordingly.

Fringes paid to non-cast members who enter Australia to work on the production in Australia are eligible subject to the usual QAPE rules, and notably the two week rule.

Please refer to [Payroll tax] and [Workers' compensation] and [Two week rule] for further information.

G

Gratuities and gifts

All gratuities are non-QAPE, including gifts and donations paid in lieu of fees. Any additional benefits provided to cast or crew must be contractual and associated with remuneration that is QAPE, in order for them to be considered QAPE.

Green screen photography

Green screen photography may be an eligible activity under the PDV Offset.

As a general rule, if green screen is being used for less than half of the principal shoot, you can claim all your costs associated with the shoot in Australia (including cast and facilities). If more than half of the film is made using green screen production the costs cannot be claimed under the PDV Offset as the filming is considered to constitute ‘principal photography’.

If the green screen shoot is considered principal photography, the post-production editing work done in the studio in Australia manipulating the green screen footage with other footage, backgrounds and effects may be eligible PDV-QAPE.

GST (Goods and Services Tax)

Applicants are not able to claim input tax credits for the GST as QAPE or Production Expenditure. All expenditure statements must show GST exclusive expenditure.

Productions commencing on or after 1 July 2007, and before 1 July 2011 may be eligible to claim GST inclusive expenditure and should contact the Screen Incentives Section for further information.

H, I

Insurance

[see ITAA97 s.376-150(1) item 6]

Expenditure incurred on insurance for the making of the film is QAPE to the extent that such expenditure is incurred in Australia (i.e. an Australian insurance provider) and is related to undertaking PDV activity. This could include expenditure on the following kinds of insurance:

- negative film risk
- miscellaneous equipment (i.e. multi-risk)
- public liability
- travel and vehicle.

See also Completion guarantee / completion bond.

For final certification, insurance details must be itemised.

Only insurances related to PDV production can be claimed as PDV-QAPE. Please note that where insurances cover the production more broadly you may be required to apportion the expenditure to the amount of PDV activity undertaken. Errors and Omissions insurance is not PDV-QAPE.

Deductibles on insurance payouts may be PDV-QAPE (assuming the premium is also PDV-QAPE). If an insurance claim is made during production, the costs associated with the claim or the loss and replacement costs may be considered PDV-QAPE.

Interest payments

[see ITAA97 s.376-135 item 1]

Interest payments are financing expenditure and are excluded from Production Expenditure and therefore QAPE, regardless of where they are placed in the budget.

Interested party

[see ITAA97 s.376-175]

Interested parties include holding, parent, sister companies and other associated companies, such as those with common directors to the applicant company as well as individuals that are employees and / or directors of those companies.

All transaction with interested parties must meet the principles of arm's length (See Arm's length arrangements).

Where fees and services between interested parties relate to pre-production, production and post-production, only the amount directly related to PDV activities can be claimed as PDV-QAPE. See Apportionment of expenses related to PDV.

Investment of fees

[see ITAA97 s.376-135 items 6 and 7]

As outlined in Deferments / deferrals, amounts payable from exploitation of the film (i.e. box office receipts) are not QAPE as no expenditure has been incurred (Item 6 in the table in ITAA97 s.376-135). However, where a service provider invests some or all of its fees for goods or services, the fees are not considered deferments and may be QAPE, depending on whether they satisfy the usual QAPE tests. Note, however, this must impose a legal liability on both parties.

For example, where a post-production company has contracted with the applicant company to be paid a fee of $100,000, and then the post-production company decides to invest $10,000 of this fee in the film, in order for the entire $100,000 to be claimed as QAPE, the Board would expect to see:

- an invoice issued by the post-production company to the applicant company for $100,000
- an invoice issued by the applicant company to the post-production company for $10,000 (the invested amount)
- the entire $100,000 recorded in the general ledger and cost report as remuneration of the post-production company
- the post-production company sharing in $10,000 worth of equity in the film.

