



the dti

THE DEPARTMENT
OF TRADE AND INDUSTRY
SOUTH AFRICA



Film Incentive

FILM & TELEVISION PRODUCTION REBATE

GUIDELINES





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Foreword

It is well known that the decision taken many years ago not to permit *Breaker Morant* to be filmed in South Africa deprived our country of an opportunity to feature strongly in the international filming arena. Instead, it stimulated the Australian film industry, which went on to produce films such as *The year of living dangerously*, *My brilliant career* and *Gallipoli*.



Australia was followed by Ireland, a small country whose film industry became a force to be reckoned with. In Europe, France's celebrated cinema nouveau and the mystical pictures of Sweden's Ingmar Bergman showed that there were films to be made beyond Hollywood. India's Bollywood is the most recent sensation and Hollywood, never to be outdone, has suddenly re-invented documentaries through films such as *Bowling for Columbine*. All of this demonstrates that there is a remarkable vigour in film industries that can be integrated with a range of value chains, in turn providing trajectories for economic growth.

The good news for South Africa is that international filmmakers are increasingly recognising the country's value as a high-quality production site for international and local film-making.

One of **the dti's** mandates is to promote and develop growth sectors through legislation, regulation, information and financial support. The **dti** recognises that our local film industry could have a tremendous impact on employment and stimulate a host of supplier industries. For this reason, **the dti** is introducing a package of support measures for the film industry, the details of which are described in this brochure.

It is my sincere wish that local and international producers and other role-players in the film industry will use these support measures to create a vibrant and dynamic South African film industry that celebrates the cinematic art and elevates its technologies to new heights.

A handwritten signature in black ink, appearing to read 'A. Ruiters'.

DR ALISTAIR RUITERS
DIRECTOR-GENERAL: TRADE AND INDUSTRY

Introduction

The South African Government has introduced a Large Budget Film and Television Production Rebate Scheme (“the rebate”) whereby an eligible applicant will be rebated a sum totalling 15 per cent for foreign productions or 25 per cent for qualifying South African Productions including official co-productions of the Qualifying South Africa Production Expenditure (“QSAPE”) that the applicant has spent on an eligible film production.

A finite sum has been allocated over an initial three-year period. The maximum rebate for each project will be R10 million in order to attract an optimum number of productions.

The objective is to provide an additional financial incentive for the production of both foreign and domestic large budget film and television projects in South Africa. In establishing the rebate, the Government recognises that large budget film productions contribute to South Africa’s economic development and international profile by providing valuable economic, employment and skill development opportunities for the South African film production industry. The rebate will ensure that South Africa remains competitive in attracting large budget film productions from abroad.

These guidelines set out the eligibility rules for the rebate and outline the process involved in applying. The rules may be subject to change from time to time. A successful provisional application will depend on the availability of funds. Before making an application, applicants should check with the South African Department of Trade and Industry (“**the dti**”), which administers the rebate. If a provisional certificate has been issued the funds will be reserved to fulfil a successful final application. The issuing of a provisional or final certificate is at the discretion of **the dti** panel and the decision of the panel is final.

The rebate is tax exempt for the purposes of income tax.

The Departments of Trade and Industry, Arts and Culture and Communication have jointly formulated a strategy to develop the content industries. The collaborative effort is recognition that the content industries are a concurrent competency between the three government departments. In particular, content constitutes cultural artefact, a tradeable commodity as well as a medium for television programmes, cinema, animation, video, electronic games and any other audio-visual mode of packaging. The relevance, interest and role of the three departments are self evident given this perspective.

This submission was informed by consultations with The National Film & Video Foundation (NFVF) that has been engaging the industry about the future direction of the film and television content industry since 1999. It was also informed by consultations with the South African Revenue Services about the existing tax incentives regime available for the content industries as well as the South African Programme Production and Digital Broadcast Advisory Body Reports that were presented to Cabinet in 2002 (refer to paragraph 3.5.19 of the minutes of the Cabinet dated 4 December 2002).

SECTION 1 - Eligibility Rules

To be eligible for the rebate a film production must meet the following seven criteria:

- a) Commencement;
- b) and Rebate Thresholds;
- c) Schedule Requirements;
- d) Eligible Formats;
- e) Bundling;
- f) Entity Status; and
- g) Exclusion of Access to other Incentives.

a) Commencement

Only productions commencing principal photography on or after 01 April 2004 can apply.

b) Expenditure and Rebate Thresholds

Production expenditure incurred on a film production must achieve a certain QSAPE minimum and ceases to attract the rebate at a certain level:

- i. Minimum spend on QSAPE should be R25 million.
- ii. Rebate is capped at R10 million per production.

The definitions for Production Expenditure & QSAPE are set out in Section 2.

c) Schedule Requirements

In order to achieve a significant level of production in South Africa a majority of the film production's principal photography should be filmed in South Africa:

- i. At least 50 per cent of the principal photography schedule should be filmed in South Africa and,
- ii. A minimum of four weeks of the principal photography should be filmed in South Africa.

d) Eligible Formats

A film production must be in one of the following formats:

Feature film

- A film including animation commonly screened as the main attraction in commercial cinemas;
- No less than 60 minutes, or in the case of a large format (IMAX) film no less than 45 minutes; and
- Is shot and processed to commercial release standards, for cinema exhibition, television broadcast or direct-to-video.

Telemovie

- Drama programme of a similar nature to a feature film capable of exhibition on television;
- No less than one commercial television hour in length:
 - Or in the case of 'C' classification material and material specifically designed for children under six years of age not less than one half commercial television hour in length; and
 - Or in the case of a programme predominantly utilising cell, stop motion and/or computer animation not less than half commercial television hour; and
- Is shot and processed to commercial release standards, for cinema exhibition or television broadcast.

Television drama series or mini series

- An episodic television drama, including animation, which is either:

- An extended but self-contained drama made for television wherein the key dramatic elements of character, theme and plot are introduced, developed and concluded so as to form a narrative structure (similar to that of a novel), which features a major continuous plot enhanced by minor plots and there is the expectation of an ending that resolves the major plot tensions and is arranged into consecutive for screening purposes limited to 13 hours or 13 episodes or less; or
- An anthology of drama works for television where the key dramatic elements of character, theme and plot are introduced, developed and concluded so as to form a narrative structure within each episode (similar to that of a novel or a short story) but there is no continuity of plot between episodes (although there may be host elements common to each episode) and is made to be broadcast under one generic title; and
- Is shot and processed to commercial release standards, for telecast; and
- Has an average TPE per hour of R1 million and the series meets the QSAPE R25 million threshold outlined in 1 (b) (i) above; and
- Each episode has a minimum duration of a television half hour.

Documentary or Documentary Mini Series

- A non-fictional informative or educational programme or series recording real people or events that may involve some dramatisation;
- No less than one commercial television hour in length, or in the case of a large format (IMAX) film no less than 45 minutes; and
- Is shot and processed to commercial release standards for cinema exhibition, television broadcast or direct-to-video; and
- If a series is limited to 13 episodes

Film productions that fit in the following categories (or to a substantial extent fit in the following categories) are specifically excluded from eligibility:

Reality TV:

- An advertising programme or commercial;
- A discussion programme, current affairs, news, a panel programme me, a variety programme, or a programme of a like nature;
- A production of a public event, including a sports event; or
- A training or “how to” programme.

Films, which fall within schedules 6,7 or 10 of the Films and Publications Act, 1996, as amended, will be excluded from eligibility to this incentive.

Animation is a sequence of frames that, when played in order at sufficient speed, presents a smoothly moving image for broadcast, projection, new media and network use in an entertainment, educational, informative or instructive manner.

An animation can be hand-drawn images (2d animation), digitised video, computer-generated images (3D and flash animation), live action objects or a combination thereof.

e) Bundling

- If one applicant meets the expenditure minimums within any 12-month period across a slate of no more than three features, telemovies or documentaries, the rebate will be available. This clause does not apply to television series. There must be a commitment to spend the full budget to acquire a provisional certificate and the final application cannot be processed until the full commitment is met and the films nominated are complete. If the films are sourced from an offshore producer it should be the same source for all bundled films. Source means a common beneficial holder of copyright.

f) Entity Status

An applicant must be the entity responsible for all activities involved in making the production in South Africa, and must have access to full financial information for the total production worldwide. Such overseas expenditure should be included in provisional and final applications but will not be subject to audit.

