


***TD 2005/D53 - Income tax: to what extent are freight costs included in 'qualifying Australian production expenditure' within the meaning of section 376-40 of the Income Tax Assessment Act 1997?***

 This cover sheet is provided for information only. It does not form part of *TD 2005/D53 - Income tax: to what extent are freight costs included in 'qualifying Australian production expenditure' within the meaning of section 376-40 of the Income Tax Assessment Act 1997?*

This document has been finalised by TD 2006/3.



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## Draft Taxation Determination

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Income tax: to what extent are freight costs included in 'qualifying Australian production expenditure' within the meaning of section 376-40 of the *Income Tax Assessment Act 1997*?

### **Preamble**

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Freight costs are included in 'qualifying Australian production expenditure' (QAPE) to the extent that those costs relate to the provision of freight services within Australia.
2. Division 376 of the *Income Tax Assessment Act 1997* (ITAA 1997) entitles an Australian film production company to a refundable tax offset for certain Australian production expenditure the company incurs in making a certified and completed film. The offset requires QAPE of at least \$50 million, or if QAPE is at least 70% of total production expenditure then it need only exceed \$15 million.
3. Subsection 376-25(1) of the ITAA 1997 provides that a company's production expenditure is expenditure that a company incurs to the extent to which it is incurred in, or in relation to, the making of the film, or is reasonably attributable to the use of equipment or other facilities for, or activities undertaken in, the making of the film. The expenditure must be in, or in relation to, the actual process of producing the first copy of the film.
4. Generally speaking, QAPE is so much of the production company's production expenditure on the film as is incurred for or is reasonably attributable to goods and services provided, or 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 film (section 376-40 of the ITAA 1997). Some special Australian inclusions are added, and are added to production expenditure (section 376-45 of the ITAA 1997). Some expenditures are excluded, particularly all expenditures incurred when the production company is not Australian (section 376-50 of the ITAA 1997).
5. The costs incurred in shipping goods and equipment to Australia for use in the film may be claimed as QAPE to the extent that the freighting occurs in Australia. This means that a foreign freight provider's fees may be included in QAPE to the extent that the goods are freighted in Australia.

# TD 2005/D53

6. For example, if an Australian film production company leases a piece of editing equipment from overseas, the cost of the use of the editing equipment when in Australia is QAPE. However, the freight/shipping costs incurred in bringing the equipment to (and from) Australia are not considered QAPE except for the part of the freight that occurs in Australia. The service's cost should be apportioned on the basis of what was provided in Australia and what was provided outside of Australia.

7. Similarly, in the situation where the production company purchases goods direct from a firm located overseas and the goods are transported to Australia, the provision of freight is the relevant service expenditure for QAPE. However, the major part of freight will be provided outside Australia and so it will not satisfy the requirement that the service be provided in Australia (paragraph 376-40(a) of the ITAA 1997). The total cost of the freight will have to be apportioned between the provision of freight outside Australia and that inside, on the basis of the words 'reasonably attributable' in section 376-40.

8. 'Australia' is defined in the *Acts Interpretation Act 1901* as being the Commonwealth of Australia including the Cocos (Keeling) Islands and Christmas Island as well as coastal waters. Effectively, this means 15 nautical miles from the low water line along the coast of Australia and includes the airspace above.

9. Where goods are located in Australia at the time of purchase, their cost will be QAPE if the goods are used in making the film. Similarly, when freight is provided within Australia, the cost of the freight will be QAPE as it constitutes the provision of a service in Australia.

10. Where a supplier provides goods to the production company in Australia, the price of those goods may include an unidentified freight element or alternatively the costs attributable to freight might be itemised or separately invoiced. In the former situation the cost of the good is the price paid irrespective of the fact that an element of freight costs is included. However, where freight costs have been itemised or separately invoiced, a combination of goods and services have been supplied and each has its own cost.

## Date of effect

11. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Your comments

12. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

<b>Due date:</b>	<b>9 December 2005</b>
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**Commissioner of Taxation**

9 November 2005

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 92/20

*Subject references:*

- Australian films
- film tax offset
- films
- transport freight and delivery charges

*Legislative references:*

- TAA 1953 Pt IVAAA
- ITAA 1997 Div 376
- ITAA 1997 376-25
- ITAA 1997 376-25(1)
- ITAA 1997 376-40
- ITAA 1997 376-40(a)
- ITAA 1997 376-45
- ITAA 1997 376-50
- AIA 1901

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ATO references

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Income Tax ~~ Industry specific matters ~~ film production