



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

PROGRAMME GUIDELINES

Location Film and Television Production Incentive

Issued: 28 January 2008

*The Enterprise Organisation
Department of Trade and Industry
Private Bag X86, Pretoria 0001
Website: www.thedti.gov.za
Call Centre: 0861 843 384*

the dti Campus: 77 Meintjies Street
Sunnyside, Pretoria 0002
Republic of South Africa



Contents

<u>Section</u>	<u>Page</u>
1. Overview	2
2. Description of the Location Film and Television Production Incentive	3
3. Eligibility Criteria.....	4
4. Eligible Formats.....	5
5. Exclusions	7
6. Qualifying Productions	7
7. Credit.....	7
8. Definition of Production Expenditure	8
9. Treatment of Expenditure.....	10
10. Rebate Calculation	12
11. Application Process.....	13
12. Rebate Disbursement.....	13
13. Interaction of this incentive with other sources of funding.....	14
Appendix A: Glossary of terms and definitions	15
Contact details for enquiries.....	18

Disclaimer:

This guidelines document provides the criteria to assess proposals from potential film and television projects and the process of applying for the incentive. The guidelines are approved and issued by the Minister of Trade and Industry for the purpose of ensuring clarity on the aim and requirements of the incentives programme. **the dti** reserves the right to amend the guidelines as it deems appropriate.



1. OVERVIEW

- 1.1 The South African government recognises the potential of the film industry and has prioritised it as one of the sectors under its Accelerated and Shared Growth Initiative (ASGI-SA). The growth of the film industry could have a tremendous impact on economic development in terms of employment and exports, while stimulating a host of supplier industries.
- 1.2 South Africa has a growing and vibrant film sector, attested in the recent past by productions such as the award-winning *Tsotsi* and the internationally acclaimed *Blood Diamond*. Opportunities abound and producers continue to benefit from the cost competitiveness of the country's beautiful locations.
- 1.3 To support the growth of the sector, the Department of Trade and Industry (**the dti**) is offering incentives in order to increase local content generation and improve location competitiveness for foreign film productions. In addition to incentives, **the dti** is working with other role players on raising the profile of the sector in general and a number of strategic co-production treaties are set to improve distribution locally and internationally.
- 1.4 I hereby extend an invitation to industry players to make use of this facility and to support the South African Government in realising its goals of growth, employment and equity.

Mandisi Mpahlwa, MP

Minister of Trade and Industry

Date: 15/01/2008



2. DESCRIPTION OF THE LOCATION FILM AND TELEVISION PRODUCTION INCENTIVE

- 2.1** The South African government offers a package of incentives to promote its film production industry. The incentives consist of the Location Film and Television Production Incentive to attract foreign-based film productions to shoot on location in South Africa and the South African Film and Television Production Incentive, which aims to assist local film producers in the production of local content.
- 2.2** The Location Film and TV Production Incentive is only available to foreign-owned qualifying productions with Qualifying South African Production Expenditure (QSAPE) of R12 million and above¹.
- 2.3** The objective of the incentive is to encourage and attract large budget films and television productions that will contribute towards SA economic development and international profile and increase foreign direct investment.
- 2.4** An eligible applicant will be rebated a sum totalling 15% of the QSAPE and the rebate is capped at R10 million.
- 2.5** The incentive will be effective from 01 February 2008 (subject to paragraph 3.1) and will be administered for a period of six years up to 2014.

¹ Note that there is a separate Programme Guideline document for the film incentive targeted at promoting the local-owned productions and co-productions.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

3. ELIGIBILITY CRITERIA

3.1 Commencement

- Production must apply before commencement of principal photography.

3.2 Registered legal entity/special purpose vehicle

- An applicant must be a Special Purpose Corporate Vehicle (SPCV) incorporated in the Republic of South Africa solely for the purpose of the production of the film or television project.
- 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 whole production worldwide.
- Only one entity per film production, television drama or documentary series can be eligible for the incentive.

3.3 Compliance with Broad-Based Black Economic Empowerment

- For the year 2008, both the applicant SPCV and holding company(ies) must comply to the requirements for Broad-Based Black Economic Empowerment in terms of the Codes of Good Practice for Broad-Based Black Economic Empowerment, as issued in Government Gazette 09 February 2007.
- **The dti** will, within a year from the effective date of this incentive programme, publish further targets and requirements that the applicants would be required to meet.

3.4 Shooting schedule requirements

Eligibility requirement for the shooting schedule for productions with QSAPE of R12m to R99,999,999:

- At least 50% of the principal photography schedule must be filmed in South Africa;
- A minimum of four weeks of the principal photography must be filmed in South Africa.



