

New Zealand  
Screen Production Incentive Fund  
(SPIF)

**CRITERIA**

**1 July 2008**

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# Screen Production Incentive Fund Criteria

## SECTION I - INTRODUCTION

1. The New Zealand Government has introduced a Screen Production Incentive Fund (“SPIF”) for eligible producers of New Zealand feature film, television and other format screen productions.  
The SPIF provides:
  - a grant of 40% of the Qualifying New Zealand Production Expenditure (QNZPE) that an applicant has spent on an eligible feature film; or
  - a grant of 20% of the QNZPE that an applicant has spent on an eligible television or other format screen production.
2. The purpose of the SPIF is to:
  - support increased production of medium and larger scale New Zealand cultural screen content, for the benefit of audiences;
  - support the retention of New Zealand screen talent, stories and infrastructure by maintaining New Zealand’s international competitiveness; and
  - incentivise the New Zealand screen production industry to develop closer market connections and private finance for larger screen productions.
3. The SPIF will be available only to productions certified by the New Zealand Film Commission under Section 18 of the New Zealand Film Commission Act 1978 as New Zealand films (or other productions) having ‘significant New Zealand content’.
4. SPIF grants will be given standard grant treatment for income tax purposes. That is, the cost base of the screen production will be reduced by the amount of the grant.
5. This document sets out the eligibility criteria and definitions for the SPIF and outlines the process requirements for application. The criteria may be subject to change from time to time and applicants should check with the New Zealand Film Commission (“NZFC”) which administers the SPIF before making an application.
6. The criteria apply from 1 July 2008. Productions which have started principal photography prior to 1 July 2008 are not eligible for a SPIF grant. QNZPE can only include expenditure incurred on or after 1 July 2008, regardless of when any contractual obligation to undertake the expenditure was undertaken.
7. A screen production will not be eligible for a SPIF grant if it has received production funding from a government agency prior to 1 July 2008. Receipt of government development funding (as defined in clauses 51-2 below) will not affect eligibility for a SPIF grant.
8. A screen production is completed when it is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public. For different screen formats, this means:
  - feature film – when it is completed to answer print stage (or digital equivalent);

- single episode programme – when the programme is finished to master video tape stage with credits ready for broadcast (or digital equivalent);
- series – when the series of programmes are finished to master video tape stage (or digital equivalent) with credits ready for broadcast;
- season of a series – when the programmes are finished to master video tape stage (or digital equivalent) with credits ready for broadcast, completed within one defined time period or “season” of a series.

## **SECTION II – ELIGIBILITY CRITERIA**

9. To be eligible for the SPIF a screen production must meet the following criteria regarding:
- (a) *Expenditure Thresholds;*
  - (b) *Format (including evidence of commercial distribution);*
  - (c) *New Zealand Production with ‘Significant New Zealand Content’;*
  - (d) *Relevant Entity;*
  - (e) *Residency Status;*
  - (f) *Recoupment Position; and*
  - (g) *Access to Other Government Incentives.*

### **(a) Expenditure Thresholds**

10. Production expenditure spent on a screen production must fit within certain thresholds:

<b>Format</b>	<b>Minimum QNZPE (maximum \$15 million)</b>	<b>SPIF</b>
Feature Film	\$4 million total	40% of QNZPE
Single episode programme	\$1 million total & No less than \$800,000 per commercial hour	20% of QNZPE
Documentary	\$250,000 total	20% of QNZPE
Series of programmes	\$1 million total & No less than \$500,000 per commercial hour	20% of QNZPE
Short form animation	\$250,000 total & No less than \$1 million per commercial hour	20% of QNZPE

11. For official co-productions undertaken under an agreement or arrangement between the New Zealand government and the government of another country, Total Production Expenditure as defined in these Criteria (as opposed to QNZPE), will count towards meeting the minimum QNZPE thresholds. However, the SPIF grant will only be payable on QNZPE.
12. The maximum amount of eligible QNZPE for any individual screen production is \$15 million. The maximum individual SPIF grant will, therefore, be \$6 million. Productions with QNZPE over \$15 million will remain eligible to receive the SPIF, but the grant will not be paid on any QNZPE above \$15 million. The production may be eligible for the Large Budget Screen Production Grant (LBSPG) above \$15 million, however

productions are not eligible to receive both the SPIF and LBSP or Post-Production, Digital and Visual Effects Grant.

