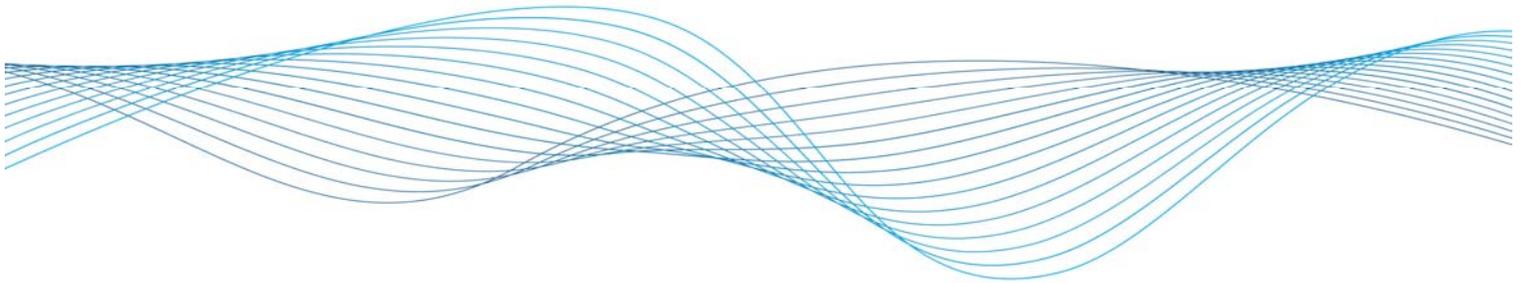




Review of Film Tax Offsets
November 2008



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1. Overview

ASTRA appreciates the opportunity to contribute to the Australian Government's consultation regarding Division 376 of the Income Tax Assessment Act 1997 (**'Consultation'**).

In summary, ASTRA makes the following points:

- ASTRA's members are strong supporters of the independent production sector which supplies all of the subscription television industry's current commissioned drama content;
- The Film Tax Offset has had no impact upon levels of independent vs 'in-house' production content and has not been a factor when considering whether to use an independent or in-house producer;
- The Film Tax Offset has had no impact upon the negotiation of licence fees which are one of a number of issues determined through the circumstances specific to individual productions; and
- Additional reform of the Film Tax Offset and regulation impacting upon production financing is recommended in order to enhance and extend subscription television's contribution to the film and television production industry.

2. Setting the scene: ASTRA and the Subscription Television Industry

ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) television and radio platforms, narrowcasters and program providers came together to underpin and propel the new era in competition and consumer choice that these new services have brought to broadcasting, communications and entertainment in Australia.

Subscription broadcasting and open and subscription narrowcasting services were new categories of broadcasting services introduced by the Broadcasting Services Act 1992 (Cth) ('BSA'). These new services added to the mix of existing categories of service, those being the national broadcasting services; commercial broadcasting services (commercial television and radio); and community broadcasting services.

ASTRA's membership includes the major subscription television platforms as well as the many channels that provide programming to these platforms. Other members include communications companies such as OPTUS and Telstra. A complete list of ASTRA members can be found at www.astra.org.au/members.asp.

In Australia, subscription television channels provided by ASTRA members are broadcast on the FOXTEL, AUSTAR and OPTUS subscription television platforms. These channels are available to over two million residential subscribers and are directly accessible by more than seven million people.

Since its inception, over \$A9 billion dollars has been invested in infrastructure, capital, facilities, productions, programs and services in order to establish and develop the subscription television industry. ASTRA's members are responsible for the bulk of this investment which has been distributed throughout metropolitan, regional and remote markets. Consequently, the sector has created an enormous number of jobs, investment, infrastructure and production content throughout Australia.

The industry continues to invest heavily in its own growth and the growth of the Australian film and television broadcast sectors including the continuing investment in television programming and production.

3. Background: Subscription Television's Production Investment

ASTRA's members have a crucial role to play in the development of both film and television production. Subscription television:

- promotes and makes available to Australian audiences a diverse range of services in a variety of genres;
- facilitates the development of the Australian broadcasting and production industry through its own investment and productions (both 'commissioned' and 'in-house'); and
- continues to develop and reflect the Australian identity, character and the broad diversity of Australian culture like no other medium through its targeted niche programming.