- Only one entity per film production or bundle per (e) above can be eligible for the rebate.
- An applicant must be a Special Purpose Corporate Vehicle (SPCV) incorporated in the Republic solely for the purpose of the production of the film or bundle of films and have at least one South African resident company director who should have an active role in the production and be credited in that role.
- The entity and all contractors and employees must abide by South African laws in all matters connected with filming in South Africa.

g) Qualifying South African Production

- A production qualifies as South African if all beneficial rights are owned by a South African; and
- The producers, writers, directors as well as the technicians, performers and other production personnel are citizens or permanent residents of South Africa unless the production requires the participation of an individual not covered by this clause in which case approval may be given at provisional certification stage; and
- Live action shooting and animation works is in principle carried out in South Africa, location shooting outside of South Africa - should the script require - may be authorised if technicians from South Africa take part in the shooting; and
- The laboratory work is done in South Africa unless it is technically impossible to do so; or
- A production is approved as an official co-production by the NFVF.

h) Interaction of this rebate with other incentive schemes

- Any other South African rebates, training or internship funding specific to this project may be claimed but should be deducted from the gross QSAPE before calculation of the rebate with the exception of SETA funds, which may be received after the final application or payment of the rebate.
- A project that receives funding from the IDC, NFVF or private investors under 24F of the Income Tax Act No 58 of 1962 will be eligible for the rebate.
- An applicant must supply information on the intended and actual source of funding per the attachments required to Forms A and D in Schedule A.

i) Credit

The **dti** should be credited for its contribution in the end titles of the film or TV production.

SECTION 2 - Definition of Production Expenditure

a) Introduction

All costs, including Qualifying South African Production Expenditure (QSAPE), Total Production Expenditure (TPE) and Non Qualifying South African Production Expenditure (NQSAPPE) must be presented with each application. Arrangements should be made to track expenditure that relates to South African and non-South African production activity as early as possible with computerised accounts formatted to identify the information required on the application form. Where necessary, invoices from any supplier should also be broken down to show South African and non-South African activity.

b) Qualifying South African Production Expenditure (QSAPE)

QSAPE is defined as the production expenditure spent by the applicant on copyright and goods owned by or facilities and services provided by South African entities or individuals.

[Individual transactions in excess of R1 000 should be verifiable by audit of invoices quoting a South African company number and stated South African address, and payroll records quoting the South African Identity Document numbers or South African passport numbers of all crew, cast and extras claimed as QSAPE]

Where individuals or contractors are paid via an agency, proof of the South African status of the individual or contractor will be required.

Where the purchase of South African copyright is being claimed as QSAPE the relevant legal agreement verifying chain of title must be attached to the application form.

Goods and services may be provided outside of South Africa as long as the schedule requirements in Section 1(c) are met.

c) Total Production Expenditure (TPE)

A film or television production's total production expenditure is that incurred or reasonably attributable to the making of the film from pre-production to the point at which the first copy of the film is ready to be distributed, broadcast or exhibited to the general public. Section 24F of the Income Tax Act No 58 of 1962 (The Act) defines production expenditure as follows:

“production cost”, in relation to a film, means the total expenditure incurred by a film owner in respect of the acquisition or production of such film, excluding expenditure incurred in the erection, construction or acquisition of any buildings or other structures or works of a permanent nature, but including, without in any way limiting the scope of this definition -

- any remuneration, salary, legal, accounting or other fee, commission or other amount paid or payable to any person for the purposes of or in connection with the production of the film;
- the cost of acquiring the story rights, script, screenplay, copyright or other rights in relation to the film;
- insurance premiums in respect of insurance against injury to or death of persons, or loss of or damage to property employed or used, as the case may be, in the production of the film;
- premiums or commission payable in order to secure a guarantee that the cost of the film will not exceed a specified amount;

- interest, finance charges and raising fees incurred for the purposes of or in connection with the production of the film;
- the cost of acquiring or creating music, sound and other effects which will form part of the film;
- any allowance which but for the provisions of this section would be allowed under section 11 (e) or (o) or 12C in respect of any machinery, implements, utensils or articles used in the production of a film: Provided that—
 - any such allowance shall be deemed to be an amount of expenditure incurred;
 - an amount equal to the total amount of any such allowance which may be granted in respect of any year of assessment divided by the number of days in that year
 - shall be deemed to have been incurred on each day of that year;
 - such expenditure shall be deemed to have been incurred in the country in which the asset in respect of which the allowance may be granted was acquired; and
 - no deduction or allowance shall be granted in respect of the cost of acquisition of any such machinery, implements, utensils or articles otherwise than as provided in this paragraph or paragraph (h); and
 [Para. (g) amended by s. 26 of Act No. 129 of 1991.]
 Wording of Sections
- expenditure incurred in respect of—
 - the purchase, hire or construction of sets; and
 - the hire of any machinery, implements, utensils or articles used in the production of the film,
 - but excluding any such expenditure incurred after the completion date and any expenditure incurred in the marketing or promotion of, or soliciting of orders for, the film.

This definition is adopted for these guidelines though certain expenditure items, which may be considered production expenditure under section 24F, are specifically excluded from QSAPE regardless of the payee per (d) below.

Non-Qualifying South African Production Expenditure (NQSAPE)

The following expenditure items are specifically excluded from the definition of QSAPE:

- i. Financing Expenditure
- ii. General Business Overheads
- iii. Producer Fees
- iv. Other Associated Party Fees
- v. Deferments, Profit Participation, Residuals
- vi. Advances
- vii. Land and Buildings
- viii. Costs of Services embodied in Goods
- ix. Other exclusions.

i. Financing Expenditure

Financing expenditure includes returns payable on amounts invested in the film production and expenditure connected with raising and servicing finance for the production, such as executive producer fees and interest payments.

ii. General Business Overheads

South African business overheads, being general business overheads, are excluded from QSAPE to the extent that they exceed the lesser of:

- 2 per cent of the total of the company's TPE on the film production; or
- R200 000 (two hundred thousand rands).

iii. Producer Fees

South African Producer fees, which should be inclusive of all their travel accommodation and living expenses, are excluded from QSAPE to the extent that they exceed the lesser of:

- 10 per cent of the total of the company's TPE on the film production; or
- R1 000 000 (one million rands)

QSAPE is limited to working producer fees and the limit is per producer.

iv. Other Connected Party Fees

The fees of any other connected parties whose fees appear above the line, that is, writer, director or cast member inclusive of all their travel, accommodation and living expenses are excluded from QSAPE to the extent that they exceed the lesser of:

- 10 per cent of the total of the company's TPE on the film production; or
- R1 million (one million rands)

A connected party is an individual or entity that is a director or shareholder of the applicant company and includes parent or subsidiary companies.

v. Deferments, Profit Participation, Residuals

QSAPE does not include expenditure that is dependent on the film production's commercial performance and its earnings, as expenditure directly linked to the production's commercial performance cannot be quantified until after the production has actually been exhibited.

Therefore, expenditure items specifically excluded from QSAPE include:

- Payments deferred until the film production provides financial returns through box office receipts, earnings or profits (for example, bonuses paid to directors);
- Payments dependent on eventual profits made on the production; and
- Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the production through future exhibition and distribution.

vi. Advances

All payments made by way of an advance on a payment in respect of deferments, profit participation or residuals are excluded from QSAPE unless they are non-recoverable.

vii. Land and Buildings

Any acquisition of land or buildings or erection of buildings of a substantial nature is excluded from QSAPE as this expenditure would not be considered reasonably attributable to the making of the film.

