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Trade and Industry  
REPUBLIC OF SOUTH AFRICA

# PROGRAMME GUIDELINES

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## The South African Film and Television Production and Co-production Incentive

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**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.



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## 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



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## **2. DESCRIPTION OF THE SOUTH AFRICAN FILM AND TELEVISION PRODUCTION INCENTIVE**

- 2.1** The South African Government offers a package of incentives to promote its film and television production industry. The incentives consist of the South African Film and Television Production Incentive, which aims at assisting the local film producers in the production of local content, as well as the Location Film and Television Production Incentive to attract foreign-based film productions.
- 2.2** The South African Film and Television Production Incentive is only available to qualifying South African productions and official treaty co-productions with total production budgets of R2,5 million and above<sup>1</sup>.
- 2.3** The objective of the South African Film and Television Production Incentive is to support the local film industry and to contribute towards employment opportunities in South Africa.
- 2.4** The South African Film and Television Production Incentive provides financial assistance to local productions in the form of a rebate of up to 35% of the Qualifying South African Production Expenditure (QSAPE). The rebate will be capped at R10 million.
- 2.5** The incentive is effective from 01 February 2008 (subject to paragraph 3.1) and will be administered for a period of six years up to 2014.

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<sup>1</sup> Note that there is a separate Programme Guideline document for the Location Film and TV Production Rebate, targeted at attracting larger-budget international productions



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### **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. 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 credited in that role.
- 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** Only one film production, television drama or documentary series per entity is eligible for the incentive.

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

#### **3.5 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.



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### **3.6 Shooting schedule requirements**

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

## **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**

- 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, direct-to-video or DVD.

### **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 or for 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 so as 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 a 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; and is shot and processed to commercial release standards for telecast.
- Each episode must have a minimum duration of a 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 min. 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;
- 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 entertaining, educational, informative or instructive manner.



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- 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. QUALIFYING PRODUCTIONS**

**5.1** The total production budget (total production expenditure) must be a minimum of R 2,5 million.

For example, a project of Total Production Expenditure (TPE) of R2,5 million will have R1,875 million Qualifying South African Production Expenditure (QSAPE), which is at least 75% of TPE (see paragraph 7.1). It is however possible for a project with a TPE of R2,5 million to have a QSAPE of R2,5 million.

**5.2** The applicant must provide **the dti** with a distribution plan and prove that they have secured a distribution agreement.

**5.3** The applicant must provide **the dti** with a financial plan, a letter or letters of intent from financier(s) and the applicant must at least commit 25% of the total budget.

## **6. EXCLUSIONS**

**6.1 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



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- 6.2 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.
- 6.3 Commissioned projects by any broadcaster will not be eligible for this incentive.
- 6.4 Bundling is not allowed.
- 6.5 SPCV should not be owned and controlled by South African and foreign broadcasters.

## **7. ELIGIBLE PRODUCTIONS**

The productions eligible for the South African Film and Television Production Incentive can either be a 'Qualifying SA Production' or an 'Official Treaty Co-production'.

### **7.1 A Qualifying South African Production means a film in respect of which:-**

- At least 75% of the total budget of the film is defined as 'Qualifying South African Production Expenditure (QSAPE);
- The majority of intellectual property is owned by South African citizens
- the director is a South African citizen, 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;
- The top writer and producer credits include South African citizens 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 (either exclusive or shared collaboration credits);
- The majority of the five highest paid performers are South African citizens unless the production requires the participation of an individual who is not South African citizen, in which case approval may be given at provisional certification stage.
- The majority of the film's heads of departments and key personnel are South African citizens.



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## 7.2 A Qualifying Co-Production must meet the following conditions:

- A production must be approved by the Minister of Arts and Culture as an Official Treaty Co-production;
- The applicant must submit a copy of the advance ruling at application stage for provisional certification and a copy of the final ruling when submitting the application for the final payment of the incentive.

## 8. CREDIT

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

## 9. ELIGIBLE 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.

### 9.1 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;*



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- *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.*



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## **9.2 Qualifying Production Expenditure**

- Qualifying Production Expenditure will include all the production costs spent by the applicant on intellectual property 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 and 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 and monitoring reports.

