



Australian Government

SCREEN
AUSTRALIA

FACT SHEET: Assets and rentals for non-SPVs

JULY 2011

The treatment of rentals and assets used in a production requires particular attention if you are not producing your project through a special purpose vehicle (SPV) company. If you are not setting up an SPV, please read this fact sheet carefully.

We also recommend that you contact the Producer Offset and Co-production Unit (POCU) to discuss how this structure will affect certain costs in your budget and what can be claimed as QAPE.

IMPORTANT: The information provided in this Fact Sheet is intended as a guide only and you should discuss the contents with your company accountant.

SUMMARY

1. **'Intra-company' charges are not recognised as expenditure for the purposes of the Producer Offset.** QAPE is based on costs actually incurred by the applicant. A company cannot incur costs with itself; they must be paid to a third party. For example, the rental of premises may be a line item in your production budget and cost report, but unless you have actually paid rent to a third party, you cannot claim this as QAPE.

As well as having implications for what you can claim as QAPE, this may mean that the Total Film Expenditure on your QAPE spreadsheet will be different from the expenditure in your budget and cost report.

2. For **intra-company equipment rentals**, it is the depreciation value (if any) attributable to the use of the asset in making the film, not the rental cost, that is reflected on your QAPE spreadsheet as both the total film expenditure and QAPE amounts.

An asset must be depreciated for the purpose of the Producer Offset in the same way as it has been depreciated for your company's tax purposes. You will need to discuss this with your company accountant.

1. 'Intra-company rentals' and QAPE

QAPE is based on costs you actually incur. A company cannot incur costs with itself; they must be paid to a third party. This may mean that your QAPE spreadsheet figures will be different from the expenditure in your cost report.

Where a company is submitting an application for the Producer Offset, it will have charges such as 'rentals' in its expenditure statements, cost reports and budget (eg, office rental and equipment rental).

However, a rental situation, for the purposes of the Producer Offset, can only occur between two separate entities (ie parent company to subsidiary or SPV or a third party to the applicant company). See page 6 for a definition of 'entity'. The ATO has confirmed that operating a separate set of accounts is not sufficient to demonstrate a separate entity.

Where there is no SPV, rental amounts charged by the applicant company to the production cannot be claimed as QAPE for the purposes of the Producer Offset even if this amount is a line item in the budget and cost report.

Rental costs for premises cannot be claimed as QAPE unless rent is actually paid by the applicant company to a third party. If the company owns its premises, for example, rental costs in the budget could not be claimed as QAPE as there would be no actual expenditure incurred. Any production expenditure charged for the cost of maintaining an office is expected to be covered within the applicant's 'Overheads'. See section 3 on page 5.

Care must be taken to ensure the correct amount is entered into the QAPE spreadsheet as it will affect the total final costs of the film. This in turn affects the legislative 20 per cent above-the-line QAPE cap and the 5 per cent / \$500K overhead cap.

2. Claiming depreciation as QAPE

In the case of assets such as equipment, it is the amount of depreciation attributable to the use of the asset in making the film that can be claimed as QAPE, rather than the rental cost that may be itemised in the budget.

You cannot arbitrarily assign a value to a piece of capital equipment (an asset which your company owns or leases). For QAPE purposes, it has to be the tax depreciable amount according to tax law.

Various methods can be used to calculate depreciation ('diminishing value' method etc) in your company tax return. The important point is that the treatment must be consistent – whatever method is used for the company tax return must be used for the QAPE claim.

Special rules apply to depreciating assets used in a business with a turnover of less than \$2 million per annum (a 'Small Business'). Broadly, these rules allow a full deduction for the purchase of assets with a value of less than \$1,000. For more information, see the Australian Taxation Office (ATO) website: <http://ato.gov.au/businesses/content.asp?doc=/content/00149651.htm>

For assets with a value of \$1,000 or more, the normal depreciation rules apply. That is, the depreciation rate is applied to the asset for the period of

time the asset is used in the business. See also 'What is a depreciating asset?' on page 6.

When preparing an Offset application, you should identify any equipment which has been 'assetised' and create a comprehensive depreciation schedule for all such equipment. Cameras, sound and editing equipment are typical types of assets we see in these circumstances.