13. Expenditure per hour is determined using the following formula:

$$\frac{\text{Total QNZPE}}{\text{Duration of screen production in hours}}$$

Where:

- duration of screen production in hours means the total length of the production measured in hours; and
- total QNZPE means the total of the company's qualifying New Zealand production expenditure on the screen production.

14. The definitions for QNZPE are set out in section III.

**(b) Format**

15. A screen production must be in one of the following formats:

- (a) **a feature film**, including theatrical documentary features, animated features and IMAX:

A feature film is intended to mean a screen production of at least sixty minutes (not one commercial hour) in length that is screened as the main attraction in commercial cinemas. For large-format projects such as IMAX it is intended that the screen production be a least 45 minutes in length.

- (b) **a single episode programme** (other than a documentary):

A stand-alone programme of at least one commercial hour in length that is exhibited commercially in a medium other than cinema. This includes telemovies or movies-of-the-week, films released direct to DVD or films released on the internet, video-on-demand or a mobile phone delivery platform. A single episode programme other than a documentary may be an animated film/programme.

- (c) **a single episode documentary**

A single episode documentary must be at least one commercial half-hour in length. A documentary is defined as a programme that is creative treatment of actuality other than a news, "reality", variety, current affairs, public event, sport coverage, magazine, infotainment or light entertainment programme.

A 'reality' programme is not a documentary. It is intended that the term 'reality programme' be applied to programmes in which contestants or participants are placed in contrived situations, where the primary purpose is to provide a vehicle within which their characters can be observed and assessed by the viewer. The primary purpose of such a reality programme would not be to explore and interpret an idea. Where there is a competitive element in the programme between participants, it is intended the programme would generally be considered a reality programme.

**(d) a series or season**

A series or season of a series are multiple-episode programmes that do not receive a cinema release but are exhibited commercially on another medium, eg straight to DVD or via television or the internet. A series or season of a series must be at least two episodes. Each episode (with the exception of animation) must be a least one commercial half-hour in length.

A series must have a common theme or themes, contain dramatic elements that form a narrative structure, consist of episodes that are intended for exhibition together in a national market or markets and have a new creative concept.

This is intended to include anthology series released under a single title, which are thematically linked but where plot, setting and characters differ.

A series may be comprised of individual “seasons”.

In assessing whether there is a “new creative concept” the NZFC will have regard to the degree of difference in the following factors, with respect to other series:

- the title;
- the principal characters;
- the setting;
- the production locations;
- the persons involved in the making of the series; and
- any other matters that the NZFC considers to be relevant.

**(e) short form animation**

A short-form animation is a programme of one episode or a collection of episodes, predominantly utilising cell, stop motion, digital or other animation of not less than one commercial quarter-hour in total duration.

16. Screen productions that fit in the following categories (or to a substantial extent fit in the following categories) are specifically excluded from eligibility:
- a reality programme (other than a documentary – this distinction is described in paragraph 13(c) above);
  - bundling of screen productions (other than series or seasons as outlined above);
  - an advertising programme or commercial;
  - a discussion programme, current affairs, news, a panel programme, a variety programme, magazine, infotainment or light entertainment or a programme of a like nature;
  - a production of a public event, including a sports event;
  - a training programme; or
  - computer games.

*Distribution Requirements*

17. Feature Films: Feature films will be required to secure confirmed commercial cinematic distribution in New Zealand, such as a bona fide, legally binding deal memo or distribution agreement, in order to qualify for the SPIF.

18. For the purposes of the SPIF, New Zealand commercial cinematic distribution for feature films means there must be a genuine intention from a recognised distributor (evidenced by the deal memo or agreement that is on normal commercial terms) to release the film as the main attraction in cinema theatres in at least three New Zealand cities, where an admission fee is charged. This would not include a contrived arrangement for release on a single occasion, for an unacceptably short period of time or other non-commercial basis. It excludes test screenings, free or charitable screenings, and film festival screenings (as such terms are commonly understood in the New Zealand screen production industry).
19. Other Screen Formats: Other screen formats require a similar commercial agreement for distribution on an appropriate platform, whereby access to the screen production is available in New Zealand. Examples include New Zealand television broadcast, commercial distribution on DVD in New Zealand, or commercial distribution of the production via a new media platform (such as online or mobile content) accessible to New Zealanders.
20. All productions: If, subsequent to lodging a provisional or final application (as the case may be) for a SPIF grant, commercial distribution of the production does not proceed, then provided, at the time the application was lodged, there was a distribution deal memo or agreement which evidenced a genuine intention to commercially distribute the production, the production will continue to be eligible to qualify for the SPIF.

