



Australian Government

Australian Taxation Office

Australian film industry incentives 2006

To help you complete your tax return for 1 July 2005 – 30 June 2006

To be used by taxpayers claiming a tax deduction for investing in Australian films

WHAT DEDUCTIONS CAN I CLAIM FOR INVESTING IN AUSTRALIAN FILMS?

If you invest in the Australian film industry, you may be eligible for a special tax deduction for capital expenditure incurred in acquiring an interest in the copyright of an Australian film.

As a taxpayer, you may be able to claim a deduction under either:

1 Division 10B of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936), which gives investors a deduction, normally spread over two years, for capital contributions used to acquire rights in or under copyrights relating to an 'Australian film', or

2 Division 10BA of Part III of ITAA 1936, which gives investors a 100% deduction for capital expenditure used to produce a 'qualifying Australian film' where, as a consequence, they acquire an interest in the initial copyright of the film.

Division 10B applies to both residents and non-residents, while Division 10BA applies to residents only. A taxpayer can elect that Division 10BA not apply to their project and apply Division 10B instead.

Taxpayers may also be able to claim deductions under **Subdivision 375-H** of the *Income Tax Assessment Act 1997* (ITAA 1997) for amounts paid for shares in a film licensed investment company.

DIVISION 10B

Division 10B is available to both residents and non-residents and has potentially broader application than Division 10BA. Division 10B applies to a film certified for Division 10B purposes as an 'Australian film', whereas Division 10BA only applies to a film certified for Division 10BA purposes as a 'qualifying Australian film'. Under Division 10B you may be entitled to a deduction for the

capital cost of producing an Australian film or the capital cost of acquiring the copyright in an Australian film. If you invest in a 'qualifying Australian film', Division 10B can apply to you if you elect that Division 10BA not apply.

You have two methods of claiming a deduction under Division 10B:

- you can deduct the costs incurred over two years, or
- you can elect to deduct the costs of the unit over the effective life of the copyright.

If you deduct the costs over two years, half the cost of acquiring the interest in the copyright is deductible in the year of income during which the film was first used to produce assessable income. The other half is deductible in the following year.

If you elect to claim deductions over the effective life of the copyright and you acquire the copyright for a specified period, the effective life is the shorter of that specified period or the period ending at the time the copyright terminates. If you elect to claim deductions over the effective life of the copyright and you do not acquire the copyright for a specified period, the effective life is the shorter of 25 years or the period ending at the time the copyright terminates.

DIVISION 10BA

Division 10BA deductions are available to investors in a film that has been certified by a provisional certificate or a final certificate as a 'qualifying Australian film'.

To qualify for a Division 10BA deduction, you must be a resident of Australia who:

- expended capital monies in producing the film or as a contribution to its production
- expected to become the first owner, or one of the first owners, of the copyright of the film, and

- intended to use the copyright to produce assessable income from public exhibition in cinemas or by television broadcasting.

The Minister for Communications, Information Technology and the Arts must certify the film as a qualifying Australian film. It must be:

- an eligible film – a film produced wholly or principally for the cinema or television which is a feature film (including an animated feature film), a documentary or a television mini-series, and
- an Australian film – a film with a significant Australian content made wholly or substantially in Australia or an external territory, or a film made as a result of an agreement between the Australian Government and a government of another country.

An Australian film assessed as having significant non-Australian content may be refused certification.

Ultimately, eligibility for a deduction depends on a final certificate being issued when the film is completed. However, you may claim a deduction on the basis of a provisional certificate.

Deductions for expenditure or contributions

A Division 10BA deduction is generally allowable for capital monies spent to produce a film or contributed to the cost of its production. Your deduction is limited to the amount of your contribution that is spent directly on the production of the film.

In any given year, other deductions for expenses relating to the film investment, such as interest payable on the money used to make the capital contributions, are limited to the amount of film income from that film for that year.

Subject to this limitation, any unused deduction can be carried forward and applied against income from the film in future income years.

Investors and potential investors should be aware that, while an up-front deduction on the basis of a provisional certificate can be claimed, this deduction will be later disallowed if the following conditions set out in Division 10BA arise:

- the film does not receive a final certificate from the Minister for Communications, Information Technology and the Arts certifying that the film is a qualifying Australian film
- the film is not exhibited commercially within two years of the end of the income year in which capital monies were first spent to produce the film or were contributed to the cost of producing the film, or
- the copyright of the film did not come into existence within the relevant two-year period and you have not derived assessable income under an agreement granting another person the rights to exhibit the film.