You also need to provide information on how the assets have been treated by the company to date, including the purchase price and date of purchase.

Screen Australia requires this information in order to properly determine QAPE.

Your accountant should be able to provide all the requisite information. However, the scenarios below and on the next page might help you to understand a bit more about how depreciation works in this context.

When you purchase equipment for a production ...

Where the equipment costs less than \$1,000, it can be fully expensed. In this situation, you would enter the cost of the asset into the QAPE spreadsheet as both Total Film Expenditure (column A) and Total QAPE (column C).¹

However, this can only happen once. If an item has already been written off in a prior tax period, it should be excluded from the QAPE spreadsheet altogether because it has already been claimed in full for tax purposes and there is no remaining value to claim. Again, this is the case even if the amount appears as a line item in the budget and cost report.

Where the asset is worth more than \$1,000, you would expense the depreciation (decline in value) for the period the asset was used on the film and enter this amount into the QAPE spreadsheet as both the Total Film Expenditure (column A) and Total QAPE (column C).

When you use equipment you already own on a production ...

Whether or not you can claim anything for the use of an asset you already own depends on how long you've owned it for – how long it has already been depreciating and whether it has any 'effective life' left.

For tax purposes, an asset declines in value each year, even though you may not claim any depreciation for it. There has to be a *notional* reduction in the asset's value over the period, and the value at the end of each year is the same as if depreciation *had* been claimed over the period.

While the asset still has value, you can claim as QAPE the proportion of its depreciation attributable to its use on the production.

However, once the asset's effective life has expired, it is fully depreciated and deemed to have no remaining value. In this case no amount can be claimed as either production expenditure or QAPE, even if the asset has been 'rented' to the production in the budget (and even if this is the first time you have used the asset since you purchased it).

Refer to the example on the next page.

¹ These column labels referred to the revised QAPE spreadsheets issued July 2011.

EXAMPLE

An applicant company owns a camera and uses it in making a film. The company charges the camera to the production at a cost of \$1,000 per week for 10 weeks (a total of \$10,000).

In both the following scenarios, the production budget for the film contains the same line item of \$10,000 for camera hire.

For the purposes of the Producer Offset, however, the company does not claim \$10,000 on the QAPE spreadsheet under Camera Equipment. Instead, it identifies the camera as an asset and treats the asset the same way as it has treated the camera for the company's tax purposes.

QAPE scenario 1:

The applicant company purchased the camera (which has an effective life of five years) six years ago and it has been fully depreciated in the applicant company's books.

In this case, for the purposes of the Producer Offset, this amount does not form part of the film's total final costs and there is no amount entered into the QAPE spreadsheet at all. This is because the camera has no effective life left as an asset and therefore, there is no depreciable amount to claim.

QAPE scenario 2:

The applicant company purchased the camera (effective life of five years) two years ago. The camera therefore has three years in which it can still be depreciated, and the applicant company can claim the proportion of the remaining depreciation (effective life) that is relevant to the period it was used on the film.

The important point is that the treatment of the asset must be consistent – whatever method is used for depreciating the asset for the company tax return must be used for the QAPE claim.

If, after applying the relevant depreciation method the company uses, the camera is deemed to have an amount of depreciation attributable to its use on the film, of let's say \$5,000, then this depreciable amount is claimed as both the production expenditure and QAPE, ie \$5,000 is put in column A of the QAPE spreadsheet (Total Film Expenditure), and column C (Total QAPE).²

		(A)	(B1)	(B2)	(C)	
	ALL IN AUD	COMMENT ON COST	TOTAL FILM EXPENDITURE	FOREIGN CO-PRODUCER EXPENDITURE (see note below)	AUSTRALIAN APPLICANT EXCLUSIONS	TOTAL QAPE
13	CAMERA EQUIP	Depreciable amount	5,000	-	-	5,000
14	SOUND EQUIP		-	-	-	-
15	LIGHTING EQUIP		-	-	-	-
16	GRIP EQUIP		-	-	-	-
17	UNIT FACILITIES		-	-	-	-
18	SAFETY		-	-	-	-
19	RENTALS & STORAGE		-	-	-	-
20	TRAVEL & TRANSPORT		-	-	-	-
21	ACCOM, LIVING,CATERING		-	-	-	-
22						
23						

This \$5,000 is the depreciable amount of the camera relevant to the period of the making of the film which is listed as the Total Film Expenditure and as QAPE.