***(c) Significant New Zealand Content***

21. The SPIF will be available only to productions which have been certified by the New Zealand Film Commission under Section 18 of the New Zealand Film Commission Act 1978 as a New Zealand film having 'significant New Zealand content'. The definition of "film" under the Act includes television, animation and other screen production formats.
22. Guidance notes on how the NZFC intends, in general terms, to assess 'significant New Zealand content' are attached as Schedule 1 to these Criteria. The Commission will retain the discretion to consider any matters it considers relevant in making a determination of whether a production has significant New Zealand content.
23. A production certified by the New Zealand Film Commission as an 'official co-production' under one of New Zealand's bilateral international film co-production agreements or arrangements will be considered as a New Zealand film having 'significant New Zealand content' for the purposes of eligibility for the SPIF.

***(d) Relevant Entity***

24. An applicant must be the entity responsible for (either by carrying out or making the arrangements for carrying out) all activities involved in making the production in New Zealand, and must have access to full financial information for the production worldwide, which can be made available to the NZFC upon request. Only one entity per screen production can be eligible for the SPIF. Broadcasters are eligible for the SPIF, but where an eligible production is made by an independent production company the producer will be eligible for the SPIF grant, not the broadcaster.
25. Making of the production means doing all things necessary for the production of the completion of the production, and includes (but is not limited to):
  - Pre-production activities in relation to the production;

- Production activities in relation to the production;
- Post-production activities in relation to the production; and
- Any other activities undertaken to bring the production up to the state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public.

**(e) Residency Status**

26. An applicant must either be:

- a) a New Zealand resident company (a company is a New Zealand resident company if:
  - the company is incorporated in New Zealand; or
  - although not incorporated in New Zealand, it carries on business in New Zealand and has either its central management or control in New Zealand, or its voting power is controlled by shareholders who are residents of New Zealand); or
- b) a foreign corporation operating with a fixed establishment in New Zealand for the purposes of lodging an income tax return (both when it lodges the SPIF application and when the grant is paid). Advice can be obtained from the Inland Revenue Department (“IRD”) on whether a company is a fixed establishment in New Zealand for the purposes of lodging an income tax return.

**(f) Share of Income of the Production**

27. Generally, the applicant shall be entitled to a share of the income from the production that is commensurate with the expected value of the SPIF grant, with the position for the recoupment of such share of income to be similar to that of any other equity investors in the production.

**(g) Access to Other Government Incentives**

28. Eligible feature film productions that have received production funding (or any other funding in relation to the production) through a New Zealand government agency will remain eligible to receive a SPIF grant on their QNZPE (including for example funding through NZFC, NZ On Air or Te Mangai Paho).
29. Other format screen productions (including telemovies, series and documentaries) that have received government production funding will not be eligible for a SPIF grant.
30. Applicants that have received development funding (as defined in section III) from a New Zealand government agency will continue to be eligible to apply for a SPIF grant.
31. Where co-investment / co-funding is provided by a New Zealand government agency, special tax rules will apply. In brief, the co-funding will be treated as if it were a grant, but any payments back will be tax deductible.
32. All productions will be ineligible to receive both a SPIF and a LBSP or PDV grant.
33. It is proposed that productions receiving a SPIF grant will not be eligible for the immediate write off tax incentive under sub-part EJ of the Income Tax Act 2007. This

proposal will be part of the June 2008 omnibus taxation bill which will go through the usual select committee process that will include submissions. Accordingly, this proposal may change as part of that process.

### **SECTION III – DEFINITIONS OF TOTAL PRODUCTION EXPENDITURE AND QUALIFYING NEW ZEALAND PRODUCTION EXPENDITURE (QNZPE)**

#### ***Introduction***

34. This section outlines the definitions of Total Production Expenditure and QNZPE.

#### **TOTAL PRODUCTION EXPENDITURE**

35. Total Production Expenditure is defined as the production expenditure incurred in, or that is reasonably attributable to, actually making the screen production, whether in New Zealand or elsewhere, to bring the production up to the state that the production is ready to be distributed, broadcast or exhibited to the general public.
36. Total Production Expenditure must necessarily include all expenditure items calculated as part of QNZPE.

