

# REFUNDABLE FILM TAX OFFSETS

## Statutory Review

### Submission by Screen Australia

December 2008

#### Introduction

Screen Australia (SA) welcomes the opportunity to comment on aspects of the Statutory Review of Division 376 in relation to certain production levels ('**Review**').

SA administers the Producer Offset in accordance with the legislation (Division 376 of the *Income Tax Assessment Act 1997*). The Offset is the largest change in the structure of Australian Government assistance to the screen production industry in many years.

The majority of this work involves the day-to-day assessment of applications. SA has a key role in ensuring the success of the Offset, as a potential major co-funder and partner to projects eligible for the scheme. SA will continue to monitor the operation of the scheme, reporting to Government where appropriate, and refining procedures and documentation to reduce administrative costs.

The Review has been specifically initiated to examine the effect of the Tax Offsets 'in relation to levels of production by the Australian independent production sector compared to levels of production by Australian television broadcasters.'

The Review invites comment on the effect of the location and post, digital and visual effects offsets – which target large budget offshore production locating in Australia. Questions are also posed about the impact on licence fees.

SA is not in a position to comment on the level of licence fees or on negotiations between producers and broadcasters.

SA's National Survey of Feature Film and TV Drama Production provides a unique source of quantitative data, which can usefully inform the Review. SA's latest survey covering production in 2007/08 was released on 2 December. The relevant survey results examined in this submission largely relate to levels of inhouse production<sup>1</sup>.

#### Timing

SA welcomes Treasury's Review of the Offsets, however it is too early to draw any substantive conclusions or assess the impact of the tax incentives. The operation of the Offset has brought to light important issues that need to be addressed, but are out of the scope of the current Review. SA recommends that the operation and impact of

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<sup>1</sup> This submission uses the terms 'inhouse' and 'non-inhouse' rather than 'independent production' since the latter is open to interpretation.

the offset be reviewed again in 18 months when it will be more established and there will be more data to assess its impact.

While the Producer Offset legislation commenced in September 2007, in effect the administration of the Producer Offset commenced operation in December 2007 with the release of the program guidelines of the then Film Finance Corporation Australia (FFC). It took industry time to come to terms with the application procedure and the first provisional certificates for the Offset were not issued until 11 January 2008. The first certificate to a television drama was issued on 30 January 2008.

Given that the Offset has only been actively in operation since the start of 2008, it is still a comparatively young program. It is therefore difficult to draw any conclusions from the data collected in the context of the Offset's administration. A similar familiarisation phase preceded wide use of incentives in the UK, Ireland, Canada and many state incentives in the US.

Film development is a lengthy process whereby scripts often benefit from multiple drafts and sources of finance are increasingly hard to secure. Therefore projects aiming to make use of the offsets would commonly take several years to develop.

In terms of assessing television applications, timing is a critical influence especially in the transitional phase for the Offset. Many productions were already in progress at the introduction of the Offset, and so it is quite likely that a final certificate will be sought at the completion of production without having applied for a provisional certificate.

### **Producer Focus**

SA's funding policies are designed to support the production of the more expensive television formats such as mini-series, telemovies, documentaries and children's drama. SA guidelines require applicants to be independent producers. SA investment guidelines also require broadcasters to pay a minimum licence fee of \$400,000 an hour for high-end drama. Equity from the Offset is retained by the producer and SA discourages the producer from 'trading away' a high proportion of this.

SA notes that SPAA's concerns, which originally prompted Treasury's Offset Review, went well beyond the issue of levels of in-house and non-inhouse production. SPAA members apparently reported commercial arrangements between independent producers and broadcasters involving the Offset, which compromised the equity position of producers. SA is not in a position to comment on deals struck between broadcasters and producers.

### **National Survey of Feature Film and TV Drama**

Screen Australia's National Feature Film and TV Drama Production Survey continues the research published by the Australian Film Commission since 1990, tracking production of feature films and TV drama programs for adults and children (mini-series, telemovies and series/serials) by financial year.

The Producer Offset became available during 2007/08, allowing for a percentage of expenditure incurred from July 2007 to be refunded through the Australian tax system once an eligible project is completed and certified. Operational guidelines were not introduced until late 2007. It is too early to expect an impact of the introduction of the Producer Offset to be evident in the 2007/08 National Feature Film and TV Drama Production Survey results.

Table A illustrates the levels of production for Australian and co-production television drama over six years, apportioned according to non-inhouse and inhouse production.