Both scenarios will result in a difference between the expenditure amounts in the QAPE spreadsheet and the budget/cost report.

² These column labels referred to the revised QAPE spreadsheets issued July 2011.

3. Rental charges for premises

The rule that a company cannot incur costs with itself also has implications for rental charges for premises.

Where there is no SPV and the production office is owned by the applicant company, the company cannot charge the production office rent for the purposes of the Producer Offset. We acknowledge that this will be a line item in the production budget; however, this internal cost should not be transferred to the QAPE spreadsheet. Any production expenditure charged for the cost of maintaining an office is expected to be covered within the applicant's 'Overheads'.

Again, your accountant will be able to advise you, but the following scenarios may help you understand the implications if you do not set up an SPV but make a film through your 'main' company.

Scenario 1.

Your company owns its own office space and also owns the editing rooms you use on the production.

In this case your company cannot charge a rental fee to itself (although the amount appears as a line item in the budget and cost report) for either the office or the editing rooms because it already owns the property and there is no outgoing expenditure to an external, third party.

No rental could be claimed as QAPE. The Overhead claim would be expected to cover any indirect costs incurred.

Scenario 2.

Your company rents office space from a third party (for example, a real estate agent).

In this case you may claim as QAPE the proportion of the actual rent that is attributable to the film's production. This fee can only be claimed as QAPE if rent was actually paid by the applicant company to a third party. You may be asked to substantiate this claim.

Scenario 3.

As one of the principals of the company, you run your company from home, including providing editing facilities. You personally own your home. Your company pays you office rental into your own bank account, and there is a rental charge in the production budget and cost report for the film.

As in scenario 2, your company may claim as QAPE the proportion of actual rent attributable to the film's production. This is because rent was actually paid by the company to a third party. For the purposes of the Offset, it is not the rental amount in the budget that is apportioned; rather, the actual rent that the applicant company pays you.

Scenario 4.

The scenario is the same as in 3 above, but your company does not pay office rental into your own account, even though there is a rental charge in the production budget and cost report.

The budgeted rental fee in this situation would not be eligible as either film expenditure or QAPE because your company has not actually paid rent on the premises. The Overhead claim would be expected to cover any indirect costs incurred.

WHAT IS AN 'ENTITY'?

For clarification, the definition of 'entity' contained within the ITAA97 in section 960-100 is as follows:

- 960-100 Entities
- (1) *Entity* means any of the following:
- (a) an individual;
 - (b) a body corporate;
 - (c) a body politic;
 - (d) a partnership;
 - (e) any other unincorporated association or body of persons;
 - (f) a trust;
 - (g) a *superannuation fund;
 - (h) an *approved deposit fund.

Note: The term *entity* is used in a number of different but related senses. It covers all kinds of legal person. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

WHAT IS A DEPRECIATING ASSET?

A depreciating asset is an asset that has a limited effective life and can reasonably be expected to decline in value over the time it is used, except:

- (a) land
- (b) an item of trading stock, or
- (c) most intangible assets.³

Cameras, sound and editing equipment are typical types of assets we see in these circumstances.

The Producer Offset legislation⁴ states that if:

- (a) a company:
 - (i) holds a depreciating asset; and
 - (ii) uses the asset, while held, in the making of a film; and
- (b) deductions in relation to the asset are available under Division 40 (which deals with capital allowances);

then the production expenditure of the company on the film includes an amount equal to the decline in the value of the asset to the extent to which that decline is reasonably attributable to the use of the asset in the making of the film (the film proportion).

The decline in value of the asset is to be worked out using Division 40.

An item of equipment needs to be treated as a depreciating asset whether you purchase it particularly for a production, or use an existing asset in making a film, even if the asset was acquired originally for another project or before the particular film project began.

³ Definition in section 40-30, *Income Tax Assessment Act 1997 (ITAA97)*

⁴ Pursuant to subsection 376-125(6) of the ITAA97