Sets and props would not be classified as substantial in nature, however any proceeds on the sale of sets and props or the deemed value of such, if retained by the applicant or related party after the completion of the film, should be deducted from the value of QSAPE for the purpose of calculating the rebate.

viii. Costs of Services embodied in Goods

If the cost of certain services are embodied in the cost of a good that is delivered to the applicant company, and those services were predominantly (namely, greater than 50 per cent of cost) performed outside South Africa, then those services are not provided in South Africa for the purposes of determining QSAPE. This does not apply to imported goods where the supplier has an established business that has a history of supplying that particular good, for example, Kodak stock.

ix. Other Exclusions

The following sundry items do not qualify as QSAPE:

- Errors and Omission insurance which protects the copyright holders from litigation once the film is exhibited; and
- Any gifts, entertainment and gratuities.

e) Non Production expenditure that may be included as QSAPE

Under 24F in relation to assets only the depreciation allowance as defined in The Act sections 11(e) or (o) or 12(c) is allowed as production expenditure. For the purpose of QSAPE and the rebate, the treatment of any expenditure in relation to goods whether an asset or expendable is determined in line with Section 3 (f) below.

SECTION 3 -

Treatment of Expenditure

a) Value Added Tax (VAT)

All figures set out in this document and those provided in applications should be net of VAT where it is reimbursable.

b) Currency Exchange

All QSAPE will be incurred in South African Rand. All other production expenditure incurred in foreign currencies must be reported in South African Rand using the budgeted exchange rate on the audited expenditure statement.

c) Arm's Length Expenditure

The basis of the arm's length principle is to ensure that amounts charged between the applicant company and any connected parties for the provision of goods or services are commercially reasonable.

- Where the applicant incurs expenditure under a non-arm's length arrangement, which inflates or deflates the cost of a particular good or service in relation to the film production, then a rate no greater than the commercial rate for that good or service will be counted towards QSAPE and TPE. The commercial rate will be taken to be the amount that would have been incurred if the parties were dealing at arm's length with each other, charging what they would ordinarily charge to an unrelated party. If a lesser rate is charged, it is that rate that should be claimed.

The arm's length principle applies to any act or transaction directly or indirectly connected with any expenditure incurred by the applicant - that is, the principle still applies if a non-arm's-length deal between other parties otherwise inflates the expenditure of a particular good or service purchased by the applicant.

d) Basis of Expenditure

To be included as QSAPE, an expenditure item must have actually been incurred on the making of the specific film production for which the application is made. In addition, the applicant must have actually discharged its liability to pay at the time of application for the rebate.

e) Expenditure by Prior Companies

Eligibility for the rebate extends to an applicant who takes over the film production from another company (or companies) and completes the film production. The applicant is taken to have incurred the production expenditure of the previous company (or companies) for the purposes of the rebate. Any costs incurred by the applicant in the take over of the project are excluded from its calculation of QSAPE.

Documentary evidence of this expenditure to verify that it qualifies as QSAPE must be provided.

f) Purchase and Sale of Goods

Where an applicant purchases any goods for use in a film production and sells or disposes of those goods on the completion of the production, only the net cost of those items can be claimed as TPE or QSAPE.

In the event the applicant or an associated party retains any goods purchased beyond the completion of the film an independent valuation should be made of those goods and that valuation should be deducted from the value of QSAPE for the purpose of calculating the rebate.

This clause does not relate to intellectual property or rights.

g) Transfer Pricing

It is anticipated that the applicant company will charge a production services fee if the film is being produced for an overseas producer or studio. This fee should be at an arm's length commercial rate and will be considered QSAPE if it satisfies the criteria.

If this fee is paid out of the rebate, it will not have been incurred before the completion of the film and will not qualify as QSAPE under Section 3 (d).

SECTION 4 - Application for Rebate Payment

a) Provisional Certificate

All applicants must apply for a provisional certificate from **the dti** by supplying details of budgeted expenditure and other information required in Form A in Annexure A.

The purpose of the provisional process is to provide an applicant with certainty as to whether a film production satisfies the eligibility criteria and what portion of its expenditure is likely to qualify for the rebate. It will also enable **the dti** to schedule its resources. To assist this process, applicants should also provide a timeframe for the production with their application for assessment. In order to discourage provisional applications for projects that are not well advanced, letters of intent from investors are required.

A provisional certificate application is attached in Annexure A.

A provisional certificate will lapse if the applicant does not confirm the commencement of principal photography within six months of it being issued (see form B in Annexure A).

The applicant should advise the intended date of delivery or completion and should there be a change at any point, **the dti** should be advised in writing (see form B in Annexure A).

An applicant may hold three provisional certificates for projects that have not yet commenced principal photography at any one time.

b) Final Application

All applicants must submit a final rebate application to **the dti** once a film production is completed and within three months of completion of the film production

A film production is regarded as having been completed per the definition in section 24F of Income Tax Act No 58 of 1962 – in relation to a film, the date on which the cut master negative and conforming sound track of the film are married to an answer print or, where such film is not a cinematographic film, the date on which the film is completed to an equivalent production stage.

Certain attachments are required with the final application as detailed in section 4 of the application included in Annexure A. Including the following:

- i. Audited Expenditure Statement
- ii. Documentation detailing source of production financing
- iii. Sample Footage, including **the dti** credit
- iv. Attested Declaration
- v. An original Tax Clearance Certificate
- vi. Further Information as Requested

i. Audited Expenditure Statement

All costs claimed as QSAPE must be presented in an audited expenditure statement. The audit must be prepared by a person who is:

- An auditor registered with SAICA or PAAB;
- If the auditor has any connection to the applicant that connection should be declared.
- The **dti** reserve the right to appoint any other registered auditor to perform further checks at their own expense.
- The statement should be in the format provided in Annexure A.

The auditor's statement is provided at the applicant's expense, with the name of the auditor and auditor's company or firm, qualifications, and contact details to be provided in the relevant section of the application form.

ii. Sample Footage

A dated selection of VHS/DVD footage from the film production, together with a full final credit listing, and proof of distribution or exhibition arrangements for the production must be included with the application to verify that the production is ready for distribution or exhibition to the general public.

The **dti** reserves the right to be supplied with a VHS/DVD of the entire film production or, alternatively, to be invited to a filming of the production in its entirety following the production's release. The selected footage and final copy of the production will be kept only for the purposes of the application process.

iii. Attested Declaration

The information provided in an application must be certified in an Attested Declaration by an authorised person from the applicant company, normally a director of the applicant company or the Chief Executive Officer.

iv. Further Information as Requested

The **dti** reserves the right to require any further information deemed necessary to complete the rebate process. This information must be provided at the applicant's expense within 28 days of **the dti's** request, although the applicant may write to **the dti** requesting an extension of time.

c) Application Forms

Application forms and guidelines may be downloaded from **the dti** web site.

Application forms and associated documentation should be submitted electronically via compact discs.

Three complete copies of the application in its relevant form, including all required documentation, should be sent to:

The Investment Services Manager,
Film and Television Production Rebate
Department of Trade and Industry
Private Bag X86
Pretoria 0001,
South Africa

A panel established by **the dti**, which will include representatives of **the dti**, NFVF, the National Treasury and the South African Revenue Service, will assess applications for the rebate. The issuing of a certificate is at the discretion of the panel and the decision of the panel is final.

A Tax Clearance Certificate may be obtained from any branch office of SARS.

d) Independent Consultants

The **dti** panel will be the body responsible for assessing whether the application satisfies the rules for the rebate. However, **the dti** panel may seek the advice of one or more independent consultants to:

- Provide an independent assessment of whether specific items claimed in an expenditure statement are "reasonably attributable" to TPE and QSAPE;
- Assess whether costs charged for specific items are made on an arm's length basis; and

- Provide advice on the extent to which costs between connected parties are commercially reasonable.

Where necessary the independent consultants may seek further information from the applicant or its auditor to assist its assessment. Where this information relates to arm's length issues, the consultants may seek information on the process and methodologies adopted to show that the amounts charged accord with the arm's length principle. The consultants will be subject to a contractual duty of confidentiality.

e) Payment of Rebate

Provided that the application for expenditure is complete and verified **the dti** will endeavour to approve payment within six weeks of final application. The Ministry of Trade and Industry will make payment of the rebate within three weeks of advice from **the dti** panel.

f) Confidentiality

During the rebate approval process, certain information supplied by the applicant will be provided to **the dti** panel, the Department of Trade and Industry, and independent consultants, where reasonable.

The **dti** will use reasonable efforts to maintain the confidentiality of the information provided by the applicant. The **dti** notes, however, that it is subject to various disclosure requirements, and shall not be liable for any disclosure it believes, acting reasonably, it is required to make.