*Table A: Australian and co-production TV Drama, 2002/03 to 2007/08*

Year <sup>1</sup>	Non-inhouse		Inhouse <sup>2</sup>		Total	
	No.	hours	No.	hours	No.	hours
2002/03	37	504	5	170	42	674
2003/04	36	461	3	161	39	622
2004/05	29	411	4	209	33	620
2005/06	40	427	2	156	42	583
2006/07	41	435	4	180	45	615
<i>5 year average</i>	<i>37</i>	<i>448</i>	<i>4</i>	<i>175</i>	<i>40</i>	<i>623</i>
2007/08	38	485	4	205	42	690
<i>6 year average</i>	<i>37</i>	<i>454</i>	<i>4</i>	<i>180</i>	<i>41</i>	<i>634</i>

<sup>1</sup> Productions that started principal photography during the year.

<sup>2</sup> In-house production is defined as production by an Australian TV station where no independent production company is credited as producer or co-producer.

### *Non-inhouse v Inhouse<sup>2</sup> production*

The ratio of non-inhouse to inhouse television drama production has remained relatively steady in the five years leading up to the introduction of the Producer Offset and in 2007/08, the first year of its operation.

In the five-year period 2002/03 to 2006/07 (i.e. prior to the introduction of the Producer Offset) the proportion of non-inhouse productions to inhouse productions was an average of 37 non-inhouse titles per year compared to four inhouse titles per year (or an average of 448 hours compared to 175 average yearly hours).

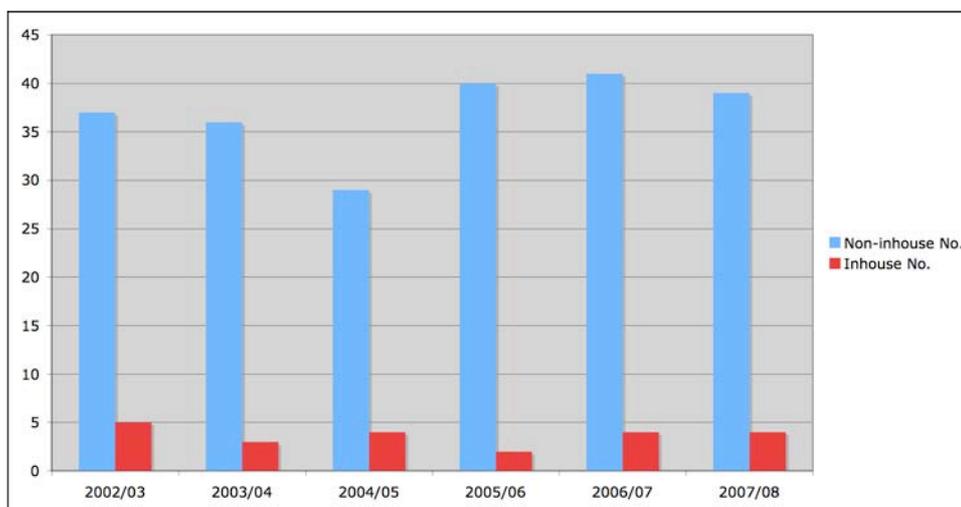
In 2007/08, the first year in which the Producer Offset was available, inhouse hours comprised 30 per cent of total TV drama hours produced, which compares with the previous five-year average of 28 percent.

Chart A and B below illustrate the proportion of non-inhouse production to inhouse production by number of titles (Chart A) and by number of productions (Chart B) over this period.

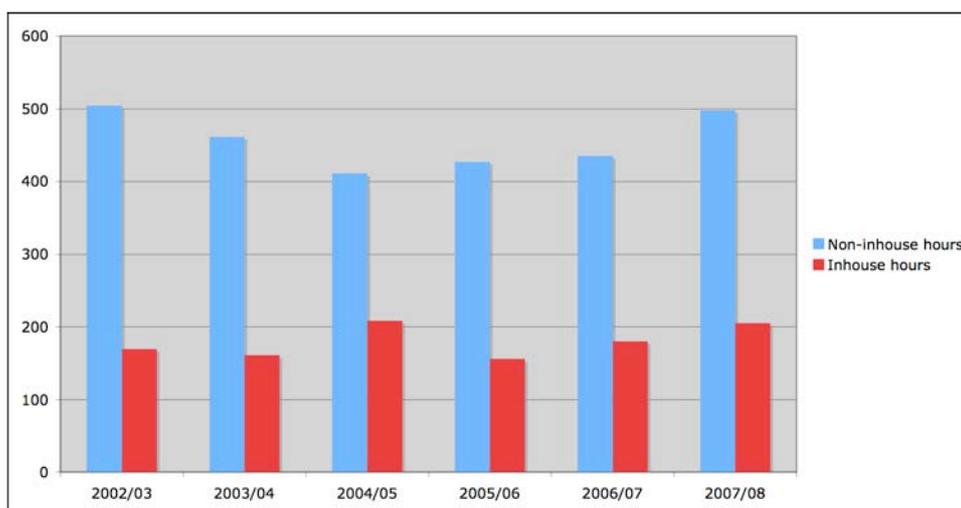
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<sup>2</sup> In-house production is defined as production by an Australian TV station where no independent production company is credited as producer or co-producer.

