

TD 2006/3A1 - Addendum - 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?

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Addendum

Taxation Determination

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 Addendum amends Taxation Determination TD 2006/3 to reflect that the previous Division 376 of the *Income Tax Assessment Act 1997* has been repealed and a new Division 376 substituted. The change was made as part of the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* (TLAA 2007 No. 5).

The new Division 376 provides for:

- a producer offset of 40% for a feature film and 20% for a film that is not a feature film of the company's qualifying Australian production expenditure on the film;
- a location offset of 15% of the company's qualifying Australian production expenditure of a large-budget production that does not satisfy the qualifying Australian content test for the producer offset; and
- a PDV offset of 15% of the company's qualifying Australian production expenditure to the extent that it relates to post, digital and visual effects production for the film.

Under the new Division 376, the determination of qualifying Australian production expenditure (QAPE) rests with:

- the 'film authority' in relation to the producer offset (section 376-25); and
- the 'Arts Minister' in relation to the location and PDV offsets (sections 376-30 and 376-50).

This is to be contrasted with the former Division 376, which placed the determination of qualifying Australian production expenditure with the Commissioner of Taxation.

Relevantly, TLAA 2007 No. 5 provides that despite the repeal and substitution of Division 376, that Division continues to apply, in relation to films that commenced principal photography or production of the animated image before 8 May 2007, as if that repeal and substitution had not happened.

Accordingly, this Taxation Determination continues to apply to films that commenced principal photography or production of the animated image before 8 May 2007.

TD 2006/3

TD 2006/3 is amended as follows:

1. Paragraph 2

After the paragraph insert:

2A. Furthermore, this Determination only applies in relation to films that commenced principal photography or production of the animated image before 8 May 2007.

Commissioner of Taxation

25 June 2008

ATO references

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