#### **Specific Exclusions**

37. The following expenditure items are specifically excluded from the definition of Total Production Expenditure:

- (a) Financing Expenditure*
- (b) Development and Pre-production Expenditure*
- (c) Copyright Acquisition*
- (d) General Business Overheads*
- (e) Publicity and Promotion Expenditure*
- (f) Deferrals, Profit participation, Residuals*
- (g) Advances*
- (h) Acquisition of Depreciating Asset*
- (i) Other exclusions*

#### ***(a) Financing Expenditure***

38. Except where it qualifies as QNZPE, financing expenditure does not form part of Total Production Expenditure. Financing expenditure includes returns payable on amounts invested in the screen production and expenditure connected with raising and servicing finance for the production, such as interest payments.

#### ***(b) Development and Pre-production Expenditure***

39. Except where it qualifies as QNZPE, development and pre-production expenditure does not form part of Total Production Expenditure. The definition of QNZPE (see below) details the circumstances under which development and pre-production expenditure may be claimed as QNZPE.

**(c) Copyright Acquisition**

40. Except where it qualifies as QNZPE, copyright acquisition expenditure does not form part of Total Production Expenditure. The definition of QNZPE (see below) details the circumstances under which copyright acquisition expenditure may be claimed as QNZPE.

**(d) General Business Overheads**

41. Except where it qualifies as QNZPE, general business overheads do not form part of Total Production Expenditure. The definition of QNZPE (see below) details the parameters under which an appropriate share of New Zealand business overheads may be claimed as QNZPE.

**(e) Publicity and Promotion Expenditure**

42. Except where it qualifies as QNZPE, publicity and promotion expenditure does not form part of Total Production Expenditure. The definition of QNZPE (see below) details the circumstances under which publicity and promotion expenditure may be claimed as QNZPE.

**(f) Deferments, Profit Participation, Residuals**

43. Total Production Expenditure does not include expenditure that is dependent on the screen production's commercial performance and its earnings - 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 Total Production Expenditure include:
- Payments deferred until the screen production provides financial returns through box office receipts, earnings, or profits (e.g. 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.

**(g) Advances**

44. Except where it qualifies as QNZPE and is non-recoverable, all payments made by way of an advance on a payment in respect of deferments, profit participation or residuals (as described above) are excluded from Total Production Expenditure.

**(h) Acquisition of Depreciating Asset**

45. Except for copyright acquisition expenditure that qualifies as QNZPE, the acquisition of a depreciating asset and any capital costs invested in that asset do not qualify as Total Production Expenditure. The definition of QNZPE (see below) details the circumstances under which copyright acquisition expenditure may be claimed as QNZPE.

**(i) Other Exclusions**

46. Cast perks, gifts, entertainment and gratuities do not qualify as Total Production Expenditure.

### **QUALIFYING NEW ZEALAND PRODUCTION EXPENDITURE (QNZPE)**

47. QNZPE is generally defined as the production expenditure spent by the applicant on the making of the screen production where that expenditure is incurred for, or is attributable to:
- goods and services provided in New Zealand; or
  - the use of land located in New Zealand.
48. In some cases, production expenditure incurred outside New Zealand qualifies as QNZPE. See sections (k) *Production Incurred in a Foreign Country* and section (m) *Financing Expenditure* below.
49. All costs claimed as QNZPE must be presented in an audited expenditure statement attached to each application. Arrangements should be made to track expenditure that relates to New Zealand and non-New Zealand production activity as early as possible. Where necessary, invoices from any supplier used should be broken down to show New Zealand and non-New Zealand activity with computerised accounts formatted to accept the forms developed by the NZFC for this process. This will also facilitate the independent audit of the expenditure statements.

