



Investment in the Australian film industry

If you invest in the Australian film industry, you may be eligible for a special tax deduction. NAT 0954-06.2003.

Last updated 22 September 2003

If you invest in the Australian film industry, you may be eligible for a special tax deduction under Division 10BA of the *Income Tax Assessment Act 1936*. This deduction is for capital expenditure incurred in acquiring an interest in the initial copyright of a new Australian film.

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

- outlaid capital expenditure in producing the film or as a contribution to its production
- consequently became 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 way of 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, that is, a feature film-including an animated feature-length movie, a telemovie, a documentary or a mini-series of television drama produced for exhibition to the public in cinemas or on television, and
- an Australian film, that is, one 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



You may be eligible for a deduction for the whole of the amount you expended or contributed under a contract.

Deductions for investors who take the place of an underwriter



An investor who takes the place of an underwriter before the film is completed may be eligible for a deduction.

Proceeds from film investment



Receipts from the film including amounts received on the disposal of a copyright, are assessable income.

Partnerships



Division 10BA does not apply in working out the net income or loss of a partnership.

Losses



You can offset film losses carried forward from prior years only against film income.

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Safeguard provisions are in place to ensure that Australian film industry incentives are not exploited.

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Deductions for expenditure or contributions

You may be eligible for a deduction for the whole of the amount you expended or contributed under a contract.

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You may be eligible for a deduction for the whole of the amount you expended or contributed under a contract entered into after 24 May 1988. Your deduction is limited to the amount of your contribution that is spent directly on the production costs of the film.

Under Division 10BA a deduction is generally allowable for capital moneys spent to produce a film or contributed to the cost of its production. The deduction is allowable in the year in which you made your payment.

In any given year other deductions for expenses relating to the film investment, such as interest payable on the moneys used to make the capital contributions, are limited to the amount of film income 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 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, or
- the film is not exhibited commercially within 2 years of the end of the income year in which capital moneys were first spent to produce the film or contributed to the cost of producing the film, or
- if the copyright of the film did not come into existence within the relevant 2-year period-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 moneys spent directly in producing the film. To meet this requirement both the following

circumstances must occur:

- There must be a production contract-or an underwriting contract-which secures funds equal to the estimated cost of producing the film. The production contract (or underwriting contract) must be in place before the end of the income year in which investors first spent money on producing the film or first contributed to its cost.
- An appropriate person-usually the producer-must lodge a declaration before one month after the end of the income year in which funds are first contributed towards the production of the film. This declaration must show evidence that qualifying contributions have been, or will be, dealt with appropriately. 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 an amended notice of assessment for the relevant years disallowing the deductions. The Commissioner can amend assessments disallowing claims made under Division 10BA at any time. In the event of an amended assessment, incorrect return penalties and a general interest charge may also apply.

Note

To provide greater certainty for investors, the Australian Taxation Office (ATO) has introduced a Product Rulings system. Promoters of an investment can apply to the ATO 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 provided in Product Ruling PR 1999/95 *Income tax and fringe benefits tax: Product Rulings system*.

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Deductions for investors who take the place of an underwriter

An investor who takes the place of an underwriter before the film is completed may be eligible for a deduction.

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An investor in a qualifying film who takes the place of an underwriter before the film is completed may be eligible for a deduction. Your contribution may still be treated as being for the costs of producing it. As long as the requirements outlined in the [Deductions for expenditure or contributions section](#) of this publication are satisfied, the investor will be allowed a deduction in the year in which they contribute to the cost of production.

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Proceeds from film investment

Receipts from the film including amounts received on the disposal of a copyright, are assessable income.

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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.

You may be eligible for a credit for any foreign tax you paid on film receipts from overseas which you included in your assessable income.

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 imputation credit.

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Partnerships

Division 10BA does not apply in working out the net income or loss of a partnership.

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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.

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Losses

You can offset film losses carried forward from prior years only against film income.