The post-production company's entire $100,000 fee could then be QAPE, provided that there is appropriate supporting documentation confirming the above and the usual QAPE tests are satisfied.

ISAN registration

Registering a film with ISAN Australasia is not considered QAPE for the PDV Offset. However, it can be considered Production Expenditure for the calculation of total production expenditure.

J, K, L

Legal fees and expenses

[see ITAA97 s.376-135 item 1 and s.376-150(1) items 1 and 6]

Legal expenses incurred in respect of services performed by a law firm in Australia during the making of the production may be claimed as QAPE, if the services are integral to PDV activity, for example, contracting VFX service providers, music clearances, PDV related insurance and lease agreements.

Legal fees incurred during development (including costs relating to writers' contracts or copyright issues, including chain of title or financing the film, are generally not attributable to PDV and therefore not considered QAPE for the PDV Offset.

Legal fees charged by financiers, such as cash-flow lenders may be considered QAPE if they relate to PDV activity and they fall into a category of expenditure set out in section 376-150(1) of the ITAA97 (see in particular, item 6), which outlines specific inclusions of expenditure constituting QAPE.

Legal fees for litigation in Australia may be eligible QAPE for the PDV Offset if the litigation is sufficiently related to the PDV work.

Applicants should ensure that legal expenses that relate directly to qualifying Australian PDV activity are identified and invoiced separately. This will assist in the preparation of expenditure statements for the PDV Offset.

M

Marketing

[see s.376-135 item 5 and subs.376-150(1) items 3 and 4]

Generally speaking, all expenditure related to the marketing, publicity and promotion of the film is excluded from Production Expenditure and by definition is non-QAPE as it is not for the 'making of the film'.

However, the legislation provides limited allowances for QAPE claims related to some publicity and promotional expenses. This is limited to expenditure which is:

- incurred in producing material where the copyright in the material is held by an individual or a company that is an Australian resident (e.g. design of the poster, e-books, apps (other than games)); and/or
- incurred in producing audio or visual content for the film otherwise than for use in the first copy of the film (e.g. footage for the 'making of' DVD, trailer or the Electronic Press Kit (EPK)) before the completion of the film.

Any expenditure on duplication and distribution of the trailer however would be non-QAPE.

For final certification an applicant must provide the relevant documents that confirm the above requirements.

Expenditure relating to marketing consultants' fees, games, and attendance at conferences, markets and/or festivals is not QAPE.

Medical fees

[see ITAA97 s.376-135 item 1, s.376-150 item 6]

As Film Producer's Indemnity Insurance (FPI) may be QAPE, expenditure on medical examinations required by FPI insurance may also QAPE so long as the examination takes place in Australia (see Insurance). However, in general both FPI and medical fees are not considered to be PDV-QAPE. To be eligible under the PDV Offset the applicant must demonstrate that any such costs are sufficiently related to PDV staff/activity.

Miniatures / models

Expenditure related to miniatures and models may be QAPE for the purposes of the PDV Offset. The definition of PDV under the ITAA97 does not encompass physical creation or manipulation of physical elements, such as sets or props, but may include construction and manipulation of miniatures or models which are used as part of PDV production.

Music copyright

[see ITAA97 subs.376-150(1) item 2)]

See Copyright acquisition and licensing.

N

Narration

See Voice Recording.

New Zealand

The Australia-New Zealand Closer Economic Relations Trade Agreement (CER) does not apply to government subsidies, tax concessions and measures for nationals of either country. Therefore, NZ residents are treated the same as any other 'non-Australian' residents for the purposes of QAPE. Similarly, work in New Zealand by Australians or non-Australians is considered overseas work.

Non-arm's length arrangements

[see ITAA97 s.376-175]

Where fees and services relate to pre-production, production and post-production, only the amount directly related to the PDV activities on the production can be claimed as QAPE for the purposes of the PDV Offset (or PDV-QAPE).