#### **Specific Inclusions**

50. For the sake of clarity, the following New Zealand expenditure items are specifically noted as being included within QNZPE:
- (a) *New Zealand Development and Pre-production Expenditure*
  - (b) *New Zealand Copyright Acquisition*
  - (c) *New Zealand Business Overheads*
  - (d) *New Zealand Copyrighted Publicity and Promotion Expenditure*
  - (e) *Additional Audiovisual Content*
  - (f) *Travel to New Zealand*
  - (g) *Production Insurance and Completion Bonds*
  - (h) *Advances*
  - (i) *Freight*
  - (j) *Production Incurred in a Foreign Country*
  - (k) *Above the Line Costs*
  - (l) *Financing Expenditure*
  - (m) *Legal and Audit Fees*

#### **(a) New Zealand Development and Pre-production Expenditure**

51. New Zealand development and pre-production expenditure is defined as expenditure incurred in New Zealand on the development and pre-production stages of the screen production, i.e. prior to the commencement of principal photography. It includes expenditure to cover:
- location surveys and other activities undertaken to identify and assess locations for possible use in the production (including background design, modelling and rigging for animated productions);

- storyboarding and script writing (including Leica reels/animations for animated productions);
  - research for the production (including animation tests for animated productions);
  - casting actors (including character design, modelling and rigging for animated productions);
  - developing a budget; and
  - developing a shooting schedule for the production.
52. Expenditure on development work undertaken outside of New Zealand cannot be counted as part of QNZPE.

**(b) New Zealand Copyright Acquisition**

53. The cost, if deductible under the *Income Tax Act 2007*, or the depreciation, if allowable under the *Income Tax Act 2007*, of copyright or licensing of copyright in a pre-existing work for use in the screen production may be claimed as QNZPE if the original owner of the copyright in the pre-existing work is held by a person:
- that the *Income Tax Act 2007* treats as either being resident in New Zealand; or
  - who carries on a business in New Zealand through a fixed establishment.
54. The cost, if deductible under the *Income Tax Act 2007*, or the depreciation, if allowable under the *Income Tax Act 2007*, of commissioning and purchasing copyright (or an interest in copyright) in a work created for use in the screen production may be claimed as QNZPE if the cost was incurred in New Zealand.

**(c) New Zealand Business Overheads**

55. New Zealand business overheads are those general business overheads that qualify as New Zealand expenditure under the definition of QNZPE above. Expenditure on these overheads may be claimed as QNZPE to the extent that the amount does not exceed the lesser of:
- 5% of the total of the company's Total Production Expenditure (as defined above) on the screen production; or
  - \$500,000.

**(d) New Zealand Copyrighted Publicity and Promotion Expenditure**

56. Publicity and promotion expenditure in relation to the screen production (including press expenses, still photography, video tapes, public relations and other similar expenses) may be included as QNZPE where:
- it was incurred by the applicant company before completion of the production; and
  - copyright in the publicity material is held by a person the *Income Tax Act 2007* treats as either being resident in New Zealand, or who carries on a business in New Zealand through a fixed establishment.

57. Refer also to section (e) *Additional Audiovisual Content* below for a specific exception to this clause.

**(e) Additional Audiovisual Content**

58. Usually, QNZPE can only be incurred in relation to producing the first copy of the project. However, expenditure incurred in New Zealand on producing audiovisual content that is intended to be released with the production in some form may also be QNZPE, where copyright on the additional audiovisual content is also held by a New Zealander. Examples of additional audiovisual content for release with the production might include director or cast commentary tracks, 'making of' documentaries, or similar material.

**(f) Travel to New Zealand**

59. Travel to New Zealand for work undertaken on the screen production may be included as QNZPE where that travel relates to incoming journeys:
- for non-cast personnel whose remuneration qualifies as QNZPE and who work on the screen production in New Zealand for a period of at least fourteen consecutive days; and
  - for cast personnel whose remuneration qualifies as QNZPE, regardless of the number of days spent working on the screen production in New Zealand.
60. The cost of an incoming journey is equivalent to 50 per cent of a return commercial airline fare.
61. Where the production schedule requires personnel to travel in and out of New Zealand more than once during the making of a screen production then each of those incoming journeys may be claimed as QNZPE.

**(g) Advances**

62. All payments made by way of an advance on a payment in respect of deferments, profit participation or residuals (as described above), and which are non-recoverable, may be considered QNZPE where they satisfy the requirements set out in clause 47 above.

**(h) Production Insurance and Completion Bonds**

63. Production insurance, including Errors and Omissions insurance, and completion bonds may be included within QNZPE.

**(i) Freight**

64. International freight within and between countries may be included within QNZPE to the extent that the goods will be used in the making of the screen production and provided that the cost is paid to a New Zealand company.