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You can offset film losses carried forward from prior years only against film income. A film loss arises when your film deductions exceed the sum of your assessable film income and your net exempt film income. 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.

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Deduction safeguards

Safeguard provisions are in place to ensure that Australian film industry incentives are not exploited.

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Safeguard provisions are in place to ensure that Australian film industry incentives are not exploited. Two examples are:

- expenditure qualifying for the deduction is limited to amounts that the investor may lose if the film venture fails
- the ATO must be satisfied that the costs have not been inflated as part of a non-arm's length transaction.

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Information to be shown in tax returns

Claiming a deduction for an investment in a qualifying Australian film must be shown at the correct labels.

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Individual taxpayers claiming a deduction for an investment in a qualifying Australian film must show the deduction at item **D11** on their *2003 tax return for individuals* (supplementary section). Trustees are to show the amount at item **15** on their *Trust tax return 2003* (NAT 0660-6.2003), clearly identifying it as a film industry incentive deduction. Companies are to use *Company tax return 2003* (NAT 0656-6.2003). The publication *Company tax return instructions 2003* (NAT 0669-6.2003) has more information about which label to use.

Information to be kept by investors

You need to be able to provide information if the ATO requests it.

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You need to be able to provide the following information if the ATO requests 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 number of the certificate
- 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
- if the film has not been completed, 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
- if a claim for a deduction is for any amount paid by a partnership of which you are a partner:
 - the name and tax file number of the partnership
 - the tax office where the tax return of the partnership was or will be lodged.

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Further information

Guidance notes for special tax deductions.

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You may also be eligible for special tax deductions if:

- you invested in a film on or before 24 May 1988, or
- you elected not to apply Division 10BA deductions, or
- you were not eligible for the Division 10BA deductions but you were eligible for the 2-year write-off deduction under Division 10B.

If this publication does not fully cover your circumstances or you are uncertain about your eligibility under Division 10BA, please contact your tax adviser or the ATO.

If you have any questions about the certification of qualifying Australian films, write to the Department of Communications, Information Technology and the Arts at GPO Box 2154, Canberra ACT 2601 or ring them on **(02) 6271 1066**.

Tax offset for film production in Australia

Companies can claim tax offsets for qualifying Australian production expenditure on films completed during the year.

Last updated 22 September 2003

Under Division 376 of the Income Tax Assessment Act 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 mini-series 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 \$A15 million, and
- 70% of the total expenditure spent on production activity in Australia-where qualifying expenditure was between \$A15m and \$A50m.

Films with Australian production expenditure over \$A50m will automatically qualify for the offset.

Where the tax offset is claimed, other incentives, such as funding from the Film Finance Corporation, or deduction under Division 10B or Division 10BA of the *Income Tax Assessment Act 1936*, become unavailable. 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. A FLIC is not able to invest any of its concessional capital in a film production that will claim the tax offset.

For further information, a fact sheet about the tax offset is available on the website of the Department of Infrastructure, Transport, Regional

Development, Communications and the Arts at
www.infrastructure.gov.au.

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Publications

Supporting publications.

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All ATO publications are free. To get a copy of any ATO publication referred to in this booklet:

- visit our website at **www.ato.gov.au**

Publications referred to in this book are:

- Product Ruling PR 1999/95 *Income tax and fringe benefits tax: Product Rulings system*
- Company tax return instructions 2003 (NAT 0669-6.2003)

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Lodge your tax return over the Internet using e-tax

Guidance notes on an easy and convenient way to lodge.

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If you are looking for an easy and convenient way to do your tax return, look no further than *e-tax 2002*. It is available **free** from the Australian Taxation Office. *e-tax* can estimate items such as capital gains and your tax refund or tax debt. *e-tax* allows you to complete your tax return confidentially and at your leisure, 7 days a week. Tax returns lodged using *e-tax* generally take only **14 days** to process. *e-tax* is

available for use from 1 July 2002. For more information on e-tax, visit the ATO website at **www.ato.gov.au**.

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Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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