

Explanatory Statement
Issued by the Authority of the Minister for the Arts
Income Tax Assessment Act 1997

PDV Offset Amendment Rules 2023

Authority

This instrument is made under subsections 376-260(2) and (3) of the *Income Tax Assessment Act 1997* (ITAA 1997).

Purpose

The purpose of the Amending Rules is to amend the *Post, Digital and Visual Effects (PDV) Offset Rules 2018* (the Principal Rules) to remove all provisions that require an applicant to provide a Commonwealth Statutory Declaration (statutory declaration) with their application under the PDV Offset and replace them with the requirement for a “digital declaration”. Additional minor amendments will correct references to superseded legislation, update relevant definitions and remove unnecessary information for clarity.

Impact and effect

The requirement for applicants under the PDV Offset to submit a statutory declaration has been removed as the *Taxation Administration Act 1953* (TAA 1953) already imposes penalties for false or misleading information.

Information forming part of an application to the PDV Offset constitutes a tax declaration and falls under the TAA 1953. This legislation imposes administrative penalties on any entity that makes a false or misleading statement, or takes positions that are not reasonably arguable, to the Commissioner of Taxation or another entity exercising powers or performing functions under a taxation law. For information provided under the TAA 1953, a statutory declaration offers no additional protection and serves only as an administrative burden.

These amendments will simplify the PDV Offset application process by reducing the administrative burden on applicants and departmental staff, as well as minimising the chance of delays in the assessment process due to the absence of a valid statutory declaration. A ‘digital declaration’ will inform applicants of their obligations under the TAA 1953 when providing information to the Department.

Additional minor amendments will remove ambiguous terminology and, where necessary, substitute alternative text for clarity.

Consultation

The amendments to the Principal Rules are considered minor in nature and do not substantially alter existing arrangements. The Department undertook a limited consultation process with a selection of stakeholders, including the Film Certification Advisory Board and film production accountants who work for the Department on a regular basis. Additionally, the removal of the statutory declaration requirement has been regularly requested by applicants as part of ongoing feedback on the application process.

Background

The objects of the Principal Rules are to provide for the issue of provisional certificates in relation to the PDV Offset and to specify how applications for certificates in relation to the PDV Offset are to be made.

The PDV Offset is legislated in Division 376 of the ITAA 1997 and entitles eligible applicants to a 30-per-cent rebate on qualifying Australian production expenditure. This is intended to incentivise the use of Australian post-production and visual-effects studios, growing the sector and increasing its capabilities. Applicants use the online portal to lodge an application, which is received by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department).

Depending on the nature of the application, assessments are completed by either an Independent Film Production Consultant or in-house by departmental officers and then reviewed by the Film Certification Advisory Board. Once finalised, applicants receive a certificate and letter from the Department. For final applications, the certificate is signed by the Minister for the Arts and is provided to the Australian Taxation Office by the applicant, along with their tax return, for receipt of the PDV Offset rebate.

For provisional applications, the certificate is signed by the Chair of the Film Certification Advisory Board and is used to establish eligibility, provide a level of assurance for budgeting purposes and, if necessary, to cash flow loans and acquire financing.

The Principal Rules set out the information applicants must include in submissions to the PDV Offset. Under Clause 1.1 of Part B of Schedule 1 and Clause 1.1 of Part B of Schedule 2 in the Principal Rules, applicants are required to submit a statutory declaration to certify that the information contained in the application is true and correct. Statutory declarations are made under the *Statutory Declarations Act 1959* and must be completed accordingly. This means that a statutory declaration with a wet-ink signature must be posted to the Department. Alternatively, as per the *Coronavirus Economic Response Package (Modifications—Statutory Declarations and Notices of Intention to Marry) Determination 2021*, statutory declarations can be completed and witnessed electronically until 31 December 2023.

Like all information submitted to the Australian Taxation Office for the purpose of tax assessment, information forming part of an application to the PDV Offset constitutes a tax declaration. As such, it falls under the TAA 1953, which imposes administrative penalties on any entity that makes a false or misleading statement, or takes positions that are not reasonably arguable, to the Commissioner of Taxation or another entity exercising powers or performing functions under a taxation law. As this legislation underpins Division 376 of the ITAA 1997, under which the PDV Offset is legislated, requiring applicants to also submit a statutory declaration is superfluous as it does not confer any additional assurance that the information provided in applications is true and correct. Ultimately, applicants who submit information that is found to be false or misleading are liable for penalties under the TAA 1953.

Summary of the PDV Offset Amendment Rules 2023

Schedule 1 of the Amendment Rules provides the amendments to the Principal Rules. The amendments consist of:

- the removal of all references to the requirement to submit a “statutory declaration” with applications under the PDV Offset and detailing the effect of a “digital declaration”, which replaces this requirement;
- the amendment of wording related to superseded legislation, Division 10B of Part III of the *Income Tax Assessment Act 1936*;
- the addition or removal of definitions as required;
- the removal of a note in relation to the scope of decisions made by the Film Certification Advisory Board, the purpose of which is already captured in the relevant provision.