In order to establish the correct apportionment of fees for services (such as for accounting, audit, legal, producer, director) each case needs to be considered in the context of the individual production and the relative amount of PDV activity. For some activities the appropriate apportionment may be calculated based on production schedules (i.e. time spent undertaking tasks).

The method of apportionment needs to be justified in the application materials for assessment and the decision maker's consideration.

See also Apportionment of expenses related to PDV, Arm's length arrangements and Interested party.

Non-Australian service providers (including crew and cast)

QAPE generally refers to expenditure on goods and services provided in Australia. Therefore:

- Expenditure on non-Australian resident voice related cast and crew who work in Australia on PDV related activities is QAPE. Please note however that crew are subject to the two week rule (see Two week rule).
- Any expenditure on non-Australian resident cast and crew who work **outside Australia** is non-QAPE.
- If a non-Australian crew or voice related cast member is paid a total fee and the PDV activity takes place in both Australia and overseas, the applicant must calculate what portion of this fee was attributed to the overseas work and exclude it from QAPE and provide supporting evidence with the application.
- If expenditure is incurred on the use of non-Australian goods it may be QAPE providing it is for use in Australia for PDV activities. For example, if an applicant company hires equipment from the US which will be used on PDV activity in Australia, the expenditure on the equipment can be QAPE.

Apportionment of services provided

Where a service provider's contract does not distinguish between the services provided in Australia and overseas, it may be possible to use apportionment to substantiate eligible QAPE expenditure.

For example, if cast or crew member contracts specify a fixed fee for all services provided, the amount that could be claimed as QAPE could be based on the number of days the cast or crew member provided their services in Australia. To do this, the contract fee should be divided by the total number of days worked to establish a daily rate, then multiplied by the number of days the service was provided in Australia to calculate the QAPE.

When undertaking apportionment calculations, applicants should use the rate which reflects the services provided. For example, where the contract specifies an hourly, daily or weekly rate, and/or rates differ between rehearsals/pre-production, principal photography and post-production, then QAPE should be calculated using the appropriate rate for the time spent providing the service. If services are provided on a part time or on an exclusive basis, the QAPE claim and the method of calculating the claim should reflect this.

In order to apportion costs based on the number of days, the day of departure from or arrival in Australia is considered a day that services are provided in Australia as long as services are provided to the production during part of that day.

Where remuneration of a person is claimed as PDV-QAPE and the person in question undertakes PDV related work on the production both in Australia and overseas, applicants must attach copies of fully executed contracts for such individuals to their application in support of a claim that reasonable apportionment has been correctly calculated.

O

Overheads (general business overheads)

[see ITAA97 subs.376-135 item 4, subs.376-165(1) item 1 and subs.376-165(2)]

Expenditure incurred to meet the general business overheads of the company that are not incurred in, or in relation to, the making of the production (or are not reasonably attributable to the activities undertaken, or use of equipment or other facilities for the making of the production) are excluded from Production Expenditure and therefore QAPE. However, the ITAA97 allows a proportion of the Australian business overheads incurred by an applicant company to be claimed as QAPE.

For the purposes of the PDV Offset, the overheads for any single project are capped at 2% of the total Production Expenditure or $500,000, whichever is the lesser (see below).

Any general business overheads claimed as QAPE do not need to be directly related to the PDV activity on the production. However, they must be genuinely incurred expenditure for, or reasonably attributable to, goods and services provided in Australia, the use of land located in Australia, or the use of goods that are located in Australia at the time they are being used in the making of the film. The amount claimed must represent a reasonable apportionment between those overheads attributable to the making of the film and the overheads attributable to the other activities undertaken by the company during the relevant period.

The Board expects to see the claimed overheads form part of the applicant's original budget and final cost report, as well as being reflected in the general ledger for the project. If overheads are only shown as a lump sum amount, applicants may be required to itemise costs and provide evidence that they were incurred.

If a cost has already been claimed as QAPE it cannot be also included as a general business overhead.