As such, the applicant should clearly indicate those parts of its application that it regards as commercially sensitive and confidential. In processing a request under the Promotion of Access to Information Act, **the dti** will consult the relevant applicant prior to a decision on release of documents.

g) Information for Research Purposes

The **dti** may wish to utilise information provided by the applicant for research purposes, for example as part of a study on the multiplier effects of a film production.

h) Further information

For further information on these criteria and the process of applying for a rebate contact:

The Investment Services Manager,

Film and Television Production Rebate
 Department of Trade and Industry
 Private Bag X86
 Pretoria 0001,
 South Africa

Mapungubwe - **the dti** Group Campus
 Block A, 77 Meintjies Street
 Sunnyside
 Pretoria

Web site	www.thedti.gov.za
Telephone	the dti Customer Contact Centre: 0861 843 384 (Local) +27 12 394 9500 (International)

Addendum

1. Section 24F

Section 24F of the Income Tax Act

The section grants a deduction of the production cost of a film to the film owner.

Film allowance

The section was introduced in 1987 to specifically address the abuse that took place by investors who participated in various film schemes and who it was felt unjustifiably benefited from generous tax treatment of varying amounts of expenditure, which were 'incurred' in the production of a film. Limited partnerships were commonly used where investors could effectively claim deductions for expenditure far in excess of the amounts for which they were at risk in terms of the partnership agreement.

The section, in essence, excludes any deductions for production costs or any allowances relating thereto under any other provisions of the Income Tax Act and provides for a film allowance instead.

Section 24F provides that a film owner may deduct a film allowance from his income (not limited to film income) calculated as set out in section 24F(3).

- A film owner may deduct from his taxable income the film allowance; and
- The film allowance is limited to the total of the production and post-production costs of the film.

Section 24F reads as follows:

(2) (a) There shall be allowed to be deducted from the income of any film owner an allowance, to be known as the film allowance, determined in terms of subsection (3) in respect of the production cost and post-production cost incurred by him in respect of any film used by him in the production of his income or from which any income is received by or accrues to him.

(b) The film allowance which may be granted in respect of any film shall not in the aggregate exceed the production cost and post-production cost thereof and shall be in lieu of any deduction or allowance in respect of such production cost or postproduction cost which may otherwise be allowable in terms of the provisions of this Act.

Definitions

Central to the understanding of this complex section is the understanding of the various terms and their definitions used in this section.

Film Owner A taxpayer may qualify for the benefits outlined in Section 24F of the Income Tax Act if he or she is determined as "the owner" of a film. Ownership is defined either as ownership of one, several or all of the assorted rights available in the film. "Rights" are usually taken to mean copyright but actually include any right, such as rights to sales and distribution, the right to make prints, the right to turn prints into formats, etc.

Production cost is defined in the Act as the total expenditure incurred by a film owner in respect of the acquisition or production of a film, but excluding expenditure incurred in the erection, construction or acquisition of any buildings or other structures of a permanent

nature. The following costs are also excluded, the expenditure incurred in the marketing or promotion of or in soliciting orders for the film.

Completion date in relation to a film, means the date on which the cut master negative and conforming sound track of the film are married in an answer print or, where such film is not a cinematographic film, the date on which the film is completed to an equivalent production stage.

Post-production cost is incurred after the completion date, but excluding any print cost in relation to the film. This means that any expenditure incurred after the completion date and expenditure incurred in respect of marketing, promoting a film are excluded. These costs are dealt with in section 24F (7), subject to an allowance calculated according to a formula.

The amount of the film allowance is determined by section 24F (3), which reads that; Subject to the provisions of subsection 4, the amount of the film allowance, which may be granted in respect of any one film, shall be the sum of-

- a) in the year of assessment in which the completion date of such film falls, the production cost of such film and any post-production cost of such film incurred during such year; and
- b) in any subsequent year of assessment, any post-production cost of such film incurred during such year and the amount of any film allowance disallowed in the preceding year of assessment under the provisions of subsection 4.

Subsection 4 notes in summary that the deductions are subject to a cap and may not exceed the sum of

- the amounts of production cost and post-production cost in respect of the film which have been paid by the film owner
- the amounts of any production cost and post-production cost which have not been paid by the film owner and for which he is 'at risk'.

At risk rule

A film owner is deemed to be "at risk" to the extent that the payment of the production and post-production costs incurred by him or repayment of a loan would result in an economic loss to him were no income to be received by him in future years from the exploitation by him of the film.

The "at risk" rule applies to the circumstances where expenditure in relation to the production and post-production of a film has been incurred, but not yet paid, or where the expenditure has been paid or financed by means of a loan or credit.

The "at risk" rule seeks to ensure that a deduction is only allowed to the film owner in respect of real liabilities and/or actual paid by the taxpayer.

A film owner will or will not be deemed to be at risk as contemplated by the rules, depending on whether the film owner runs the risk of suffering economic loss as a result of his investment in the film.

Economic loss;

Must be quantifiable, monetary loss and must flow directly from the lack of income generated from exploitation of the film.

Example, where a film owner is not at risk is that of the partnership, where undisclosed partners have their liability limited to the amounts invested by them. Another is where a third party such as an insurer guarantees payment of costs.

The opinions and advice contained in this document are based on our knowledge, understanding and interpretation of current local (and, where appropriate, international) tax law and practices.

These principles are, however, subject to change occasioned by future legislative amendments, court decisions or changes in SARS' practice. Such changes may impact on the advice/report given and the outcome of the transaction or situation analysed. You are cautioned to keep abreast of such developments and are most welcome to consult us for this purpose or to contact The South African Revenue Service, SARS at www.sars.gov.za

2. Summary of the areas that the NFVF funds

Individuals, companies and organisations may submit funding applications to the NFVF for grants or grant loans in any of the four funding categories below: Specific conditions are applicable in each funding category, and it is important for applicants to take careful note of these conditions before submitting an application.

1. Education and Training

In working towards its goal of stimulating and advancing skills development, film education and training, the NFVF will provide the following forms of assistance:

- Bursaries for film and video-related studies within South Africa
- International bursaries only for courses of study that are not available in South Africa
- Grants for film related training projects and workshops.

2. Development Funding

How does the NFVF support development?

The development of projects is seen as a vital component of the NFVF's strategy and an important basis upon which any film production strategy should be built. The Foundation will consider contributing development funding to projects in the following categories:

- Feature-length and short films
- Documentaries
- Television series
- Animation
- Multimedia

The Foundation considers development funding as an investment and will set in place mechanisms to recoup all of its development expenditure with interest on principal photography when the project enters the production phase. If a project fails to be realised, the Foundation reserves the right to be reimbursed.

How are funds disbursed?

When development funds are allocated, payments will be made in three instalments subject to the provision of cost reports that includes proof of expenditure. The final allocation will be paid upon presentation of final script.

The NFVF may at its discretion appoint an auditor for non-commercial projects.

Who qualifies for development funding?

Independent production companies or writers may apply to the NFVF for development funding. In the case of writers, the NFVF may assist the writer to find a producer.

Companies that apply for development funding must hold exclusive rights or options for at least 24 months.

How are development funding applications evaluated?

In addition to the general criteria listed in our Funding Principles, projects will also be evaluated according to:

- the likelihood of the developed project reaching its target audience
- the likelihood of the project obtaining production finance
- local and international distribution intent.

When evaluating co-productions, preference will be shown to projects with local creative control.

3. Production Funding

How does the NFVF support production?

The NFVF will consider supporting the production of films and documentaries either through repayable loans or grants.

The NFVF considers production funding primarily as an investment and as such will recoup its expenditure at the time of delivery of the finished product through traditional commercial distribution and exhibition channels.

The NFVF will determine at its sole discretion what form of assistance will be granted. In the case of a co-production, recoupment will only apply to the South African distribution component. If a product fails to be completed, the NFVF reserves the right to be reimbursed.

The following genres will be considered for production funding:

- Documentaries
- Features
- Short and specialised film and video productions
- Pilot of a television series with broadcast commitment
- Animation
- Multimedia projects that have an audiovisual component.