Subscription television exceeds in delivering key objectives of the BSA with regard to developing and reflecting a sense of Australian identity, character and cultural diversity and providing a diverse range of high quality and innovative services while remaining efficient, competitive and responsive to subscribers' needs who decide via their monthly subscriptions what they want and what they are willing to pay for.

ASTRA's members are responsible for a broad range of television production covering genres such as sports and news coverage, magazine style shows, reality programming, documentaries, films and dramas.

In particular subscription television has been responsible for:

- generating high end award winning television productions including dramas (ie *Love My Way*, *Stupid Stupid Man*, *Chandon Pictures*, *Satisfaction*, *Dangerous*, *Yakkity Yak*); telemovies (*The King*, *Make or Break*); documentaries (*Crime Investigation Australia*, *The History of Australian Sport*, *He's Coming South [The Attack on Sydney Harbour]*; *The Battle of Long Tan*) and reality television (*Australia's Next Top Model*, *Project Runway Australia*, *Football Superstar*, *Project Greenlight*).
- supporting investments in television series premiering on other mediums (ie *Seachange*, *Changi*, *Crash Palace*, *Head Start*, *McLeod's Daughters*, *Secret Life of Us*, *False Witness*); and
- making significant investments in Australian Films and exported dramatic works (ie *Two Hands*, *Looking for Alibrandi*, *The Castle*, *The Proposition*, *Japanese Story*, *Oscar & Lucinda*, *The Sound of One Hand Clapping*, *The Wiggles*, *Innocence*, *Babe 2: Pig in the City*, *Rabbit-Proof Fence*, *The Dish*, *The Man Who Sued God*).

It is widely acknowledged that subscription television takes risks in developing new genres and Australian stories that are regularly overlooked in other more risk adverse environments. The edgy and highly applauded drama *Love My Way* would not have been produced but for the willingness of subscription television to invest. Similarly the celebrated comedy *Stupid Stupid Man* was seen as a successful return to screens for the Australian sitcom – a genre that was widely overlooked in the then conservative production climate. This production is now licenced to ABC allowing for the production to have its first window on subscription television and the second window on the

national broadcaster (free to air). Similarly, the documentary series *Crime Investigation Australia* which first airs on the subscription television channel CI Network has been licensed to the Nine Network.

For many people the first time that they view an Australian film is via subscription television. Box Office, Showtime/Showcase and Movie Networks broadcast almost all Australian films for the first time on Australian television. With the multiple opportunities for viewing films offered by subscription television, these films are given far greater exposure to audiences than they would during a film's theatrical run or initial video release.. In many cases the audience viewing the film on subscription television will far exceed the audience the film realizes through theatrical release. For government investments made either directly or through rebates or offsets, delivering an audience to view that investment is significant.

Investments

ASTRA notes its members' substantial commitment to Australian content as evidenced by their investment production and transmission of a significant amount of Australian drama and non-drama content far beyond any legislated requirement.

ASTRA's members invest hundreds of millions of dollars annually in the film and television production sector, creating all forms of Australian content.

The Independent Production Industry

The investment is significant for the growth of employment opportunities and the earnings of the independent production industry. The independent production community has and will continue to have a crucial role to fulfill in supplying product to the subscription television industry as evidenced by historical and current levels of involvement and production.

ASTRA acknowledges the very healthy relationship between ASTRA's members and the independent production sector.

4. Statutory Review of Division 376

While the current policy framework for production funding generates particular issues of concern to ASTRA (addressed below), generally speaking ASTRA remains supportive of the 'offset' approach.

Independent Production

ASTRA notes the effect of Section 376-275 of the Income Tax Assessment Act 1997 requiring the Minister to "...initiate a review of the effect of this Division in relation to level of production by the Australian independent production sector compared to levels of production by Australian television broadcasters".