Investors can claim a deduction only for capital monies spent directly in producing the film or contributed to the cost of producing a film. For deductions to be available for capital monies contributed to the cost of producing a film, both of the following must occur:

- There must be in place a production contract, or a production contract and an underwriting contract or contracts, and the production contract must specify how the capital monies contributed will be expended in producing the film, or by way of contribution to the cost of producing the film.
- An appropriate person – usually the producer – must lodge a declaration stating that a contract for the production of the film has been entered into and that a person has or persons have agreed to expend an amount specified in the contract as the estimated cost of producing the film, and detailing how the qualifying contributions have been or will be dealt with. You must lodge the declaration before one month after the end of the income year in which funds are first contributed towards the production of the film. An extension of time to lodge the declaration may be granted.

If your film investment does not meet the requirements of Division 10BA, any deductions you claimed for it will be withdrawn. You will receive a notice of amended assessment for the relevant years disallowing the deductions. The Commissioner of Taxation can amend assessments disallowing claims made under Division 10BA at any time. In the event of an amended assessment, false or misleading statement penalties and an interest charge may also apply.

Deductions for an investor who takes the place of other investors

An investor in a qualifying Australian film who takes the place of another investor before the film is completed may be eligible for a deduction. The replacement investor's contribution may still be treated as being for the costs of producing the film. As long as the requirements outlined in the **Deductions for expenditure or contributions** section of this fact sheet are satisfied, the replacement investor will be allowed a deduction in the year in which they contribute to the cost of production.

Proceeds from film investment

Under Division 10BA, receipts from the film – whether from Australia or overseas – including amounts received on the disposal of the whole or part of a copyright, are assessable income. You may be entitled to a partial exemption if you were allowed a deduction under a contract entered into before 25 May 1988.

Partnerships

Division 10BA does not apply in working out the net income or loss of a partnership. Any capital expenditure is treated as having been expended in accordance with any agreement between the partners or according to each partner's interest. Film income is apportioned to each partner in a similar manner.

Losses

You can offset film losses carried forward from prior years against film income only. A film loss arises when you have a tax loss in an income year and when your film

deductions (that is, your Division 10BA deductions and your other deductions for expenses relating to your Division 10BA investment) exceed the sum of your assessable film income and your net exempt film income. The film loss is either the tax loss or the difference between your film deductions and the sum of your assessable film income and your net exempt film income, whichever is less. A film loss cannot be deducted from income other than film income but can be carried forward and deducted from film income in future years. You can carry forward film losses you incurred in 1989–90 and subsequent income years for an unrestricted period.

WHAT INFORMATION MUST I KEEP?

You must be able to provide the following information if we request it:

- the title or proposed title of the film
- the date of issue of the provisional certificate or, if the film has been completed, of the final certificate
- the certificate number
- the completion date or proposed completion date of the film
- details of your contribution or expenditure, including:
 - the date of any contract under which you made the expenditure
 - the date and the amount you paid
 - the name and address of the person you paid
 - whether you paid the amount in place of an underwriter
- details of your interest or expected interest in the copyright arising out of your expenditure on the film
- details of all income derived from the film, including any amounts you received or will receive from the disposal of all or part of your interest in the film's copyright
- details of arrangements or proposals under which you may expect to derive income from the film
- the name and address of the entity producing the film
- the name and address of the person who lodged or will lodge the necessary declaration in relation to the film
- the tax office at which the declaration was or will be lodged.

Additionally, if a claim for a deduction is for any amount paid by a partnership of which you are a partner, you need to be able to provide the following information:

- the name and tax file number of the partnership
- the tax office where the tax return of the partnership was or will be lodged.

WHAT ELSE SHOULD I KNOW?

Foreign source income – limitation of Division 10B and Division 10BA deductions

Receipts from the exploitation of a film overseas are foreign income. Any **intention** to receive foreign income could make a Division 10B or a Division 10BA deduction that would otherwise be allowable a 'foreign income deduction' and subject to quarantining measures. *Taxation Determination TD 2004/29 Can section 79D of the Income*

Tax Assessment Act 1936 operate to limit deductions available under Division 10B or Division 10BA of Part III of the Income Tax Assessment Act 1936? outlines the Tax Office's position on the limitation of Division 10B or Division 10BA deductions in these cases.

Deduction safeguards

There are safeguard provisions to ensure that Australian film industry incentives are not exploited. Two examples are:

- Expenditure qualifying for the Division 10BA deduction is limited to amounts that the investor may lose if the film venture fails.
- The Tax Office must be satisfied that the deductions claimed under Division 10B or Division 10BA have not been inflated as part of a non-arm's length transaction.