**(j) Expenditure Incurred in a Foreign Country**

65. The following expenditure, if incurred outside of New Zealand may be claimed as QNZPE:

(i) Where:

- the expenditure is incurred during principal photography only;
- the location being used for principal photography is reasonably required by the subject matter of the screen production (such as where a certain landscape or place is needed for a story);
- the expenditure is for the remuneration of a New Zealand resident or the purchase of goods or services from a New Zealand resident company (see clause 26 for a definition of a resident company);
- goods and services provided by non-New Zealand residents outside New Zealand or goods and services provided outside New Zealand during pre- or post-production, are not able to be claimed as QNZPE. An exception to this is where the expenditure meets another special rule for the SPIF, such as freight or travel expenditure; and
- where the remuneration of the person travelling for the screen production is QNZPE under this rule, that person's travel costs to or within any other country are also QNZPE;

(ii) the expenditure is financing expenditure (as defined in clause 67 below) that is directly related to cashflowing the amount of the SPIF grant and is expended in Australia, the United Kingdom, the Republic of Ireland, the United States of America or Canada, or from another country as approved by the Film Commission on a case-by-case basis;

(iii) the expenditure is for a completion guarantor's fee.

**(k) Above the Line Costs**

66. 'Above the Line' expenditure may be claimed up to a maximum of 20% of the Total Production Expenditure (as defined above) – i.e. any expenditure on 'Above the Line' costs that is greater than 20% of the Total Production Expenditure will not be considered as QNZPE. The definition of "Above the Line" includes the following:

- development (including story rights);
- remuneration for the principal director;
- remuneration for the producers and the producer's unit; and
- remuneration for principal cast.

**Note:** Above the Line expenditure in excess of 20 percent of the Total Production Expenditure does not exclude a screen production from eligibility for the SPIF.

***(l) Financing Expenditure***

67. Financing expenditure may be included as QNZPE. Financing expenditure includes returns payable on amounts invested in the screen production and expenditure connected with raising and servicing finance for the screen production, such as interest payments. Financing expenditure may be claimed only where the financier's only direct or indirect interest in the production is the financing arrangement itself and the financing arrangement does not contain any element of profit share in the production.
68. Generally, financing expenditure may only be considered QNZPE to the extent that it is in respect of services performed by a New Zealand-resident company and was incurred for, or reasonably attributable to, providing the finance for the production.
69. However, as noted in section (i) above, financing expenditure may be considered QNZPE where it is directly related to cashflowing the amount of the SPIF grant and is expended in Australia, the United Kingdom, the Republic of Ireland, the United States of America or Canada, or from another country as approved by the Film Commission on a case-by-case basis. Where financing expenditure is claimed in relation to a non-New Zealand resident company, the principal involved is capped at the amount of the expected SPIF grant.
70. Interest that may be claimed is capped at the 90-day Bank Bill Rate (as set by the Reserve Bank of New Zealand) plus 2 percent per annum.
71. Financing fees that may be claimed are capped at 2 percent per annum of the amount of the lending (including but not limited to loan fees and executive producer fees for financiers). Interest and fees incurred above these caps are not QNZPE but do not exclude a production from eligibility for the SPIF.

***(m) Legal and Audit Fees***

72. Audit fees and some legal fees will be considered QNZPE for a SPIF grant. Eligible legal fees are only those related to:
  - writers' contracts or copyright issues including chain of title;
  - cast and crew contracts and other matters directly related to production contracts, and
  - preparation and negotiation of financial and security documents (including the bond).
73. Legal and audit fees may only be claimed to the extent that they are incurred in New Zealand.
74. Legal fees that are incurred in relation to matters not listed in paragraph 72 above do not qualify as QNZPE. Applicants should ensure that their legal advisors provide a breakdown of their fees.

**Specific Exclusions**

75. The following expenditure items do not qualify as QNZPE and should be excluded:
  - (a) *Costs relating to Short-term Visits for Non-cast Personnel*

*(b) Deferments, Profit Participation, Residuals*

*(c) Acquisition of Depreciating Asset*

*(d) Others*

**(a) Costs relating to Short-term Visits for Non-cast Personnel**

76. In order to have expenditure in relation to their remuneration and other benefits, including travel costs included as QNZPE, non-cast personnel who travel to New Zealand must work on the screen production for at least fourteen consecutive days.