The perceived need for this review was driven by concerns from the independent production sector that the offset would amount to greater 'in-house' production by the commercial television broadcasters at the expense of the independent production sector because broadcasters would seek to retain the producer offset for themselves.

ASTRA has no comment to make directly in relation to the commercial television sector and the levels of 'in-house' or 'independent' production that this sector generates.

The Australian subscription television industry uses independent producers to generate its dramatic productions. With respect to non-drama productions, the Australian subscription television industry also uses independent producers to generate all major productions, as well as a significant majority of smaller productions (both one-off and series). In particular, all reality television production is sourced through independent producers and major documentary series (such as *Crime Investigation Australia* and *The History of Australian Sport*) as well as one-off documentaries such as *He's Coming South* and *The Battle of Long Tan* are also produced through independent producers. The introduction of the Film Tax Offset has not changed this pattern of activity, and there has been no reduction in the use of independent producers as a result of the Film Tax Offset being available to commissioning broadcasters.

The television productions created using the offset by ASTRA's members are listed in the Appendix. While many are 100% funded by the subscription television channel providers, all have been or are being produced by independent producers.

Licence Fees

ASTRA's members' experience of the Film Tax Offset is that it has had no effect, either directly or indirectly, upon the negotiation of licence fees. The reality of production financing means that licence fees are but one of a number of negotiated issues (revenue splits, copyright etc), determined entirely by context and remain unique to a particular production rather than being directly affected by the regulatory changes that have taken place. The methods by which ASTRA members have negotiated production financing have not changed since the introduction of the Film Tax Offset.

5. The Film Tax Offset and Additional Reform

ASTRA notes that a number of shortcomings attributable to the use of the offset in the absence of other additional reform have become apparent and have highlighted the need for a broader consideration by Government of the issues associated with production financing.

Consequently, there remain aspects of the Film Tax Offset that would benefit from Government review over and above the issues considered directly in the Consultation. These include the differentiation between film and television; the eligibility test for 'Australian'; regulation 'silos'; and the cashflow cycle.

Television vs Film: The Offset Amount and Screen Australia Funding

It remains unclear why there is a large difference in the percentage offset offered to television productions when compared to theatrical film productions. In ASTRA's view a guiding principle should be a consistent offset to Australian content regardless of the format or distribution mechanism for delivering that content.

Past funding priority models from government agencies suggest an historical imbalance against television content and this has been perpetuated in the release of Screen Australia's Program Guidelines which cover development support, production financing and Indigenous programs ('**Program Guidelines**'). In both the Film Tax Offset and direct funding mechanisms, television production appears to be undervalued.

Television production is the core element of the production industry which provides skills, businesses and training for all aspects of the industry. Both film and television remain open to fluctuating trends of success and failures and a long term strategic approach to funding should acknowledge this. Further, the disparity between the film and television industries fails to acknowledge the emerging reality of an increasingly shared number of key elements above and below the line, intertwining the two 'industries' such that they effectively form a single sector within the production industry. In past decades, the quality of Australian cinema, both from a production and artistic standpoint, greatly exceeded that of television. However, in part because of the risks taken by subscription television in commissioning productions such as *Love My Way*, the quality of Australian television production is now at least on par and in many cases exceeds that of theatrical releases, which are now becoming more the domain of smaller, independent films made on tight budgets.

As a result of the risks taken by broadcasters, television drama is currently being celebrated and perceived as 'strong' and in the midst of a renaissance, whereas the film sector is seen to be relatively 'unsuccessful' when compared to television. However in the past during a wave of local and international hits, the film sector has been perceived to be flourishing. Even the release of big-budget films such as *Australia* does not guarantee success or critical acclaim.

The point is that no part of the film and television production industry is necessarily assured and that a long term, even handed approach to support for both parts of the industry is recommended.

ASTRA notes and supports the views expressed by the Premium Movie Partnership submissions with respect to the strengthening of the television series drama sector and in

turn this sector's ability to provide a resource from which the feature film sector could draw and benefit in terms of skills transfer, training and continuity of employment.

The 'Australian' Test

ASTRA notes that Government agencies currently have different eligibility tests to determine what is considered an 'Australian' program or production.