As mentioned above the legislation allows an applicant to be able to claim up to the lesser amount of 2% of the total Production Expenditure on the film or $500,000. This does not mean that an applicant can simply claim up to the threshold, the costs must be eligible, as outlined above.

For the purposes of working out the threshold, the total Production Expenditure must be calculated in accordance with the ITAA97. See Production Expenditure for further information.

Overseas work

PDV activity (or services) undertaken outside of Australia is never QAPE for the PDV Offset.

P

Payroll tax

In most cases payroll tax for eligible cast/crew (for both Australians and non-Australians) is QAPE because it relates to work undertaken in Australia. The general rule is that if the person's remuneration is QAPE related to PDV then the Payroll Tax linked to that salary is also QAPE. Please note, however, that for crew working in Australia the two week rule applies (see Two week rule).

Per diems

[see ITAA97 subs.376-145, subs.376-155 and subs 376-165(1) item 2]

All per diems paid to both Australian and non-Australian residents working in Australia on PDV related activities are QAPE (note, however, that the Two week rule applies). If the person’s salary has been apportioned for PDV and non-PDV related activities the per diems and other allowances must also be apportioned.

Pilot episodes

A pilot (if there is one) may be considered to be part of the television series. Normal rules apply to claim expenditure under the PDV Offset such as the PDV activity would have had to occur in Australia.

Pitch reel

See Sizzle reel.

Post, digital and visual effects (PDV)

[see ITAA97 subs.376-35(2)]

Subsection 376-35(2) of the ITAA97 defines PDV for the purposes of the PDV Offset as:

- the creation of audio or visual elements (other than principal photography, pick-ups or the creation of physical elements such as sets, props or costumes) for the film, and
- the manipulation of audio or visual elements (other than principal photography, pick-ups or the creation of physical elements such as sets, props or costumes) for the film, and
- activities that are necessarily related to the activities mentioned in the above two points.

Poster design

[see ITAA97 subs.376-150(1) item 3]

See Marketing.

Production Company Fees / Production Services Fees

Production company fees / production services fees are not QAPE because they are not directly related to the PDV activity on the applicant production. Activities that are often included under production company fees or production services fees, such as legal, accounting costs or visa application fees, may be claimed as individual PDV-QAPE items.

Production Expenditure

[see ITAA97 s.376-125, s.376-130, s.376-135, s.376-150]

Production Expenditure is expenditure incurred both inside and outside Australia for the purposes of making the film. This includes pre-production, production and post-production activities and any other activities that are necessary to bring a production to the stage where it is ready to be distributed, broadcast or exhibited to the general public. An applicant company may incur production expenditure in the income year for which an offset is sought or in earlier income years.

Applicants should note that total production expenditure is not required except in circumstances where Australian Business Overheads are being claimed as QAPE in order to determine the amount able to be claimed (see Overheads (general business overheads))

The following expenditure (non-exhaustive) does **not** count as production expenditure for the purposes of the PDV Offset:

- financing expenditure, **except** for eligible insurances, certain audit and legal services provided in Australia and fees for incorporation and liquidation
- development expenditure incurred overseas (Australian legal fees during development cannot be included **except** where they relate to writer's contracts or chain of title and other underlying copyright issues)
- copyright acquisition expenditure, **except** the acquisition of Australian copyright for pre-existing work used in the film from an individual or company that is an Australian resident that holds the copyright
- publicity and promotion expenditure, **except** expenditure incurred in producing Australian copyrighted promotional material **or** producing additional audio or visual content (other than for the film itself) if incurred before the completion of the film
- residuals, **except** if paid out before the film being completed
- deferments, profit participation, and advances, and
- expenditure to the extent to which it sets or increases the costs of a depreciating asset.

Total production expenditure cannot include unsubstantiated accrued expenditure, estimates to complete or contingency items.

