KWAZULU-NATAL FILM COMMISSION

SOUTH AFRICA INCENTIVES AVAILABLE FOR THE FILM INDUSTRY

CONTENTS

1. INTRODUCTION

The South African Government offers a package of incentives to promote its film production and post-production industry. The incentives consist of the Foreign Film and Television Production and Post-Production incentive to attract foreign-based film productions to shoot on location in South Africa and conduct post-production activities, and the South African Film and Television Production and Co-Production incentive, which aims to assist local film producers in the production of local content.

The South African film industry is estimated to be contributing R5.5 billion to the South African economy and is highly supported by the government through a number of institutions such as the Department of Arts and Culture, Industrial Development Corporation (IDC), the National Film and Video Foundation (NFVF), the Department of Trade and Industry (DTI) and the South African Revenue Services (SARS).

Various provincial film offices are established to provide assistance at a provincial government level. The industry is highly concentrated in three provinces, Gauteng, Kwa-Zulu Natal and Western Cape.

The industry is dominated by private companies and close corporations and was mostly established between 1990 and 2000.

The South African government has recognised the potential inherent in the local film and video industry in creating jobs and contributing to the Gross Domestic Product (GDP). Over the past 10 years the South African film industry has reported an essential growth. The growth is evidenced by the acknowledgment the sector has received from the government by introducing policies that seek to augment the industry while also strengthening its hand it terms of funding, the growth in production volumes and box office returns. With the global economic crisis hitting all sectors of production, the SA film industry revealed a resilient feature and continued to churn out quality products that were appreciated by the audience.

According to the research conducted by the NFVF, both the feature film production and television received much attention in the previous 10 years. Feature film production has increased by more than 100%.

Private investors in SA are reluctant to invest in the film industry and according to respondents this is due to the fact that the industry is high risk and the return on investment are uncertain. However, the lack of investment from the private sector did not discourage the SA film producers instead they seek alternative routes to fund the production of films. During the 10 years under review SA filmmakers relied on funding from the government (27.5%) of the surveyed companies while 23.7% of the companies used own investment to fund production of films. Licensing from distributors and broadcaster were other avenue explored by filmmakers for raising film financing.

Apart from the funding from government, the industry is taking advantage of the co-production treaties SA has signed with international countries to raise funding for the development and production of films.

In the past 10 years there have been major developments in the local film and video industry and the most notable ones as listed by the respondents are;

- The change in the threshold of the film and television incentive administered by the DTI widely known as “the rebate”,
- the licensing of more broadcasters,
- Availability of more funding sources as well as;
- The availability of more mobile, cheaper yet good production equipment.

Other developments reported on include the availability of more co-production treaties, the success recorded by more local films and the creation of representative bodies to advocate industry stakeholder issues.

The filmmakers explored the opportunities presented to them by the free to air and pay television to sell their content and the DVD medium was mostly used for the distribution of content.

According to respondents the turnaround strategy from the public broadcaster (SABC), continued government support and the co-productions opportunities between SA productions companies and international companies presents endless opportunities. The licensing of new broadcasters will open room for more content and thereby expand the market.

The ability to develop the industry to a competitive standard, the accessibility of audiences and technological development of the industry are some of the ways that will advance the South African film industry.

2. FOREIGN FILM AND TELEVISION PRODUCTION AND POST-PRODUCTION INCENTIVE

2.1 Objective:

To encourage and attract large-budget films and television productions and post-production work that will contribute towards employment creation, enhancement of international profile, and increase the country’s creative and technical skills base.

2.2 Benefits:

2.2.1 Shooting on location in South Africa, the incentive will be calculated as 20% of the Qualifying South African Production Expenditure (QSAPE). No cap will apply for this incentive.

2.2.2 Shooting on location in South Africa and conducting post-production with a Qualifying South African Post-Production Expenditure (QSAPPE) of R1.5 million in South Africa, the incentive will be calculated at 22,5% of QSAPE and QSAPPE (an additional 2,5%, cumulative 22,5%)

2.2.3 Shooting on location in South Africa and conducting post-production with a QSAPPE of R3 million and above in South Africa, the incentive will be calculated as 25% of QSAPE and QSAPPE (an additional 5%, cumulative 25%).

2.2.4 Foreign post-production with QSAPPE of R1.5 million, the incentive is calculated at 22, 5% of QSAPPE.

2.2.5 Foreign post-production with QSAPPE of R3 million and above the incentive is calculated at 25% of QSAPPE.

2.3 Eligible Enterprises

Foreign-owned qualifying productions and South African qualifying post-production work with:

2.3.1 QSAPE of R12 million and above, provided that at least 50% of the principal photography schedule is filmed in South Africa, for a minimum of four weeks.

2.3.2 QSAPPE of R1.5 million and above provided that 100% of the post-production is conducted in South Africa, for a minimum of two weeks.

2.3.3 An applicant must be a Special Purpose Corporate Vehicle (SPCV) incorporated in the Republic of South Africa solely for the purpose of the production and/or post-production of the film or television project.

2.3.4 An applicant must be the entity responsible for all activities involved in the production and/or post-production in South Africa and must have access to full financial information for the whole production and post-production worldwide.

2.3.5 Only one entity per production and/or post-production for film, animation and television drama or documentary series is eligible for the incentive.

2.3.6 The applicant must comply fully with its obligations in terms of the Legal Deposit Act 54 of 1997.

3. SA FILM & TV PRODUCTION AND CO-PRODUCTION

3.1 Objective:

To support the local film industry and to contribute towards employment opportunities in South Africa.

3.2 Benefits:

The rebate is calculated as 35% of the first R6 million of QSAPE and 25% of the QSAPE on amounts above R6 million.