ASTRA has consistently made the point that having multiple tests for what is considered 'Australian' is not helpful or practical given that an increasing number of productions are likely to need to meet tests established under the Division and also by the Australian Communications and Media Authority ('ACMA'). The scenario could arise that the 'Australian' test is met for the broadcast but not for the production of the program and vice versa.

ASTRA is of the view that once a production meets one test, it should automatically meet the other – thereby avoiding any potential for an inconsistent finding.

Regulation 'silos'

The nature of the current regulatory environment is that discreet regulation is applied to subscription television; commercial television; and film and television production development and funding. Consequently, it can be difficult to allow the various pools of finance available to production to work collaboratively to assist production resourcing given the often competing outcomes required of the completed production.

This prevents what would otherwise be a flexible, rational market place from operating to achieve collaborative financing arrangements for the film and television community. The current situation effectively limits the type of content produced and available to Australians.

An example of this is in joint commercial television / subscription television projects. The established and accepted windowing of productions across the world is that subscription television receives a first window before the production moves to the broader commercial television platform. However, the regulatory requirement for commercial television in Australia to have first run content to meet their obligations effectively flips an otherwise optimal market situation on its head. The result is that subscription television receives the second content run and the market is distorted. As a consequence of this requirement, subscription television operators and channels have taken to financing productions on their own to ensure that they receive a first, if not sole, window for productions.

While this has some far reaching policy implications for broadcasting, for the sake of a strong television production industry and marketplace, this is an important dialogue to commence.

Cashflow

ASTRA, like other film and television industry participants, supports the need to revisit restrictions that currently exist as to when the offset payments become accessible to the producer. Given the production cycle, the high cost of finance and current parameters as to when funding is available, it is of concern to ASTRA that the current regulation will (if not already) encourage 'bunching' of productions and discourage a slate of

production dispersed across the full year. This then creates implications for resourcing and employment.

Without reform, productions will continue to be timed to complete so that a tax return can be lodged and a refund issued in the shortest possible time. In order to address this, ASTRA proposes greater flexibility in the receipt of payments available to producers through the Film Tax Offset such as quarterly deadlines or rolling return collection and offset processing throughout the year.

6. Conclusions

Subscription television has been and will continue to be a crucial contributor to the commercial viability of the Australian film and television industry. ASTRA's members remain supportive of the independent production sector, which continues to supply all of the subscription television industry's commissioned drama content.

Ways in which this contribution could be further enhanced and extended include:

- addressing the inequity of film over television in Screen Australia's released Program Guidelines and in the Film Tax Offset returns;
- allowing productions that meet either ACMA's Australian Content Standard or the Film Tax Offset 'Australian' test to automatically meet the other;
- consideration being given to the funding of television and film production in a holistic sense and issues created currently by regulation 'silos'; and
- reform in relation to the flexibility of access to the Film Tax Offset to avoid production 'bunching'.

Please do not hesitate to contact ASTRA if you require further information or clarification of the matters raised.

Appendix

Subscription Television Productions using or proposing to use the Film Tax Offset as at November 2008

Subscription Television Program Provider	Production Title	Type of Production	Producer	Broadcast date (past or anticipated)	Film Offset Year
UKTV	Make or Break	Telemovie	FOX World	December 08 / January 09	2007/08
UKTV	False Witness	Drama Series 2 x 90min	Screentime	TBC	2008/09
Premium Movie Partnership (Showtime)	Satisfaction Series 2	Drama Series 10 x 60min	Lonehand (Roger Simpson / Andy Walker)	December 08	2008/09
Premium Movie Partnership (Showtime)	Tangle	Drama Series 10 x 60min	John Edwards / Southern Star	TBC	2009/10
History Channel (FOXTEL)	Stamp of Australia	Documentary	Hammer Klavier	TBC	2008/09
Movie Network	Chandon Pictures Series 2	Drama Series 8 x 30min	Shadowfax	2009	2008/09
The Comedy Channel (FOXTEL)	Whatever Happened to That Guy	Drama series 8 x 30min	Ruby Entertainment	2009	2008/2009