Prior company expenditure

[see ITAA97 s.376-180]

The ITAA97 provides that where one company (e.g. an SPV) takes over the making of the production from a prior company (e.g. the parent company), the new company is deemed to have incurred the expenditure of the prior company. However, note that:

- Expenditure incurred in order for a company to take over a production from a prior company, such as legal work on rights buyouts or reimbursements, is non-QAPE.
- Any expenditure incurred by a company acting in the capacity of a trustee of a trust is always non-QAPE. Therefore, if any expenditure is incurred by either the prior company or the new company when either of those companies is acting in the capacity of a trustee of a trust, such expenditure cannot be QAPE (see Trusts).
- Expenditure incurred by a sole trader (e.g. an individual) is non-QAPE.
- Any expenditure before 1 July 2007 is non-QAPE for the purposes of the PDV Offset.
- When determining to what extent expenditure is QAPE, the incoming company is taken to be an Australian resident or foreign resident with a permanent establishment in Australia and an ABN for any period of time, when the prior company was an Australian resident or foreign resident with a permanent establishment in Australia and an ABN.

Prizes and prize money

- Expenditure on prizes and prize money for contestants is non-QAPE for the PDV Offset as it is not sufficiently related to the PDV activity on the production.

Production investment agreement (PIA)

- [see ITAA97 s.376-135 item 1 and subs.376-150(1) item 6]
- The PIA is the contract between the producer and investors in the project which sets out the terms and conditions of the investment. Legal work undertaken in Australia on a PIA may be QAPE.
- However, for the purposes of the PDV Offset, you may be asked to demonstrate that the PIA sufficiently relates to the PDV activity and you may need to apportion the expenditure to the amount of PDV activity undertaken in relation to the overall production.

Provisional certificate

A provisional certificate provides a guide as to whether, based solely on the information and assurances provided by the applicant, the Board is satisfied that the film is—if made—likely to meet the legislative requirements for certification for the PDV Offset. Applying for a provisional certificate is an optional step; it is not a pre-requisite for a final certificate.

Being issued with a provisional certificate does not guarantee or entitle the applicant to a final certificate, and does not bind the Minister to issue a final certificate.

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

- certify that transactions between associated or interested parties as outlined in the budget are budgeted at arm’s length; or
- audit the claims in your application form and associated documentation, but rather, rely only on the information provided in making its assessment.

Publicity and promotion expenditure

See Marketing.

Q

QAPE

[see ITAA97 s.376-145]

QAPE stands for Qualifying Australian Production Expenditure.

QAPE is the applicant company's Production Expenditure on the production to the extent it is incurred for, or reasonably attributable to:

- goods and services provided in Australia; or
- the use of land located in Australia; or
- the use of goods that are located in Australia at the time they are used in the making of the production.

For the PDV Offset QAPE must be related to post, digital and visual effects production (PDV-QAPE).

A number of specific inclusions and exclusions are described in the legislation and detailed in this Glossary.

QAPE opinions

[see ITAA97 s.376-135 item 1]

For the PDV Offset, expenditure obtaining 'QAPE opinions' from accountants or line producers for cash-flow lenders, investors or guarantors is not QAPE as it is a financing expense.

R

Related party transactions

[see ITAA97 s.376-175]

Related party transactions are referred to as 'Interested party transactions' (see Interested party), but see also Apportionment of expenses related to PDV and Arm's length arrangements.

Remuneration other than by salary

If cast/crew are contractually remunerated other than by salary (such as by the payment of companion airfares or where an individual is paid an allowance for their own travel arrangements), such payments will form part of the cast/crew member's total remuneration.

For example, a non-Australian marquee actor's fee is $500,000, and the contract includes an allowance for additional airfares (for his family). In this case, if the expenditure of the additional airfares totaled $25,000, the expenditure on these airfares may be able to be treated as part of his remuneration and brings his total remuneration up to $525,000 (plus fringes if applicable).

