FINANCE

NEW OFFSET RULES: THE WINNERS AND LOSERS

Moneypenny CEO Jane Corden has been facilitating applications for the screen incentives since they were introduced in 2007. Miranda Culley, now Aquarius Films MD, had been contracting with Moneypenny as a screen production incentive advisor, is an independent assessor for Screen Australia's Producer Offest and Co-production Unit (POCU) and on the advisory board for the PDV and Location Offset. Here, they assess the changes that came into place in July.

The Australian Screen Production Incentive has been a significant element of the finance plan for most feature films, TV drama and documentary made in Australia since the Producer Offset was introduced in 2007.

In 2010, changes were made to the legislation after consideration of its first four years of operation. These included the exclusion of GST, the lowering of the Qualifying Australian Production Expenditure (QAPE) threshold for feature films from $1 million to $500,000 and the introduction of the Gallipoli clause, which allowed the fees of Australian residents and their associated travel costs when working outside of Australia to be considered as QAPE.

On July 1, further reforms came into effect across the Producer Offset, Post, Digital and Visual Effects (PDV) and Location Offsets, which will have a mixed impact across the sectors of the industry.

The biggest change is the increase of the Producer Offset from 20 per cent to 30 per cent for all eligible projects that are not feature films released in a cinema. This is clearly a big boost for TV and streaming platforms and is the result of years of industry lobbying for the government to recognise the growth potential of this sector in a global market, as well as the challenge of financing the budget levels required to deliver quality content that can compete on an international stage.

Thankfully, the initial proposal to harmonise the offset across TV and feature film at 30 per cent was reconsidered. Feature films commercially released in cinemas will continue to receive an enhanced rebate at 40 per cent, acknowledging that the 10 per cent reduction would threaten this culturally important sector and reduce the number of Australian feature films that could be financed. This does mean the theatrical distribution requirement for feature films will continue to apply.

With the increased rebate producers will have the flexibility to identify and pursue more appropriate commercial release strategies. This may still include a cinema release but other platforms, such as an on-demand platform, subscription television broadcaster, free-to-air broadcaster, or a catch-up service, could also be considered.

Alongside the overall increase in percentage rebate, the minimum QAPE threshold has been raised back to $1 million for feature-length films for both the Producer and PDV Offset. This means the 'safe zone' for the bottom line budget is $1.2 million, allowing for non-QAPE and disallowed QAPE. After ten years it is reasonable that this threshold should increase in line with inflation. It is difficult to make a feature film for a lesser budget, though there have been many over the last ten years. However, the legislation is designed to ensure a level of quality and payment standards. Screen Australia has long been frustrated by the reporting standards of lower budget films. Sweat equity or reinvestment is still allowed, as it should be, to facilitate the new starters with strict scrutiny of the rates charged by interested parties.

Under the current definitions of the Producer Offset, feature-length films including theatrical documentaries have a minimum duration of 60 minutes except for large format or IMAX films, which have a minimum of 45 minutes.

The loser here is feature-length documentary, which has been growing in popularity over recent years. Budget levels for documentary are typically much lower than for drama and are more likely to sit in the $500,000-$1 million budget zone.

The other 2010 change that has now been retracted is the Gallipoli clause. No more fiddly accounting for Australian residents' costs while working overseas. The legislation is looking to discourage any overseas shooting, ensuring spend and jobs are kept in Australia. While COVID restrictions remain, this is not so much an issue, but it could see a significant loss of QAPE for co-productions and filmmakers looking to culturally authenticate international stories.

The most impacted by this change will again be the documentary maker. One of the ideas underpinning the Gallipoli clause was giving filmmakers the artistic licence to shoot part of their film overseas where the subject matter reasonably requires it. This has a very different meaning for drama and documentary. Arguably for documentary and factual content this isn't always about a creative choice – when we're telling factual stories about actual people and events the subject matter informs the location. It's also important to acknowledge that Australian stories include stories about Australians in the world – and there is probably no better example than Gallipoli. Removing the Gallipoli clause does not prevent filmmakers from telling these stories or filming overseas but it may impact on the budget and finance for the film AND importantly it may incentivise employment of foreign crew over Australian crew to reduce costs.

Another key change is that expenditure on general business overheads can no longer be claimed as QAPE. Until now 5 per cent of production expenditure, capped at $500,000, could be claimed as QAPE. This was regarded as an acknowledgment that there is a cost in maintaining the infrastructure of a production company that develops films and services them past their completion. It was this overhead that could help sustain producers and their production company between greenlit projects. This will result in a significant reduction to QAPE across the board and a change in finance plans, as often a portion of this would be reinvested to be recouped from returns, underages or offset margins. It would be good if this loss of income for the producer could be allowed as an increase in their producer fees to the extent that the 20 per cent cap on above the line QAPE will accommodate.

Certain business overheads that can be attributed to the making of the film could still be claimed. For example, the allocation of a financial controller in the accounting area and other administrative costs, car allowances, office rentals or mobile phone usage. The PDV Offset currently requires a justification of overheads charged to a production.

For a TV series or season of a series, the 65 commercial hour cap on claiming QAPE will be removed. This benefits successful and popular projects, recognising the growing international demand for series TV and removing the complications for those that hit the cap mid-series.

For a documentary above-the-line QAPE – story costs, development and remuneration for producer, director and principal cast (if applicable) – is now capped at 20 per cent of the total production expenditure of the film. This cap has always been in place for drama. The exclusion of documentary recognised that the nature of a documentary often means a longer production period as the filmmakers wait for a story to play out. It also acknowledged the broader roles that the producer and director can play in the production, often filling below-the-line positions such as editor, cinematographer and composer. This cap could be very problematic for the documentary sector and will necessitate the allocation of separate ATL and BTL fees where multiple roles are performed.

Jane Corden.

Miranda Culley.

A cap on the level of Australian copyright expenditure that can be claimed as QAPE, at 30 per cent of total production expenditure, has been introduced under all three offsets. This change is intended to encourage the creation of new content. The main budget items to which this applies are music and archive footage. This restriction specifically applies to pre-existing works. Above-the-line copyright acquisition, i.e. story rights, is excluded and composers' fees are not impacted as this represents the creation of original work.

On a $1.5 million film, the expenditure on Australian copyright would be capped at $450,000, which seems generous, however the potential losers here are the historical or music documentary. Archive documentaries have had an increase in popularity globally – the promise of 'never before seen footage' has resonated with audiences regardless of platform. International films like *Senna*, *Whitney* and *Amy* and our Australian hits including *The Final Quarter, Mystify: Michael Hutchence, Brock* and *Brazen Hussies* are all great examples.

A company can now only claim qualifying expenditure on the first copy of a film and one re-version when utilising the Producer Offset. Re-versioning refers to a different version of a production, for example a re-cut of a TV series from two one hour episodes to four half hour episodes and the costs associated with that. Contracted delivery requirements such as dubbed versions of the film that are required to meet specific market requirements are not considered re-versions and the treatment of those items does not form part of these reforms.

Clearly the changes to the Australian Screen Production Incentive will represent a net benefit to the Australian screen industry, which is fantastic, but there certainly are some losers in the mix – that being the documentary makers and the emerging, low budget filmmakers. It is likely to lead to less feature documentaries and less Australian-led overseas production, but all government spending is directed at outcomes for the economy. With our industry booming at the moment thanks in large part to the resourcefulness of our filmmakers, the legislative changes can result in sustained or production growth overall.

Amendments to the Producer Offset apply to films commencing principal photography on or after July 1, 2021. Amendments to the PDV Offset apply to films that commence post, digital or visual effects work on or after July 1, 2021.