3.3 Eligible Enterprises:

3.3.1 Special Purpose Corporate Vehicles (SPCV) incorporated in the Republic of South Africa solely for the purpose of the production of the film or television project. The SPCV and parent company/ies must have a majority of South African shareholders of whom at least one shareholder must play an active role in the production and be accredited in that role.

3.3.2 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.

3.3.3 Only one film production, television drama or documentary series per entity is eligible for the incentive.

3.3.4 The following formats are eligible: feature films, tele-movies, television drama series, documentaries and animation.

3.3.5 The incentive is available only to qualifying South African productions with a total production budget of R2.5 million and above.

3.4 Contacts:

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4. THE DEPARTMENT OF TRADE & INDUSTRY SOUTH AFRICA - (THE DTI) INCENTIVES

The revised film production incentive intends to increase local content generation and improve location competitiveness for foreign film productions in South Africa. The new film and television production incentive comprises of:

- Location Film and Television Production Scheme,
- The South African Film and Television Production and Co-Production Scheme.

The incentives are intended to increase local content generation and improve location competitiveness for filming in South Africa.

4.1 Location Film and Television Production Incentive

The Location Film and Television Production scheme will replace the Large Budget Film and Television Production Rebate, which the dti implemented in 2004.

This component is only available to foreign-owned productions with Qualifying South African Production Expenditure (QSAPE) of R12 million and above. It provides a rebate of 15 per cent of the QSAPE to qualifying productions in the following formats: feature films, telemovies, television drama series, documentaries, animation and short form animations. Its aim is to attract large-budget overseas film and television productions to South Africa.

4.2 South African Film and Television Production and Co-Production Scheme

The South African Film and Television Production Incentive is being introduced in order to provide more financial support for locally-owned productions and co-productions.

This component is available to both South African productions and official treaty co-productions with a total production budget of R2,5 million and above. It provides a rebate of 35 per cent for the first R6 million, and 25% for the remainder of the qualifying production expenditure. i.e. following formats are eligible: feature films, telemovies, television drama series, documentaries, animation and short form animations.

The value of the rebate for any qualifying production is uncapped. Effectively, the following key changes are being introduced:

4.2.1 The reduction of the threshold from R25 million QSAPE for foreign-owned productions to R12 million;
4.2.2 A differential requirement that local-owned productions and co-productions must have at least R2,5 million of total production budget;
4.2.3 An increase of the rebate from 25% up to 35% for local productions in order to ensure higher financial support for local productions;
4.2.4 The reduction of the threshold will make the bundling of productions unnecessary for producers
4.2.5 The provisions of the incentive will encourage production companies to advance industry transformation through adherence to the requirements of Broad-Based Black Economic Empowerment.

Moreover, the incentive is structured in such a way that it will provide necessary impetus to the growth of the South African film and television production industry thus creating an environment conducive for South African producers to attract investment and develop stable output and sustainable production companies.

All productions currently approved in terms of the Large Budget Film and Television Production Rebate would still be treated under the rules of that scheme, and will not be able to convert to the new incentive. In addition to the financial support provided through the new rebate incentives, a number of other measures are being implemented as part of the broader sector development strategy. These include capacity development for emerging production companies, the development of writers and editors through the enterprise development programme and the establishment of five pilot programmes in different locations to address distribution infrastructure, local content and audience expansion.

Application forms and programme guidelines can be downloaded from the Department of Trade and Industry on the following link: www.thedti.gov.za/film/filmincentive.htm

4.3 Contacts

For more information contact the Business Development Unit on:
Tel: +27 12 394 9500 or +27 12 394 1261
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Call Centre: +27861 843 384

5. TAX REBATES (INCOME TAX ACT SECTION 12 (0))

The South African Revenue Services (SARS) has introduced an amendment to section 24F of the Income Tax Act 58 of 1962. Section 24F was introduced as a special deduction in the determination of taxable income derived from trade as film owners.

Section 24F (1) defines a film owner as any person who owns, whether solely or jointly, a film. Persons who render a service to a film owner, such as a production company and distribution companies, are excluded from the definition. A film owner may claim three special deductions under the section 24F provision. The first deduction relates to production and post-production costs in respect of a film (film allowance).

Film owners qualify for a deduction in respect of marketing expenditure incurred on a South African Export Film (SAEF marketing deduction) and also a deduction in respect of print costs incurred in the making of copies of a film (print cost deduction). The allowance is deductible on completion of the film. The challenge with this provision is that not many filmmakers, if any, are able to use the tax incentive for the benefit of their projects. There is no data available to show how much money or how many production companies have been able to use this provision. These challenges have brought about the draft Taxation Laws Amendment Bill (draft bill) which proposes the scrapping of Section 24F. A new provision section 12 O of the Income Tax Act No 58 of 1962 has been introduced to provide easier and more effective tax exemptions for filmmakers, (Kingdom & Lewis, 2011). This new provision seeks to eliminate all income tax on film for a 10 year period. In administering this new tax provision, Treasury will rely on existing infrastructure within government which regulates film and television production, (Kingdom & Lewis, 2011) SARS "Taxation of Film Owners Guide" (2004), p 4.

The tax exemptions proposed by this new regime will only apply to the initial investor in the film and not to those individuals to whom initial investors may have on-sold their rights to profit from the film. The exemption excludes income from guaranteed payments and fixed-amount salaries. The income accruing from the film will no longer be exempt after 10 years from the date on which the film is ready for exhibition, (Kingdom & Lewis, 2011). The draft Bill proposes that this incentive of section 12 O apply to films that begin production on or after January 2012 and are completed before January 2017.

C J Coetzee

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Please feel free to contact the KZN Film Commission CEO on the contact details below
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