If the actor undertakes work outside Australia (e.g. for ADR undertaken in LA), the QAPE apportionment must be based on the entirety of his remuneration (including his fee, the companion airfares and fringes if applicable).

This does not apply to the travel expenses that are paid separately to the actor's contract for example if they are paid by the production company. In this case, the expenses are not considered remuneration and be subject to the usual QAPE travel rules.

Payments for Holiday Pay and Superannuation are included in the calculation of remuneration.

Payments for Payroll Tax and Workers Compensation are not included in the calculation of remuneration.

Note that remuneration other than by salary may attract FBT liabilities.

For final certification, the applicant must supply contracts for all personnel who are remunerated other than by salary.

Research

Expenditure related to research is generally considered development and not QAPE for the PDV Offset (see Development expenditure). However, where research tasks can be demonstrated to directly relate to PDV activity, then the costs may be QAPE for the PDV Offset. For example, research related to story or script development is not eligible QAPE; however, the work to locate additional material to be used in post-production may be QAPE for the PDV Offset.

Residuals / buyouts

[see ITAA97 s.376-135 item 8]

Buyouts of residual rights are QAPE if they are paid out before the production is completed and are connected with a person's fee that is QAPE.

However, any residual payments that are incurred **after** completion of the film (e.g. triggered by box office receipts or USA TV Sales) are non-QAPE.

S

SAG (Screen Actors Guild) fees

SAG fees are QAPE to the extent that the wage/salary of the actor is QAPE.

Services embodied in goods

[see ITAA97 s.376-160]

Where goods are located in Australia when used in the making of a film, but the real value of the goods lies in a service embodied in them, the service must be provided in Australia for the expenditure associated with the goods to be QAPE.

This means that where the goods themselves have little or no value as an item, and the value lies in the service embodied in those goods, then where the service is provided rather than where the goods are located will be the determining factor on whether QAPE can be claimed.

For example, the cost of animation or special effects work undertaken outside of Australia is not QAPE. If a company contracts the delivery of animation or visual effects work undertaken outside Australia as stock or computer media in Australia, the cost of that contract would not be QAPE (although the cost of delivering the stock to Australia could be). The animation or effects work would have to be carried out in Australia for the work to be considered QAPE.

A further example is where a production company engages a wardrobe specialist overseas to provide costumes and the costumes are shipped to Australia. The salary of the wardrobe specialist would not be QAPE, but the cost of the costumes and the freight costs would be QAPE.

Sizzle reel

Expenditure incurred on the preparation of a sizzle reel which is prepared for the purposes of attracting finance is non-QAPE.

Software

Expenditure incurred on the purchasing or use of software may be considered QAPE if it can be demonstrated that the software is related to the PDV activity in Australia.

SPA (Screen Producer Australia) levies

Guild levies paid by the production are not considered QAPE for PDV Offset. However, they can be considered Production Expenditure for the purpose of overhead claims (see Production Expenditure and Overheads (general business overheads)).

Special Purpose Vehicle (SPV)

SPV is an expression used to describe a company formed specifically to produce a film. The SPV will be the company that carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the film.

See also Prior company expenditure.

Statutory declaration

See Digital declaration.

Storyboards

Expenditure related to storyboards for live action productions is considered development and is non-QAPE for the purposes of the PDV Offset. This includes virtual production techniques that assist in shot planning. However, for productions where storyboarding is used specifically as a tool to create and manipulate the film's visual and audio elements and not to develop a film's plot, costs incurred may be eligible QAPE.

Subsequent financial year (to completion of the film)

QAPE may have been incurred in the income year for which the PDV Offset is claimed and also in earlier financial years (after 1 July 2007). Any expenditure incurred in a subsequent income year (to the year the PDV activity ceased in Australia and therefore the year the claim will be made) is non- QAPE.

See Accrual basis of expenditure.