NB: For productions with QSAPE of R100m and more, the requirements of (3.4) may be waived at the discretion of the Adjudication Committee such as principal photography in the Southern African Customs Union and utilisation of South African technical and human resources which will be to the advantage of the South African economy. Such discretion will of necessity take into account the budgetary implications of the decision-making.

4. ELIGIBLE FORMATS

The following formats are eligible: feature films, telemovies, television drama series, documentaries and animation. Each one is explained in turn hereunder.

4.1 Feature film

- A film including animation commonly screened as the main attraction in commercial cinemas;
- No less than 90 minutes, or in the case of a large format (IMAX) film, no less than 45 minutes;
- Shot and processed to commercial theatrical release standards for cinema exhibition or television broadcast or direct-to-video.

4.2 Tele-movies

- 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;
 - or in the case of a programme predominantly utilising cell, stop motion and/or computer animation, not less than one half commercial television hour;
- Shot and processed to commercial release standards, for cinema exhibition or television broadcast.



4.3 Television drama series and 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 to form a narrative structure (similar to that of a novel) which features a major continuous plot enhanced by minor plots and contains the

expectation of an ending that resolves the major plot tensions arranged consecutively 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 short story), but without continuity of plot between episodes (although there may be host elements common to each episode) and made to be broadcast under one generic title;
- Shot and processed to commercial release standards for telecast.
- Each episode has a minimum duration of one television half-hour.

4.4 Documentary, documentary series and documentary feature

- A non-fictional informative or educational programme or series recording real people or events that may involve some dramatisation;
- No less than 90 minutes in length, or in the case of a large format (IMAX) film, no less than 45 minutes;
- Shot and processed to commercial theatrical release standards for cinema exhibition, television broadcast, direct-to-video or DVD;
- A series limited to 13 episodes.

4.5 Animation

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.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

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.

5. EXCLUSIONS

5.1 The following formats are not eligible:

- Reality TV
- Discussion programme
- Current affairs
- News
- Advertising programme or commercial
- Panel programme
- Variety programme or a programme of a like nature
- Public events including sports events
- A training or “how to” programme
- Other

5.2 Films which fall within schedules 6, 7 or 10 of the South African Films and Publications Act 1996 as amended, are specifically not eligible for the rebate.

5.3 Bundling is not allowed.

6. QUALIFYING PRODUCTIONS

The productions eligible for the Location Film and TV Production Incentive must have minimum expenditure on QSAPE of R12 million and above.

7. CREDIT

the dti must be credited for its contribution to the production.



8. DEFINITION OF PRODUCTION EXPENDITURE

All costs including ***Total Production Expenditure (TPE), Qualifying South African Production Expenditure (QSAPE) and Non-Qualifying South African Production Expenditure (Non-QSAPE)*** must be presented with each application for purposes of clarity.

8.1 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.]*
- *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.*

8.2 QUALIFYING SOUTH AFRICAN PRODUCTION EXPENDITURE (QSAPE)

- Qualifying Production Expenditure will include all the production costs spent by the applicant on copyrights and goods owned, or facilities and services provided by South African companies.
- Where individuals or contractors are paid via an agency, proof of the South African citizenship 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 South Africa as long as the shooting schedule requirements are met.



8.3 NON-QUALIFYING EXPENDITURE

- Financing expenditure
- General business overheads
- Other associated party fees
- Deferments, profit participation, residuals
- Advances
- Land and building
- Costs of services embodied in goods
- Depreciation
- Other

9. TREATMENT OF EXPENDITURE

9.1 Value Added Tax (VAT)

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

9.2 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.

9.3 Arm's length expenditure

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 particular goods or services in relation to the film production, then a rate no greater than the commercial rate for those goods or services 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 must 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 particular goods or services purchased by the applicant.

9.4 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.

9.5 Expenditure by prior companies

Eligibility for the incentive 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 incentive. 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.

9.6 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 of the applicant or an associated party retaining any goods purchased beyond the completion of the film, an independent valuation must be made of those goods and that valuation must be deducted from the value of QSAPE for the purpose of calculating the rebate.



9.7 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 must 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 5.8.

10. REBATE CALCULATION

- 10.1** The rebate is calculated as 15% of QSAPE.
- 10.2** The maximum rebate is capped at R10 million.