## **9.3 Non-Qualifying Expenditure<sup>2</sup>**

- 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

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<sup>2</sup> Definition of Non-Qualifying Expenditure appears in Appendix A.



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## **10. TREATMENT OF EXPENDITURE**

### **10.1 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.

### **10.2 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.

### **10.3 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, that rate 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.



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#### **10.4 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 incentive.

#### **10.5 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.

#### **10.6 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 incentive.



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## **10.7 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 incentive, it will not have been incurred before the completion of the film and will not qualify as QSAPE under Section 5.8.

## **11. REBATE CALCULATION**

- 11.1** The rebate is calculated as 35% of first R6 million of the QSAPE; thereafter 25% is calculated for the remainder;
- 11.2** The maximum rebate is capped at R10 million.



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## **12. APPLICATION PROCESS**

### **12.1 Application for provisional approval**

**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

### **12.2 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

### **12.3 REVISED COMPLETION DATE** (To be completed only if the completion date differs from the one indicated on the original application.)

**The following document must be included:**

- Revised post-production schedule

## **13. REBATE DISBURSEMENT**

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

### **13.1 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



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- 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.

#### **14. INTERACTION OF THIS REBATE WITH OTHER SOURCES OF FUNDING**

- Any other South African rebates, 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 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.



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## Appendix A: Glossary of terms and definitions

Television broadcasting service	Means a broadcasting service consisting of the transmission of visual images or other visible signals with or without accompanying sounds, where the visual images are such that their sequences are seen as moving pictures.
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 - 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 - 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 - 10% of the total of the company's TPE on the film production or - R1 000 000,00 (one million Rand)



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Deferments, profit participation, residuals	<p>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.</p> <p>Therefore, expenditure items specifically excluded from QSAPE include:</p> <ul style="list-style-type: none"><li>- Payments deferred until the film production provides financial returns through box office receipts, earnings or profits (for example, bonuses paid to directors);</li><li>- Payments dependent on eventual profits made on the production;</li><li>- Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the production through future exhibition and distribution.</li></ul>
Advances	<p>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.</p>
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	<p>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.</p>



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Other exclusions	<p>The following sundry items do not qualify as QSAPE:</p> <ul style="list-style-type: none"><li>- Errors and Omission Insurance which protects the copyright holders from litigation once the film is exhibited;</li><li>- Any gifts, entertainment and gratuities.</li></ul>
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"><li>• an auditor registered with SAICA or PAAB.</li><li>• If the auditor has any connection to the applicant that connection should be declared.</li><li>• <b>the dti</b> reserves the right to appoint any other registered auditor to perform further checks at their own expense.</li><li>• The statement should be in the format provided in Annexure A.</li></ul> <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>
Sample footage, including <b>the dti</b> 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><b>the dti</b> 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><b>the dti</b> 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 <b>the dti</b>'s request, although the applicant may write to <b>the dti</b> requesting an extension of time</p>



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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"><li>• "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"><li>- 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;</li><li>- the cost of acquiring the story rights, script, screenplay, copyright or other rights in relation to the film;</li><li>- 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;</li><li>- premiums or commission payable in order to secure a guarantee that the cost of the film will not exceed a specified amount;</li><li>- interest, finance charges and raising fees incurred for the purposes of or in connection with the production of the film;</li><li>- the cost of acquiring or creating music, sound and other effects which will form part of the film;</li><li>- 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;</li></ul></li></ul> <p>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.</p>
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.



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### Compliance to Broad-Based Black Economic Empowerment

Level	BEE Score	BEE Recognition Level
1	>100	135 % (e.g. R1= R1.35)
2	85 ~ 100	125%
3	75 ~ 85	110 %
4	65 ~ 75	100 % (e.g. R1 = R1)
5	55 ~ 65	80 %
6	45 ~ 55	60 %
7	40 ~ 45	50 %
8	30 ~ 40	10 %
Not Compliant	< 30	0 % (e.g. R1 = R0)

### CONTACT DETAILS FOR ENQUIRIES

For further information on film rebates, please contact:

Postal address:

The Enterprise Organisation

Private Bag X86

Pretoria 0001

Website: [www.thedti.gov.za](http://www.thedti.gov.za)

Call Centre: 0861 843 384

Physical Address:

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