Substituted accounting period (SAP)

Some applicant companies are authorised by the ATO to use an income year which differs from the usual 1 July to 30 June financial year. This is known as a Substituted Accounting Period (SAP) and can only be adopted by a taxpayer with the Commissioner of Taxation's permission. Applicants are asked to identify in the final application form whether or not they use a SAP for their company. Any expenditure incurred in an income year (financial year) subsequent to that of the PDV activity ceasing in Australia (the year in which the offset is being claimed) cannot be claimed as QAPE, so applicant companies with SAPs should note that their differing accounting calendar may impact their QAPE claim.

See also Accrual basis of expenditure.

T

Teaser

See Sizzle reel.

Television series (including mini-series)

[see ITAA97 s.376-45]

For the purposes of the PDV Offset, a television series or mini-series of television drama must be made up of two or more episodes that:

- are produced wholly or principally for public broadcast on television under a single title
- have a common theme or themes
- contain dramatic elements that form a narrative structure, and
- are intended for exhibition together in a national market or markets.

To be considered a television series, the requirements mean that there must be common elements that draw the episodes of the series into a cohesive whole that are then released under a single title. This could include anthology series that are thematically linked but where plot, setting and characters differ. However, different series or episodes produced for different markets or released separately cannot be grouped together to reach the minimum QAPE threshold for eligibility.

Test screenings

The ability for expenditure on screenings to be claimed as QAPE is very limited. These screenings must be genuine ‘test screenings’, not cast and crew screenings or promotional screenings.

Expenditure for test screenings may be eligible under the PDV Offset if they are technical screenings, are genuinely held to finalise PDV activity on the production, take place in Australia, and occur before the post-production is complete.

Title clearances/searches

Expenditure on title clearances and searches is non-QAPE under the PDV Offset.

Trailer

See Marketing and Additional content.

Transcribers

Costs related to transcribing may be eligible QAPE for the PDV Offset if it is necessary for post-production. In determining what portion of these costs can be claimed it must be established that the transcribing was used for editing/post-production, or whether it was also used for other activities (e.g. continuity notes), which would then mean it should be apportioned accordingly.

Travel

[see ITAA97 subs.376-165(1) items 1 and item 2]

Travel in Australia

Travel for Australian and non-Australian residents in Australia is QAPE if it is sufficiently related to or necessary for PDV activities related to the production (non-cast members are subject to the Two week rule).

The principle for expenditure in relation to travel in Australia is that if a person's remuneration is QAPE at a location, then the expenditure on their travel to and from that location is also likely to be QAPE.

Travel expenditure can include airfares, accommodation, per diems and transportation (e.g. hire car, taxi, petrol, parking and excess baggage). Under the PDV Offset, travel expenditure may have to be apportioned to reflect the amount of time spent undertaking PDV activities.

Travel to Australia

Similar to travel in Australia, travel for Australian and non-Australian residents to Australia is likely to be QAPE if that person's remuneration is QAPE. Expenditure on travel from Australia to another country is never QAPE. For example:

- Australian and non-Australian cast travelling to New Zealand to undertake filming as part of the production are able to claim the portion of the airfare to return to Australia to undertake further PDV related work on the production in Australia. Where the airfare is purchased as a return airfare the cost of the incoming journey is 50 per cent of that return fare.
- Australian and non-Australian non-cast members (crew, producers, executive producers) travelling to New Zealand to undertake filming as part of the production are able to claim the portion of the airfare to return to Australia to undertake PDV work and work on the film for at least two consecutive calendar weeks (refer to Two week rule).

The applicant company will need to maintain detailed records of this expenditure.

Travel from Australia to another country is not QAPE as activity undertaken overseas is not eligible QAPE under the PDV Offset.

For information about travel relating to people who are not cast or crew working on a production, e.g. companion travel, refer to Remuneration other than by salary.

Trusts

[see ITAA97 subs.376-35(1) and subs.960-100(1) and (4)]

A company acting in the capacity of a trustee of a trust is not eligible for the PDV Offset and can neither incur QAPE nor be certified.