11. APPLICATION PROCESS

11.1 APPLICATION FOR PROVISIONAL CERTIFICATE

The following documents must be included in the application:

- Summary and detailed budget in SA Rand
- Financial plan including letters of intent from investors
- Advanced ruling from the NFVF in the case of a co-production
- Distribution agreement
- Provisional shooting schedule
- Certificate of incorporation of the SPCV (CK1)
- Appointment of directors of the SPCV (CM 29)
- Written confirmation that **the dti** will be credited

11.2 CONFIRMATION OF COMMENCEMENT OF PRINCIPAL PHOTOGRAPHY

The following documents must be included in the confirmation:

- Day 1 of principal photography call sheet
- Day 1 of principal photography progress report
- Current photography schedule
- Post-production schedule

11.3 REVISED COMPLETION DATE (To be completed only if the completion date differs from the one indicated in the original application.)

The following documents must be included:

- Revised post-production schedule

12. REBATE DISBURSEMENT

- Rebate is disbursed on completion date of production;
- **the dti** will verify the completeness of the claim/expenditure before payment is made.



12.1 APPLICATION FOR PAYMENT OF THE REBATE

The following documents must be included:

- Audited summary and detailed expenditure report
- Auditor's statement
- Complete general ledger in electronic format
- Final ruling from the Department of Arts and Culture in the case of a co-production
- Certificate of incorporation of the SPCV (CK1)
- Full final cast and crew list showing the following information:
 - Nationality/residency
 - ID or passport numbers
 - Total fee/salary paid to all SA nationals/residents
 - Contract duration
 - Role in the production
- Distribution agreement
- A VHS or DVD of the final production
- An original valid Tax Clearance Certificate issued by SARS
- Original credit order instruction form
- Original cancelled cheque

13. INTERACTION OF THIS INCENTIVE WITH OTHER SOURCES OF FUNDING

- Any other South African incentives, training or internship funding specific to this project may be claimed, but must be deducted from the gross QSAPE before calculation of the rebate. An exception is applicable for 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 section 24F of the Income Tax Act No 58 of 1962 is eligible for the incentive.
- 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.



Appendix A: Glossary of terms and definitions

Non-Qualifying Expenditure	
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.
General business overheads	South African business overheads, being general business overheads, are excluded from QSAPE to the extent that they exceed the lesser of <ul style="list-style-type: none"> - 2% of the total of the company's TPE on the film production or - R200 000 (two hundred thousand Rand).
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 <ul style="list-style-type: none"> - 10% of the total of the company's TPE on the film production or - R1 000 000.00 (one million Rand).
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 <ul style="list-style-type: none"> - 10% of the total of the company's TPE on the film production or - R1 000 000,00 (one million Rand)
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: <ul style="list-style-type: none"> - 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; - Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the production through future exhibition and distribution.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Advances	All payments made by way of an advance on a payment in respect of deferrals, profit participation or residuals are excluded from QSAPE unless they are non-recoverable.
Land and buildings	<p>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.</p> <p>Sets and props will 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 completion of the film, must be deducted from the value of QSAPE for the purpose of calculating the rebate.</p>
Costs of services embodied in goods	If the cost of certain services are embodied in the cost of goods delivered to the applicant company and those services were predominantly (namely, greater than 50% 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 those particular goods, for example Kodak stock.
Other exclusions	<p>The following sundry items do not qualify as QSAPE:</p> <ul style="list-style-type: none"> - Errors and Omission Insurance which protects the copyright holders from litigation once the film is exhibited; - Any gifts, entertainment and gratuities.
Audited expenditure statement	<p>All costs claimed as QSAPE must be presented in an audited expenditure statement. The audit must be prepared by a person who is</p> <ul style="list-style-type: none"> • an auditor registered with SAICA or PAAB. • If the auditor has any connection to the applicant that connection should be declared. • the dti reserves 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. <p>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.</p>



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Sample footage, including the dti credit	<p>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 in the application to verify that the production is ready for distribution or exhibition to the general public.</p> <p>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.</p>
Attested declaration	<p>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.</p>
Further information as requested	<p>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</p>
Total production expenditure	<p>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.</p> <p>Section 24F of the Income Tax Act No 58 of 1962 (The Act) defines production expenditure as follows:</p> <ul style="list-style-type: none">• "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 –<ul style="list-style-type: none">- 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



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

	<p>used, as the case may be, in the production of the film;</p> <ul style="list-style-type: none">- 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.
Compliance with Broad-Based Black Economic Empowerment	Compliance with Broad-Based Black Economic Empowerment in terms of the Black Economic Empowerment Act (53 of 2003) and the Codes of Good Practice for Broad-Based Black Economic Empowerment, as issued in Government Gazette 09 February 2007

CONTACT DETAILS FOR ENQUIRIES

For further information on film incentives, please contact:

Postal address:

The Enterprise Organisation
Private Bag X86
Pretoria 0001

Website: www.thedti.gov.za

Call Centre: 0861 843 384

Physical Address:

the dti Campus
77 Meintjies Street
Sunnyside

Pretoria 0002