In the case of multimedia projects, assistance will be considered for first-timers only.

The NFVF is committed to ensuring the distribution and exhibition of locally produced films and documentaries. To this end, the NFVF will exercise bias in favour of those projects that have local distribution commitment.

How are funds disbursed?

Funds will be disbursed in at least four instalments, depending on the cash flow requirements of the particular project. After the initial payment, disbursements will be made only after the NFVF has received satisfactory interim financial and progress reports.

Who qualifies for production funding?

South African-owned production companies that have reasonable experience may apply for production funding in any of the above-mentioned genres.

New and emerging film-makers that would not otherwise have the opportunity to actively participate in the local film industry may apply for production funding in only two genres: short films and documentaries. However, in order to qualify, the filmmakers or writers should have a production company attached.

For all applications, the script must be developed to an acceptable stage to go into

production. If the script is deemed not ready, the applicant may be advised to seek assistance for development funding instead.

How are production funding applications evaluated?

In addition to the funding principles listed in Section 3 above, the following apply to production funding:

- Credible track record in production
- Distribution intent or financial commitment from other partners, particularly theatrical or video distributors and broadcasters
- Guaranteed rural or township exposure on screen
- Language diversity
- Proven commitment to empowerment and training in pre- and post-production as well as during production
- Technical productions standards that are of broadcast quality, consistent international film distribution trends
- South African perspectives and leading roles for South African actors

In the case of co-productions, South African involvement in production must be at least 50 per cent or meet the requirements of the relevant co-production treaty.

4. Marketing and Distribution

How does the NFVF support marketing and distribution?

The NFVF believes that the success of any completed film or video production relies on innovative marketing and promotion. The NFVF will accordingly provide repayable loans for marketing and promotion to ensure optimum exposure of South African film and video productions to local and international audiences.

The NFVF will provide assistance to filmmakers and distributors for the effective promotion of their product at film markets and festivals.

Who qualifies for marketing and distribution funding?

Independent producers and local distributors who are in possession of completed SA film and television product may apply to the NFVF for grants or loans to market and promote that product.

Which aspects of film marketing and distribution qualify for support?

- Test screenings
- Film launches
 - Entry costs and freight costs for the submission of films to local and international festivals and markets
- Travel to local and international markets
- Theatrical exhibition costs (print and advertising)
- Video promotion costs (launches, video sleeves, catalogues, posters)
- International film and video marketing costs

How are marketing and distribution funding applications evaluated?

In addition to the funding principles contained herein, the NFVF will support marketing and distribution initiatives for films that are of interest to South African audiences. Favourable consideration will be given to applications designed to facilitate exposure of South African film works to international film festival and markets and local audiences based in areas where media penetration is low.

PLEASE NOTE: With all funding categories, specific conditions are applicable in each funding category, and it is important for applicants to take careful note of these conditions *before* submitting an application.

Applicants from countries other than South Africa, or applicants who have projects that originate in a discipline other than film and video, may apply to the NFVF on condition that they are clearly able to explain how their project, organisation or skills would benefit the development of the South African film and television industry. For further information or to obtain an application form for funding visit the NFVF website at www.nfvf.co.za or contact Terrence Khumalo (terrencek@nfvf.co.za) or Karen Son (karens@nfvf.co.za) or telephonically on (011) 483-0880 or if you are calling from outside of South Africa, the number is +27 11 483-0880.

3. Industrial Development Corporation of South Africa

IDC FINANCING FACILITIES

Equity Investment

This involves the direct investment into a project in the form of ordinary and/or preference equity ownership. This facility involves participation of up to 49 per cent (minority interest) as the IDC does not seek control or direct management participation.

Commercial Loans (debt Finance)

Term loans up to 6 years structured to fit business cash flow profile (asset-based finance and working capital). Owners' contribution required for adequate financial structuring of the project.

Venture Loans (quasi-equity)

Minority interest in high-risk ventures with high financial returns and developmental impact. Terms and conditions of the other investment funds to be compatible to the IDC investment funds to be compatible to the IDC investment requirements.

Investment Criteria

Media

- Minimum commercial and/or venture loans of R1 000 000,00;
- Each project to be considered on its merit and show sustainable commercial viability;
- Balanced management team;
- Rates are charged according to the project's risk return profile;
- The IDC will require some form of security; and
- Comprehensive business plan including audited financial statements and/or financial projections (income statement, balance sheet and cash flow statement).

Motion Pictures

- Minimum IDC participation of R1 000 000,00 (debt finance, quasi-equity and/or equity finance);
- Each project to be considered on its particular merit and must show sustainable commercial viability;
- Projects to deliver products for commercial exploitation in South Africa and the rest of the world;
- The IDC's participation of up to 49 per cent of a project subject to the potential risk/return profile,
- Project to secure a significant theatrical release and/or high profile television airing with a distributor or broadcaster acceptable to the IDC;
- The IDC's cashflow to be subject to the confirmation of all third party funding and the throw-down schedule;
- The IDC requires raising and commitment fees;
- The IDC requires a back-end profit share commensurate with financial participation;
- Recoupment on a *pro rata pari passu* basis with other investors;
- The IDC will expect to share in the rights (copyrights and ancillary rights) proportional to its investment;

- All credits (front and end) to be negotiated in good faith between the parties;
- The IDC's representatives to be entitled to attend all stages of production;
- The IDC's investment to be expensed only in South Africa and /or SADC countries.

Required documentation

- Comprehensive business plan for the project;
- Co-production agreements where applicable;
- Completion guarantor and its insurance agreement that includes the IDC as a beneficiary; and
- Collection agent and terms of agreement where applicable.

Delivery requirements

- Audited statements of final costs from an approved auditor
- Two VHS and DVD copies of the film; and
- Copies of all posters and promotion kits available.

For further information please visit www.idc.co.za or mail callcentre@idc.co.za

Annexure A

the dti

THE DEPARTMENT
OF TRADE AND INDUSTRY
SOUTH AFRICA



REPUBLIC OF SOUTH AFRICA (RSA) FILM & TELEVISION PRODUCTION REBATE

Application for Provisional Certificate of Eligibility

Form A

How did you find out about the Film and Television Production Rebate?

- | | |
|---|--|
| <input type="checkbox"/> Road Show/ Exhibition/Presentation | <input type="checkbox"/> TEO Private Business Consultation |
| <input type="checkbox"/> TEO Regional Office | <input type="checkbox"/> TISA Official |
| <input type="checkbox"/> Advertisement: TV, Radio, Print | <input type="checkbox"/> Media Interview |
| <input type="checkbox"/> Word of mouth | <input type="checkbox"/> Private Sector Consultant |
| <input type="checkbox"/> The dti Website | <input type="checkbox"/> Other... |

Please return completed forms by registered mail or by courier / hand deliver to

Film and Television Production Rebate
Department of Trade and Industry
Private Bag X86
Pretoria 0001,
South Africa

Mapungubwe - **the dti** Group Campus
Block A, 77 Meintjies Street
Sunnyside
Pretoria

Web www.thedti.gov.za
Telephone **the dti** Customer Contact Centre:
0861 843 384 (Local)
+27 12 394 9500 (International)

Guidelines for the RSA Film and TV rebate are available online at www.thedti.gov.za from 01 June 2004 and should be read before completing this form.

Purpose of Provisional Certificates

The purpose of the provisional certificate is twofold:

To assist in the administration of the funds that the government have made available for this incentive.

To provide an indication to applicants of the likely acceptance of a final application. It should be noted that a provisional certificate does not guarantee the rebate however an applicant may assume that if the form of their actual expenditure and shooting schedule does not vary significantly from that estimated in their provisional application and the criteria are met they should qualify.

Applicants will be advised in writing of any projected budget items that have been included in their application for provisional certification that would not be considered QSAPE for the purposes of the rebate.

A provisional certificate will state that, based on the information and projected budget presented in the application, the proposed film project would meet the core eligibility requirements in relation to production expenditure for the purposes of the rebate. A film that holds a provisional certificate is not guaranteed of qualifying for the rebate and must apply for final certification once the film is completed.

In order for a project to submit a final application for the rebate it must hold a provisional certificate.