Tax offset for film production in Australia

Under Division 376 of ITAA 1997 companies can claim tax offsets for qualifying Australian production expenditure on films completed during the year. The offset is available for feature films and television miniseries produced for cinemas, television or other forms of public release (including satellite, cable, tapes and DVDs) and amounts to 12.5% of the company's qualifying expenditure on each film project.

The eligibility requirements include a film having:

- certification by the Arts Minister that it was completed on or after 4 September 2001
- a minimum qualifying expenditure of A\$15 million, and
- 70% of the total expenditure spent on production activity in Australia – where qualifying expenditure was between A\$15 million and A\$50 million.

Films with Australian production expenditure over A\$50 million will automatically qualify for the offset.

If the tax offset is claimed, other incentives, such as funding from the Film Finance Corporation or deductions under Division 10B or Division 10BA, are not available. The tax offset is not available if deductions are claimed under Division 10B by the company or someone else, or if a provisional certificate or final certificate for the film has been issued under Division 10BA. However, eligibility for the tax offset is restored if the issued provisional Division 10BA certificate for the film has been revoked under subsection 124ZAB(6A) of ITAA 1936. A film licensed investment company (FLIC) cannot invest any of its concessional capital in a film production that will claim the tax offset.

To access the tax offset, film production companies must apply to the Department of Communications, Information Technology and the Arts for a certificate of eligibility from the Arts Minister.

For a fact sheet about the tax offset, visit the website of the Department of Communications, Information Technology and the Arts at www.dcita.gov.au/filmtaxoffset

On 13 April 2005, the Government announced that the tax offset for film production would be extended to big-budget television series. The change applies for expenditure

incurred on eligible television series from 1 July 2004. Full guidelines and eligibility criteria are available on the Department of Communications, Information Technology and the Arts' website.

Film licensed investment company 2006 and 2007 deductions

Under Subdivision 375-H of ITAA 1997 taxpayers are able to claim deductions for amounts paid by them, or for their proportion of amounts paid by a partnership in which they are a partner, for shares in a company which has been granted a license to raise concessional capital under the *Film Licensed Investment Company Act 2005*. If the shares are paid for and issued in the same income year the deductions are available in that year. If the shares are paid for in an income year and are issued in a later income year the deductions are available for the later income year. Deductions are not available for shares issued after 30 June 2007.

Deductions are available for the income years ending 30 June 2006 and 30 June 2007 only.

Film licensed investment company returns of franked dividends

The film licensed investment company (FLIC) tax concession allows certain returns of concessional capital (that is, capital invested in a FLIC during its licence period) to be treated as franked dividends. If you are an investor in a FLIC, you may have received a notice from the company advising that it is returning to you an amount of concessional capital that is, for tax purposes, a franked dividend. The FLIC will advise you of the amount of your dividend and the franking credit.

NOTE

To provide greater certainty for investors, the Tax Office has introduced a product rulings system. Promoters of an investment can apply to us for a ruling on the availability of the tax benefits claimed by the investment. Potential investors may wish to approach their film promoter for details of any applicable product ruling.

More information about the product rulings system is in *Product Ruling PR 1999/95 Income tax and fringe benefits tax: Product Rulings system*.

WHERE DO I CLAIM A DEDUCTION ON MY TAX RETURN UNDER DIVISIONS 10B AND 10BA?

- Individual taxpayers claiming a deduction for an investment in an Australian film or a qualifying Australian film can show the deduction at item **D11** on their *Tax return for individuals (supplementary section) 2006* (NAT 2679-6.2006).
- Trustees must show the amount at item **15** on their *Trust tax return 2006* (NAT 0660-6.2006), clearly identifying it as a film industry incentive deduction.
- Companies must use the *Company tax return 2006* (NAT 0656-6.2006). Information about which label to use on the tax return is in the *Company tax return instructions 2006* (NAT 0669-6.2006).

WHERE DO I CLAIM A DEDUCTION ON MY TAX RETURN FOR INVESTMENT IN A FILM LICENSED INVESTMENT COMPANY ?

- Individual taxpayers claiming a deduction for an investment in a film licensed investment company can show the deduction at item **D15** on their *Tax return for individuals (supplementary section) 2006*.
- Trustees must show the amount at item **15** on their *Trust tax return 2006*, clearly identifying it as a film industry incentive deduction.
- Companies must use the *Company tax return 2006*. Information about which label to use on the tax return is in the *Company tax return instructions 2006*.

MORE INFORMATION

To get any publication referred to in this fact sheet:

- visit our website at www.ato.gov.au/publications for publications, taxation rulings, practice statements and forms
- phone our Publications Distribution Service on **1300 720 092**, or
- visit one of our shopfronts.

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