The Amending Rules is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the default sunseting requirements and disallowance. The Amending Rules commences the day after it is registered. Details of the Amending Rules are set out in Attachment A.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. A Statement of Compatibility is at Attachment B.

Conclusion

This Legislative Instrument does not raise any human rights issues.

Details of the PDV Offset Amendment Rules 2023**Schedule 1 – Amendments**

Item 1 repeals the note in Section 6 and substitutes the note with amended definitions to reflect the expressions used in the Principal Rules that are defined in section 995-1 of the ITAA 1997.

Item 2 repeals the definition of “statutory declaration” under Section 6 (Interpretation) of the Rules in line with the removal of all such references.

Item 3 adds a definition for the introduced expression “Arts Department” under Section 6 (Interpretation).

Item 4 repeals a note under Section 13, which sets out the grounds on which the Board may refuse to issue a provisional certificate. The purpose of this amendment is to remove redundancy (section 13 already sets out the grounds on which the Board may refuse to issue a provisional certificate) and any ambiguity that the Board may refuse to issue a provisional certificate on other discretionary grounds.

Items 5 and 6 insert the word “former” before references to Division 10B of Part III of the *Income Tax Assessment Act 1936* in clauses 2.8 and 2.9 of Division 2 of Part A of Schedule 1 respectively. Schedule 1 sets out the information and documentation applicants must include in applications for a provisional certificate. As these clauses refer to information related to applications under the former legislation, this insertion will avoid ambiguity.

Item 7 repeals Clause 2.10 of Division 2 of Part A of Schedule 1 and substitutes the following: “Whether a deduction has been claimed under former Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film”. This effectively removes the wording “or will be claimed” with reference to deductions under the former Division 10BA of Part III of the *Income Tax Assessment Act 1936*, as the legislation is no longer in operation. The amendment also inserts the word “former” before reference to the superseded legislation for clarity.

Item 8 repeals Clause 1.1 of Part B of Schedule 1, which details the requirements of a statutory declaration that must be attached to an application for a provisional certificate. The amendment substitutes text requiring that applicants provide a digital declaration stating that all information contained in the application is true and correct.

Item 9 repeals Clause 1.2 of Part B of Schedule 1, substituting text stating that a declaration under Clause 1.1 has the effect of a statement to a taxation officer for the purposes of the *Taxation Administration Act 1953*. This amendment makes clear that the administrative penalties for providing false or misleading information under the *Taxation Administration Act 1953* apply to declarations made by applicants for provisional certificates in relation to the PDV Offset.

Item 10 is effectively a renumbering of the former Clause 1.2, which is now Clause 1.3 after the insertion created by Item 9.

Items 11 and 12 insert the word “former” before references to Division 10B of Part III of the *Income Tax Assessment Act 1936* for clarity.

Item 13 repeals Clause 2.10 of Division 2 of Part A of Schedule 1 and substitutes the following: “Whether a deduction has been claimed under former Division 10BA of Part III of the *Income Tax Assessment Act 1936* in relation to the film”. This effectively removes the wording “or will be claimed” with reference to deductions under the former Division 10BA of Part III of the *Income Tax Assessment Act 1936*, as the legislation is no longer in effect. The amendment also inserts the word “former” before reference to the superseded legislation for clarity.

Item 14 repeals Clause 1.1 of Part B of Schedule 2, which details the requirements of a statutory declaration that must be attached to an application for a provisional certificate. The amendment substitutes text requiring that applicants provide a digital declaration stating that all information contained in the application is true and correct.

Item 15 repeals Clause 1.2 of Part B of Schedule 2, substituting text stating that a declaration under Clause 1.1 has the effect of a statement to a taxation officer for the purposes of the *Taxation Administration Act 1953*. This substitution clarifies that the administrative penalties for providing false or misleading information under the *Taxation Administration Act 1953* apply to declarations made by applicants for provisional certificates in relation to the PDV Offset.

Item 16 is effectively a renumbering of the former Clause 1.2, which is now Clause 1.3 after the insertion created by Item 15.

Item 17 is effectively a renumbering of the former clauses 1.3 and 1.4, which are now clauses 1.4 and 1.5 after the insertion created by Item 15.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Post, Digital and Visual Effects (PDV) Offset Amendment Rules 2023

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The purpose of the Amending Rules is to amend the *Post, Digital and Visual Effects (PDV) Offset Rules 2018* (the Principal Rules) to remove all provisions that require an applicant to provide a Commonwealth Statutory Declaration (statutory declaration) with their application under the PDV Offset and replace them with the requirement for a “digital declaration”. Additional minor amendments will correct references to superseded legislation, update relevant definitions and remove unnecessary information for clarity.

These amendments will simplify the PDV Offset application process by reducing the administrative burden on applicants and departmental staff, as well as minimising the chance of delays in the assessment process due to the absence of a valid statutory declaration. A ‘digital declaration’ will inform applicants of their obligations under the TAA1953 when providing information to the Department.

Additional minor amendments will remove ambiguous terminology and, where necessary, substitute alternative text for clarity.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument does not raise any human rights issues.