The provisional certificate will be accompanied by two forms to be completed and returned by due date. If these forms are not completed when indicated the provisional certificate will lapse and the applicant cease to be eligible to submit a final application.

Confirmation of commencement of principal photography to be submitted within 6 (six) months of the date of the provisional certificate. This form should also confirm the completion date as that advised in the provisional application. (Form B attached)

Advice of any change to completion date. This form may be submitted at any time but applicants should note that they have 3 (three) months to submit a final application after completion and if there has been no notification of change of completion date the provisional certificate will lapse if the final application is not received within 3 (three) months of notified date of completion. (Form C attached)

Eligible Applicants

Companies are eligible to apply for provisional certification where they are either:

- A production company incorporated in the Republic of South Africa; and
- A production company responsible for all activities involved in making the production in South Africa; or
- The company responsible for developing or servicing a film project prior to the establishment of the special purpose corporate vehicle.

the dti

THE DEPARTMENT
OF TRADE AND INDUSTRY
SOUTH AFRICA



FOR DTI USE ONLY

Date of receipt

Date of Receipt:

Reference No:

APPLICATION FOR PROVISIONAL CERTIFICATE OF ELIGIBILITY – RSA FILM AND TELEVISION PRODUCTION REBATE

Section 1 - APPLICANT COMPANY INFORMATION

Registered company name:	
Registered address:	Contact person
	Name:
	Office/Title:
	Telephone: ()
	Business: ()
	Mobile:
RSA company number:	Fax No: ()
	Email address:
The names and addresses of company directors must be included with documentation supporting the company's RSA permanent residence.	

If the special purpose company has not been established at the time of the provisional application and therefore the details included above do not represent the details of the applicant for the final certificate please provide the following details:

Intended name of special corporate vehicle:
Intended registered address:
Intended directors and their nationality:
Address and contact details of intended directors should accompany the application.

Section 2 - DETAILS ABOUT THE FILM / TELEVISION PRODUCTION

Working Title:

Synopsis:

Format and schedule:

Feature film Mini-series Telemovie TV Series Documentary

Estimated total running length (in minutes):

Scheduled number of shooting weeks: of which scheduled in South Africa:

Scheduled date for start of principal photography:

Scheduled date for completion (no later than two years from date of application):

If TV series or mini series actual number of episodes: and duration of each episode:

Is this application going to take advantage of the bundling opportunity?: YES NO

If yes, nominate twelve month period: Start yy/mm/dd Finish yy/mm/dd

NB. The twelve-month period will be the start of qualifying expenditure and the conclusion, so the threshold for QSAPE will need to be met within the nominated time frame. A change to the start date may be nominated in writing within 6 (six) months of the date of issue of the provisional certificate.

Status:

Does the film qualify as a South African Film?: YES NO

If yes, is its qualification as a South African film under an official Co-production Treaty?:
YES NO

Documentation verifying the RSA ownership of all rights in the film or a copy of co-production advanced ruling from the NFVF should be supplied with this application if appropriate.

Connected expenditure

If possible, provide the name of all companies (as identified in the budget) who will be providing goods/services in making the film that are connected with the production company or any of its associate companies.

If production has not commenced and this information is unknown, please indicate not applicable (N/A).

(Please attach additional information on a separate sheet if there is insufficient space provided below.)

Has the production company taken over responsibility for making the film from another production company?

YES NO

If yes, the previous company or companies should be listed below with the relevant legal agreement confirming the transfer of responsibility also included as an **Attachment**.

(Please attach details on a separate sheet if there is insufficient space provided below.)

Registered company name:	Registered company name:
Registered address:	Registered address:
Company Number:	Company Number:

Section 3 - PROJECTED BUDGET

General requirements

The projected budget for the film must indicate the proposed level of production expenditure, identifying to the extent that it is possible the projected level of Qualifying South African production expenditure, clearly and separately showing which expenditure is planned on film production activity to be undertaken in the RSA and which expenditure, if any, will be incurred on film production activity undertaken outside of the RSA.

1. Provisional budget

Production expenditure must be identified in RSA Rand and include details of qualifying South African production expenditure, by category, including:

- i) Description of each budget item (for example, cast, lighting, CGI, etc.);
- ii) amount of expenditure on each budget item.

2. Overview of provisional expenditure

Total provisional production expenditure Rand _____
Total provisional qualifying South African production expenditure (QSAPE) Rand _____
Estimate of rebate Rand _____

Please provide a summary and detailed expenditure statement as detailed below as an Attachment.

The expenditure statements can be in the order determined by the financiers (for example, using a particular studio chart of accounts). However, it should show all top sheet categories and include column headings and the appropriate split of expenditure as indicated below.

This summary information is indicative only. A copy of the full provisional budget should also be attached.

- | | |
|----------|---|
| Column 1 | Budget item/description, for example Story and Script, Producers, Directors, Cast, etc. |
| Column 2 | QSAPE in South Africa |
| Column 3 | QSAPE outside of South Africa |
| Column 4 | Non QSAPE |
| Column 5 | Total production expenditure per detailed budget attached. |
| Column 6 | Prior company expenditure where appropriate |
| Column 7 | Payments to connected parties where appropriate |

Please provide a financial plan for the project stating the extent and source of other finance and state whether secured or contemplated by source.

Confidentiality

Please note that all information provided by the applicant will be held by the Department on a strictly commercial-in-confidence basis. The information may be provided to the South African Revenue Service (SARS), **the dti** Panel and an independent film production consultant only. These parties will be bound by Government confidentiality provisions to treat all such information as commercial-in-confidence.

Section 4 - DOCUMENTS TO BE ATTACHED TO AN APPLICATION FOR A PROVISIONAL CERTIFICATE

Please indicate by marking the appropriate box whether the following attachments (including relevant legal agreements) have been submitted with the Provisional Application Form:

1. Summary and detailed expenditure statement.
Attached Not attached
2. Summary and Detailed Budget in Rand.
Attached Not attached
3. Summary and detailed QSAPE budget in Rand.
Attached Not attached
4. Financial plan including letters of intent from investors.
Attached Not attached
5. Provisional schedule clearly noting the days scheduled in South Africa.
Attached Not attached
6. Certificate of incorporation/founding statement (CK1) to verify the company's RSA incorporation and in addition documents which state the registered address, and names and addresses of company directors/ members and public officer/accounting officer of the company/closed corporation.
Attached Not attached
7. Where corporate vehicle yet to be established names, contact details and addresses of intended company directors.
Attached Not attached Not applicable
8. Any agreement verifying the transfer of ownership in relation to copyright for intellectual property including promotional material, or establishing that copyright in such material is held by a South African – where purchase or licensing of South African copyright expenditure is incurred before completion of the film, and is therefore being claimed as qualifying South African production expenditure.
Attached Not attached Not applicable
9. Documentation to verify the South African ownership of all rights in the film or a copy of advanced ruling re co-production status from NFVF.
Attached Not attached Not applicable
10. Written confirmation that **the dti** will be credited as follows "this film was made with the financial support of the Department of Trade and Industry of South Africa".
Attached Not attached

Section 5 - APPLICANT ATTESTED DECLARATION

I,⁽¹⁾ _____, do solemnly and sincerely

declare on behalf of ⁽²⁾

that the information contained in the application for a provisional certificate, and the documents attached to it, is correct and true in every particular and I make this solemn declaration by virtue of the Justices of the Peace and Commissioners of Oaths Act 1963 as amended (Section 9), and subject to the penalties provided by that Act for the making of false statements in attested declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

⁽³⁾

Declared at _____

on the _____ day of _____ 20__

Before me,

⁽⁴⁾

⁽⁵⁾

1. Here insert name, address and office held in the applicant company of person making the declaration. This person should be authorised to make the declaration on behalf of the applicant company.
2. Name of applicant company.
3. Signature of person making the declaration.
4. Signature of person before whom the declaration is made. This person should be a "competent person" as defined in the Act.
5. Here insert title of person before whom the declaration is made.
6. Note: A penalty of imprisonment or a fine or both applies to the offence of making a false statement in an attested declaration.

the dti

THE DEPARTMENT
OF TRADE AND INDUSTRY
SOUTH AFRICA



REPUBLIC OF SOUTH AFRICA (RSA) FILM & TELEVISION PRODUCTION REBATE

**Confirmation of commencement of principal
photography and/or revision of 12 month
period if bundling**

Form B

Guidelines for the RSA Film and TV rebate are available online at www.thedti.gov.za from 01 June 2004 and should be read before completing this form.