*Chart A: Non-inhouse production v inhouse production by number of Titles*



*Chart B: Non-inhouse production v inhouse production by number of commercial broadcast hours*



*Summary of data*

Television drama production levels show an overall increase since the recent introduction of the Producer Offset. In 2007/08 non-inhouse production increased from 435 hours to 456 hours while inhouse production increased from 180 to 205 hours<sup>3</sup>. The number of non-inhouse titles declined slightly from 41 to 39 while inhouse titles remained steady at 4. However, there has been no significant increase in the proportion of inhouse production relative to non-inhouse production, which remained steady at 30 per cent of total hours produced, compared to an average of 28

<sup>3</sup> The addition of a new serial Out of the Blue (65 hours), was the main contributor to the increase in hours of adult series/serials in 2007/08.

per cent over the previous five years. An analysis of titles for 2007/08 is set out in the appendix.

### **Producer Offset Data**

The first final Offset certificate was issued on 26 June 2008. The first six final certificates issued were to television documentaries, with the first final certificate for a television drama issued on 10 October 2008. In aggregate, as of 1 December 2008, 13 final certificates for the Producer Offset have been issued so far - for eight documentaries, two feature films, and 3 TV projects, with a total qualifying Australian production expenditure (QAPE) of \$23.9 million. 178 provisional certificates have been issued for projects with a total QAPE in excess of \$1 billion. The 178 projects include 72 feature films and 71 documentaries and 35 TV projects.

SA conducted an analysis of the total of 36 Producer Offset television drama applicants received since 1 July 2007 (set out in Table B). This revealed only one inhouse production company application by a broadcaster. Appendix B is the full listing of TV drama provisional certificate applicants. It is not included with the main submission for reasons of confidentiality.

*Table B: Producer Offset – total certificates for TV drama (from 2006 to 1 Dec 2008)*

	Non-inhouse	Inhouse
Provisional certificates issued <sup>1</sup>	33	0
Final Certificates (issued)	3	1
Total	36	1

1. One production granted a provisional certificate has applied for final certification.

Of the 43 Australian and co-production TV drama titles in the 2007/08 slate, (commenced principal photography from 1 July 2007 to 30 June 2008), 15 applied for and were issued with provisional certificates (as of 1 December 2008) and one has received final certification. However it is assumed that all TV drama projects in the 2007/08 slate that are eligible for the Producer Offset are likely to qualify and eventually access the Offset.

Several projects in the 2007/08 slate were not eligible for the Offset for various reasons: they did not reach the relevant expenditure threshold; they have already exceeded the 65-episode limit; they accessed the previous tax incentive that the offset replaced, Division 10BA; or they received production finance from the FFC or the AFC prior to 1 July 2007.

## Appendix A - Analysis by titles

In 2007/08, hours of both in-house and non in-house drama increased. The increase was mainly due to local and co-produced children's TV drama and local series/serials for adults. The addition of a new serial *Out of the Blue* (65 hours), was the main contributor to the increase in hours of adult series/serials.

In children's drama, local production increased from 75 hours in 2006/07 to 88 hours in 2007/08, and co-productions were up from 34 hours to 85 hours. There have been no children's programs made inhouse since 1995/96.

Inhouse drama activity by Australian free-to-air broadcasters was slightly higher than 2006/07, at 205 hours (four titles), all produced by the Seven Network (*All Saints*, *City Homicide*, *Home and Away* and *Packed to the Rafters*). Last year's four in-house titles totalled 180 hours.

In 2007/08 the Seven Network accounted for the majority of in-house hours, as it did over the previous five years. This is mainly due to the long-running serial *Home and Away* (in production since 1987/88 and averaging 113 hours per year since 2002/03) and the series *All Saints* (in production since 1997/98 and averaging 41 hours per year since 2002/03).

These titles would not qualify for the Producer Offset because they had exceeded the 65-episode limit at the time the Offset was introduced.

Seven has also consistently produced additional in-house titles. For example *City Homicide* in 2006/07 and 2007/08 (series, total 50 hours across the two years) and *Packed to the Rafters* in 2007/08 (series, 22 hours), *Canal Road* in 2006/07 (mini-series, 13 hours), *Headland* in 2003/04 (serial, 52 hours), and *Always Greener* and *Marshall Law* (both 2001/02). Some of these titles may be eligible for the Producer Offset.