It is important to note that this also applies to any 'prior company expenditure'.

The ITAA97 provides that, where one company (e.g. an SPV) takes over the making of the film from a prior company, the new company is deemed to have incurred the expenditure of the prior company. For example, if any development expenditure is incurred by either the prior company or the new company when either of those companies is acting in the capacity of a trustee of a trust, such expenditure cannot under any circumstances be QAPE.

Two week rule

[see ITAA97 para.376-155(b)]

The 'two week rule' applies to non-cast members (e.g. crew only). All crew members (including producers and executive producers), whether Australian or non-Australian residents, must remain in Australia and work on the film for at least two consecutive calendar weeks (14 consecutive nights) for expenditure attributable to their stay to be QAPE (including salary, fringes, per diems, travel, ground transportation and accommodation). Each visit is considered separately.

U

Union fees

Union fees (including to offshore unions) are QAPE where the wage/salary of the person is QAPE (see SAG (Screen Actors Guild) fees).

V

Virtual Production

Expenditure on virtual production techniques may be considered QAPE for the purpose of the PDV Offset if applicants can demonstrate that the costs relate to PDV activity and meet the definition of post, digital and visual effects production under subsection 376-35 (2) of the ITAA97. The costs associated with the use of virtual production techniques will be subject to apportionment and will need to be substantiated through the provision of contracts, schedules and records of activity. In the case of mixed reality or a mixture of virtual and actual activity and costs associated with motion capture shoots, some costs may be apportioned as QAPE.

In order to be considered QAPE items under the PDV Offset, applicants will need to demonstrate that the activity was undertaken in Australia.

Example

When determining eligible PDV costs, apportionment of eligible activities may be necessary. For example, where a shot using LED screens results in the image being digitally manipulated and the lighting being adjusted physically, the LED screen cost and operation and the associated image manipulation are potentially QAPE items under the PDV Offset. However, the lighting costs are not an eligible cost under the PDV Offset.

Previsualisation utilising virtual production techniques purely for planning purposes does not qualify as a PDV activity. Previsualisation that is the basis for asset building for image manipulation may potentially be an eligible QAPE cost.

Visas

[see ITAA97 subs.376-165(1) item 2]

The rules for visas, for both Australian and non-Australian residents, follow the same rules as for travel. The principle is that if a person’s remuneration is PDV-QAPE at a location, then the expenditure on their visa to that location is also PDV-QAPE regardless of the country in which the visa is purchased.

Voice Recording

Costs for voice recording in Australia including narration may be claimed as QAPE if the recording occurs after, or separately to principal photography. Costs may include cast fees, travel, accommodation and studio fees but would not include development costs like casting or scriptwriting.

For example, in animated productions QAPE may include original voice recording if it takes place separately to the creation of the images. In live action format productions, the costs for voice recording that are separate to the principal photography, such as those for voice over or narration, can be eligible. This can include original recording or scripted roles, in addition to activities such as automated /additional dialogue recording (ADR).

W

Online content

[see ITAA97 subs.376-150(1) items 3 and 4]

Expenditure in relation to online / web content can fall in two areas of the legislation, depending on the use of the content. In some cases, it may fall in the ‘marketing / promotion and publicity’ provision of the legislation, in other circumstances it may sit in the ‘additional content’ provision.

Expenditure on establishing a website, such as domain name registration, and any ongoing expenditure incurred in relation to website editing / hosting that occurs after the film is completed is non-QAPE.

A breakdown of the expenditure for the website would be required to ascertain what expenditure may be QAPE. See Marketing or Additional content for further information.

For online distribution see Distribution for eligibility.

Workers’ compensation

In most cases workers’ compensation insurance for cast / crew in Australia (for both Australians and non-Australians) is QAPE because it is for work undertaken in Australia. The general rule is that if the person's remuneration is QAPE, then any workers’ compensation linked to that salary is also QAPE.