Purpose of Confirmation of principal photography

The purpose of this confirmation is to assist in the administration of the funds that the government has made available for this incentive.

The **dti** will issue a receipt for form B. It is essential that the applicant for the final certificate is able to attach a copy of the receipt for form B to the final application.

Form B cannot be completed until day 1 of principal photography has been accomplished.

Form B must be received by **the dti** within six months (183 days) of the date of the provisional certificate.

If principal photography does not commence within the prescribed time frame the applicant may resubmit for a provisional certificate.

the dti

THE DEPARTMENT
OF TRADE AND INDUSTRY
SOUTH AFRICA



FOR DTI USE ONLY

Date of receipt

Date of Receipt:

Reference No:

ADVICE OF COMMENCEMENT OF PRINCIPAL PHOTOGRAPHY – FORM B

Section 1 - APPLICANT COMPANY INFORMATION

The dti Reference Number as advised on provisional certificate:	
Registered company name:	
Registered address:	Contact person Name: Office/Title: Telephone: () Business: () Mobile:
RSA company number:	Fax No: () Email address:

Section 2 - DETAILS ABOUT THE FILM

Working Title:
Date of first day of principal photography:
Confirmed or revised date of completion/delivery:
NB: Can be no later than 21 months from date of provisional certificate.

Confidentiality

Please note that all information provided by the applicant will be held by the Department on a strictly commercial-in-confidence basis. The information may be provided to the South African Revenue Service (SARS), **the dti** Panel and an independent film production consultant only. These parties will be bound by Government confidentiality provisions to treat all such information as commercial-in-confidence.

Section 3 - DOCUMENTS TO BE ATTACHED TO PRINCIPAL PHOTOGRAPHY ADVICE

Please indicate by marking the appropriate box whether the following attachments have been submitted with the Principal Photography Advice:

1. Day 1 of principal photography call sheet.
Attached Not attached
2. Day 1 of principal photography progress report.
Attached Not attached
3. Current schedule.
Attached Not attached
4. Post-production schedule.
Attached Not attached
5. Certificate of incorporation/founding statement (CK1) to verify the company's RSA incorporation and in addition documents which state the registered address, and names and addresses of company directors/ members and public officer/accounting officer of the company/closed corporation.
Attached Not attached

Section 4 - APPLICANT ATTESTED DECLARATION

I,⁽¹⁾ _____, do solemnly and sincerely

declare on behalf of⁽²⁾

that the information contained in the application for a provisional certificate, and the documents attached to it, is correct and true in every particular and I make this solemn declaration by virtue of the Justices of the Peace and Commissioners of Oaths Act 1963 as amended (Section 9), and subject to the penalties provided by that Act for the making of false statements in attested declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

⁽³⁾

Declared at _____

on the _____ day of _____ 20__

Before me,

⁽⁴⁾

⁽⁵⁾

1. Here insert name, address and office held in the applicant company of person making the declaration. This person should be authorised to make the declaration on behalf of the applicant company.
2. Name of applicant company.
3. Signature of person making the declaration.
4. Signature of person before whom the declaration is made. This person should be a "competent person" as defined in the Act.
5. Here insert title of person before whom the declaration is made.
6. Note: A penalty of imprisonment or a fine or both applies to the offence of making a false statement in an attested declaration.

the dti

THE DEPARTMENT
OF TRADE AND INDUSTRY
SOUTH AFRICA



REPUBLIC OF SOUTH AFRICA (RSA) FILM & TELEVISION PRODUCTION REBATE

Revised completion date

Form C

Guidelines for the RSA Film and TV rebate are available online at www.thedti.gov.za from 01 June 2004 and should be read before completing this form.

Purpose of revised completion date

The purpose of this revision is to assist in the administration of the funds that the government have made available for this incentive.

The **dti** will issue a receipt of form C. It is essential that the applicant for the final certificate is able to attach a copy of the receipt for form C to the final application if the completion date has changed resulting in a failure to lodge application within 3 months (90 days) of the completion date advised in form B.

Form C may be submitted at any time within the three month period post the completion date advised in form B.

The revised date cannot be any later than 21 months from the date of the provisional certificate.

Applicants have only one opportunity to submit form C, and should therefore be confident of the revised date.

The final application cannot be submitted prior to the completion date advised in Form B or Form C if revised.



FOR DTI USE ONLY

Date of receipt

Date of Receipt:

Reference No:

**ADVICE OF REVISED
COMPLETION DATE – FORM C**

Section 1 - APPLICANT COMPANY INFORMATION

Application Number as advised on provisional certificate:	
Registered company name:	
Registered address:	Contact person Name: Office/Title: Telephone: () Business: () Mobile:
RSA company number:	Fax No: () Email address:

Section 2 - DETAILS ABOUT THE FILM

Working Title:
Revised completion date:

Confidentiality

Please note that all information provided by the applicant will be held by the Department on a strictly commercial-in-confidence basis. The information may be provided to the South African Revenue Service (SARS), the dti Panel and an independent film production consultant only. These parties will be bound by Government confidentiality provisions to treat all such information as commercial-in-confidence.

Section 3 - DOCUMENTS TO BE ATTACHED TO COMPLETION DATE REVISION

Please indicate by marking the appropriate box whether the following attachments (including relevant legal agreements) have been submitted with the Provisional Application Form:

11. Revised Post Production schedule
Attached Not attached

Section 4 - APPLICANT ATTESTED DECLARATION

I,⁽¹⁾ _____, do solemnly and sincerely

declare on behalf of ⁽²⁾

that the information contained in the application for a provisional certificate, and the documents attached to it, is correct and true in every particular and I make this solemn declaration by virtue of the Justices of the Peace and Commissioners of Oaths Act 1963 as amended (Section 9), and subject to the penalties provided by that Act for the making of false statements in attested declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

⁽³⁾

Declared at _____

on the _____ day of _____ 20..

Before me,

⁽⁴⁾

⁽⁵⁾

1. Here insert name, address and office held in the applicant company of person making the declaration. This person should be authorised to make the declaration on behalf of the applicant company.
2. Name of applicant company.
3. Signature of person making the declaration.
4. Signature of person before whom the declaration is made. This person should be a "competent person" as defined in the act
5. Here insert title of person before whom the declaration is made.
6. Note: A penalty of imprisonment or a fine or both applies to the offence of making a false statement in an attested declaration.

the dti

THE DEPARTMENT
OF TRADE AND INDUSTRY
SOUTH AFRICA



REPUBLIC OF SOUTH AFRICA (RSA) FILM & TELEVISION PRODUCTION REBATE

Application for Final Certificate of Eligibility

Form D

Guidelines for the RSA Film and TV rebate are available online at www.thedti.gov.za from 01 June 2004 and should be read before completing this form.

Eligible Applicants

Companies are eligible to apply for final certification where they:

- Are a production company responsible for all activities involved in making the production in South Africa;
- Possess a provisional certificate of eligibility; and
- Possess a form B receipt indicating that the film commenced principal photography within 6 months of receipt of the provisional certificate; and
- Submit this final application within 3 months of the completion of the film as indicated in form B; or
- possess a form C receipt accepting a revised completion date, and
- Submit this application within 3 months of that completion date.



Date of receipt

Date of Receipt:

Reference No:

ADVICE OF REVISED COMPLETION DATE – FORM C

Section 1 - APPLICANT COMPANY INFORMATION

Registered company name:	
Registered address:	Contact person Name: Office/Title: Telephone: () Business: () Mobile:
RSA company number:	Fax No: () Email address:
Income tax reference number:	Fax No: Email address:
The names and addresses of company directors must be included with documentation supporting the company's RSA permanent residence.	
Is this entity a special purpose corporate vehicle that has been used exclusively for the production of this project or bundle of projects? YES <input type="checkbox"/> NO <input type="checkbox"/>	
Bank account of special purpose corporate entity to which rebate should be transferred if successful in application:	
Original cancelled cheque and original credit order instruction must be attached.	

Section 2 - DETAILS ABOUT THE FILM / TELEVISION PRODUCTION

Working Title:
Synopsis:

Format and schedule:	
<input type="checkbox"/> Feature film <input type="checkbox"/> Mini-series <input type="checkbox"/> Telemovie <input type="checkbox"/> TV Series <input type="checkbox"/> Documentary	
Estimated total running length (in minutes):	
Final Schedule number of shooting weeks: South Africa:	of which filmed in
Actual start of principal photography:	
Actual date of completion:	
If TV Series or mini series actual number of episodes:	and duration of each episode:
Does this application take advantage of the bundling opportunity: YES <input type="checkbox"/> NO <input type="checkbox"/>	
Twelve month period: Start yy/mm/dd	Finish yy/mm/dd
If yes, has the expenditure claimed as QSAPE in this application been incurred inside of the nominated twelve-month period? YES <input type="checkbox"/> NO <input type="checkbox"/>	
Status:	
Does the film qualify as a South African Film?:	YES <input type="checkbox"/> NO <input type="checkbox"/>
If yes, is its qualification as a South African film under an official Co production treaty?:	YES <input type="checkbox"/> NO <input type="checkbox"/>
Is the film ready for distribution?:	YES <input type="checkbox"/> NO <input type="checkbox"/>
Documentation verifying the RSA ownership of all rights in the film or a copy of co-production approval from the NFVF should be supplied with this application if appropriate.	

Connected expenditure

Provide the name of all companies or individuals who provided goods/services in making the film and are connected with the production company or any of its associate companies.

(Please attach additional information on a separate sheet if there is insufficient space provided below).

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Has the production company taken over responsibility for making the film from another production company?

YES NO

If yes, the previous company or companies should be listed below with the relevant legal agreement confirming the transfer of responsibility also included as an attachment.

(Please attach details on a separate sheet if there is insufficient space provided below.)

Registered company name:	Registered company name:
Registered address:	Registered address:
Company number:	Company number:

Section 3 - AUDITED EXPENDITURE STATEMENT

General requirements

The audited expenditure statements for the film must indicate the level of production expenditure, identifying the level of Qualifying South African production expenditure, clearly and separately showing which expenditure was incurred on film production activity undertaken in RSA and which expenditure, if any, was incurred on film production activity undertaken outside of RSA.

Auditors statement

The audit should be carried out by an auditor registered with SAICA or PAAB.

Does the appointed auditor have any connection with the applicant?

YES NO

Please outline that connection if applicable.

(Please attach additional information on a separate sheet if there is insufficient space provided below.)

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Production expenditure

Total production expenditure

Rand _____

Total qualifying South African production expenditure (QSAPE)

Rand _____

Rebate

Rand _____

Please provide a summary breakdown of the above as an attachment.

The summary format can be in the order determined by the financiers (for example, using a particular studio chart of accounts); however, it should show all top sheet categories and include column headings and the appropriate split of expenditure as indicated below.

- | | |
|----------|--|
| Column 1 | Expenditure item/description, for example Story and Script, Producers, Directors, Cast, etc. |
| Column 2 | QSAPE in South Africa |
| Column 3 | QSAPE outside of South Africa |
| Column 4 | Non QSAPE |
| Column 5 | Total production expenditure per summary cost report attached |
| Column 6 | Prior Company Expenditure if appropriate |
| Column 7 | Payments to connected parties if appropriate |

This summary should be supported by the same split at a detail level reconciled to the detailed cost report. The application should be accompanied by a full general ledger or bible in electronic form. Ideally the ledger should be by category to support cost allocation.

It is acknowledged that in order to meet the 3 month deadline there may be some budgeted expenditure that has not been spent. Applicants should note this expenditure in a separate column to reconcile, but this expenditure cannot be claimed as QSAPE.

Confidentiality

Please note that all information provided by the applicant will be held by the Department on a strictly commercial-in-confidence basis. The information may be provided to the South African Revenue Service (SARS), **the dti** panel and an independent film production consultant only. These parties will be bound by Government confidentiality provisions to treat all such information as commercial-in-confidence.

Section 4 - DOCUMENTS TO BE ATTACHED TO AN APPLICATION FOR A FINAL CERTIFICATE

Please indicate by marking the appropriate box whether the following attachments (including relevant legal agreements) have been submitted with the Provisional Application Form:

1. Audited expenditure summary in prescribed format.
Attached Not attached
2. Audited detailed expenditure.
Attached Not attached
3. Auditors statement.
Attached Not attached
4. General ledger in electronic format.
Attached Not attached
5. Final schedule as executed clearly noting days located in South Africa.
Attached Not attached
6. Certificate of incorporation/founding statement (CK1) to verify the company's RSA incorporation and in addition documents which state the registered address, and names and addresses of company directors/ members and public officer/accounting officer of the company/closed corporation.
Attached Not attached
7. Any agreement verifying the transfer of ownership in relation to copyright for intellectual property including promotional material, or establishing that copyright in such material is held by a South African – where purchase or licensing of South African copyright expenditure is incurred before completion of the film, and is therefore being claimed as qualifying South African production expenditure.
Attached Not attached Not applicable
8. Documentation to verify the South African ownership of all rights in the film or a copy of co-production approval from NFVF.
Attached Not attached Not applicable
9. Full final Cast and Crew listing showing nationality/residency of each person, their ID number and total fee or salary paid to all RSA nationals/residents.
Attached Not attached
10. Distribution agreement or letter confirming distribution.
Attached Not attached
11. A time-coded VHS or DVD copy of the film or extracts to evidence its completion to a standard suitable for exhibition if at the time of application the film has not been released in South Africa.

12. An original and valid Tax Clearance Certificate issued by any SARS branch office
Attached Not attached

13. Original credit order instruction form
Attached Not attached

14. Original cancelled cheque
Attached Not attached

Section 5 - APPLICANT ATTESTED DECLARATION

I, ⁽¹⁾ _____, do solemnly and sincerely

declare on behalf of ⁽²⁾ _____

that the information contained in the application for a provisional certificate, and the documents attached to it, is correct and true in every particular and I make this solemn declaration by virtue of the Justices of the Peace and Commissioners of Oaths Act 1963 as amended (Section 9), and subject to the penalties provided by that Act for the making of false statements in attested declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

⁽³⁾

Declared at _____

on the _____ day of _____ 20__

Before me,

⁽⁴⁾

⁽⁵⁾

1. Here insert name, address and office held in the applicant company of person making the declaration. This person should be authorised to make the declaration on behalf of the applicant company.
2. Name of applicant company.
3. Signature of person making the declaration.
4. Signature of person before whom the declaration is made. This person should be a "competent person" as defined in the act
5. Here insert title of person before whom the declaration is made.
6. Note: A penalty of imprisonment or a fine or both applies to the offence of making a false statement in an attested declaration.

Republic of South Africa (RSA) Film and TV Production Rebate Auditor's Report

The Programme Manager
RSA Film and TV Rebate
Department Trade and Industry,
Private Bag X86
Pretoria 0001
South Africa

We have examined the schedule of production expenditure referred to in the application dated _____ in so far as they relate to the making of the film entitled _____.

We confirm that the auditor responsible for the preparation of this report is registered with SAICA or PAAB and is not an officer, partner, employer or employee of the applicant company or an associate of the applicant company.

The applicant is responsible for the preparation of the expenditure statements. It is our responsibility to form an independent opinion, based on our examination, of those expenditure statements referred to below and to report our opinion to you.

Basis of opinion: We conducted our audit in accordance with the South African Auditing Standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial information is free of material misstatement.

We have received all the information and documents necessary to enable us to ascertain the amount of Production expenditure and qualifying South African production expenditure (as defined in the guidelines).

Our work included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, and the presentation of those statements as they relate to the stated criteria in the guidelines.

On the basis of such examination, we report that in our opinion:

The total of the company's qualifying South African production expenditure is Rand _____,

In our opinion, this schedule presents fairly, in all material respects, the production costs of the production entitled _____ for the period ended _____ in accordance with generally accepted accounting principles.

Our examination indicates that the schedule criteria was met.

(Signed)
(for Auditor)
(Dated)



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