**(b) Deferments, Profit Participation, Residuals**

77. Except where they qualify under clause 62, deferments, profit participation, and residuals are not to be included as part of QNZPE. QNZPE does not include expenditure that is dependent on the screen production's commercial performance and its earnings – expenditure directly linked to the screen production's commercial performance cannot be quantified until after the screen production has actually been exhibited. Therefore, expenditure items specifically excluded from QNZPE include:
- Payments deferred until the screen production provides financial returns through box office receipts, earnings or profits (e.g. bonuses paid to directors);
  - Payments dependent on eventual profits made on the screen production; and
  - Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the screen production through future exhibition and distribution.

**(c) Acquisition of Depreciating Asset**

78. Except for copyright acquisition expenditure that qualifies as QNZPE, the acquisition of a depreciating asset and any capital costs invested in that asset do not qualify as QNZPE. See clauses 87-89 for the definition and treatment of a depreciating asset.

**(d) Others**

79. Cast perks, gifts, entertainment and gratuities are not regarded as QNZPE.

## **SECTION IV— TREATMENT OF EXPENDITURE**

### ***Goods and Services Tax (GST)***

80. All figures set out in this document are quoted net of GST. As such, the grant is calculated in relation to amounts that are net of GST. However, due to New Zealand tax law it is required that the grant is paid GST inclusive. For this reason, the grant will be made to eligible applicants on a GST plus basis with applicants having to return the GST component during their normal GST returns.

### ***Arm's Length Expenditure***

81. The basis of the arm's length principle is to ensure that amounts charged between the applicant company and any associate companies (including parent and subsidiary companies) for the provision of goods or services are commercially reasonable.
82. 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 screen production, then only the commercial rate for that good or service will be counted towards QNZPE. 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.
83. The arm's length principle applies to any act or transaction directly or indirectly connected with any expenditure incurred by the applicant - i.e. the principle still applies if a non-arm's-length deal between other parties otherwise inflates or deflates the expenditure of a particular good or service purchased by the applicant.

### ***Accrual Basis of Expenditure***

84. To be included as QNZPE, an expenditure item must have actually been incurred on the making of the specific screen production for which the application is made. In addition (subject only to the exception below), the applicant must have actually discharged its liability to pay at the time of application for the grant.
85. The requirement for an applicant to have discharged its liability to pay an expenditure item at the time of application does not apply where the applicant can show:
- (a) that part of the funding for the production (including any part of the expected SPIF grant that was not cashflowed to the producer) was unpaid at the time of Final Application;
  - (b) that this funding was required to meet the cost of the production; and
  - (c) that certain fees have not been paid because they are being 'held back' pending receipt of such funding; and
  - (d) that such fees are payable to key personnel involved in the production (e.g. producers, director).

In this case, the applicant will be able to include the fees that have not been paid as part of QNZPE.

For example, if a bank cashflows 80% of the estimated value of the SPIF and the budget requires 100% of the SPIF, a producer might hold back his or her fees to cover

the remaining 20% and then recover this part of their fee when the grant is received. In this case, the entire amount of the producer's fee can be included as QNZPE.

### ***Expenditure by Prior Companies***

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

### ***Depreciating Assets***

87. Where an applicant purchases an asset for use in a screen production and sells or disposes of that asset on the completion of the screen production (or on completion of the QNZPE), the net cost of that asset can be claimed as QNZPE (for depreciation which occurs in New Zealand).
88. Where an applicant holds a depreciating asset (other than copyright) and uses it in making a screen production which it retains at the completion of a production (or completion of QNZPE), then QNZPE (for depreciation which occurs in New Zealand) may include so much of the decline in value over the effective life of the asset as is attributable to its use on the production (for tax purposes).
89. The definition of a 'depreciating asset' for the purposes of the SPIF is as outlined by IRD. Further information about the treatment of depreciating assets may be downloaded from the IRD website at [www.ird.govt.nz](http://www.ird.govt.nz).

## **SECTION V – APPLICATION FOR GRANT PAYMENT**

90. The SPIF is administered by the New Zealand Film Commission (NZFC). Applications for the grant will be assessed by the NZFC. Applications will be considered against these criteria including the attached Schedule 1.
91. Three complete copies of the application in its relevant form, including all required documentation, should be sent to:

Manager, SPIF  
New Zealand Film Commission  
PO Box 11 546  
Wellington  
New Zealand

Courier address:

Level 3  
119 Ghuznee Street  
Wellington

### ***Provisional Certification***

92. Before an applicant has commenced production or at any time during production, an applicant may apply for provisional certification of eligibility for a SPIF grant. While this is not mandatory, applicants are encouraged to apply for provisional certification in all cases.
93. A Provisional Certificate is not a guarantee that a Final Certificate will be issued. It will, however, provide an indication of eligibility and the extent to which:
  - (a) the production qualifies as having Significant New Zealand Content;
  - (b) the production is likely to meet the minimum QNZPE threshold; and
  - (c) the evidence of commercial distribution meets the criteria.
94. Companies may apply for provisional certification for 'significant New Zealand content' only, or for 'significant New Zealand content' and QNZPE certification (which includes the distribution requirements). To apply, you must complete the relevant sections of the Provisional Application Form and submit it, with all of the required attachments, to the NZFC. The NZFC will assess the application and will issue you, or decline to issue you, with a Provisional Certificate. A Provisional Certificate will state that, based on the information and projected budgeted expenditure presented in the application, the proposed project would meet the eligibility requirements for a SPIF grant.
95. A production that holds a Provisional Certificate is not guaranteed of qualifying for a SPIF grant and must apply for a Final Certificate once the production has been completed.
96. Where an applicant holds a Provisional Certificate but material elements of the production change (e.g. changes to creative personnel, cast, filming locations) then the applicant should contact the NZFC to see if those changes may affect the eligibility of

the production for a SPIF grant. This will generally be of particular importance for matters affecting the assessment of 'significant New Zealand content'.

97. Companies are eligible to apply for provisional certification where they are either:
- (a) the production company responsible for the making of the production; or
  - (b) the company responsible for developing a project prior to the establishment of a production company.
98. Applicants seeking provisional certification in regard to QNZPE must fill in each item for the projected expenditure in the budget spreadsheet attached to the Provisional Certificate Application Form and attach a copy of the production's budget.
99. If the applicant is unsure as to whether its evidence of commercial distribution will be satisfactory or not, the applicant is encouraged to discuss this with the NZFC prior to lodging the Provisional Application Form.

### ***Final Certification***

100. To apply for a SPIF grant, an applicant must submit a Final Application to the New Zealand Film Commission once the production is completed (as defined in paragraph 8 above). An applicant may not apply for a SPIF grant later than six months after completion of the screen production. Each application must be made in the Final Application Form.
101. The following information must be included with each application form:
- (a) *Audited Expenditure Statement*
  - (b) *Sample Footage*
  - (c) *Statutory Declaration*
  - (d) *Further Information as Requested*

### ***(a) Audited Expenditure Statement***

102. All costs claimed as QNZPE must be presented in an audited expenditure statement. The audit must be prepared by a person who is:
- qualified under the Companies Act 1993 to audit companies;
  - not an officer, partner or employee of the applicant company, or a related body corporate of the applicant company (but may be contracted by them from time-to-time on a non-permanent basis). A related body corporate of an applicant company would be a subsidiary of an applicant company, the holding company of an applicant company or a subsidiary of the holding company of the applicant company; and
  - approved by the NZFC.
103. 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.

**(b) Sample Footage**

104. The applicant must provide a DVD of the entire screen production with the Final Application Form. The DVD will be kept only for the purposes of the application process.

**(c) Statutory Declaration**

105. The information provided in an application must be certified in a Statutory Declaration by an authorised person from the applicant company - normally this would be the Producer or the Chief Executive Officer.

**(d) Further Information as Requested**

106. The NZFC reserves the right to require any further information deemed necessary to complete the SPIF application process. This information must be provided at the applicant's expense within 28 days of the NZFC's request, although the applicant may write to the NZFC seeking an extension of time.
107. Applicants should familiarise themselves with the Final Application Form and the further information requested in that form.

**Form of Certification and Application Forms**

108. Certification and application forms may be submitted either in hard copy or electronically through the NZFC's website. Forms and guidelines can be downloaded from the NZFC website at [www.nzfilm.co.nz](http://www.nzfilm.co.nz).

**Independent Consultants**

109. The NZFC will be the body responsible for assessing whether a provisional or final application satisfies the criteria for the SPIF. However, the NZFC may seek the advice of any number of independent consultants to:
- Assess whether a production qualifies as a New Zealand film with 'significant New Zealand content';
  - Assess whether a distribution agreement meets the criteria;
  - provide an independent assessment of whether specific items claimed in an expenditure statement are 'reasonably attributable' to QNZPE;
  - 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 subsidiary companies and parent/associate companies are commercially reasonable.
110. 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.

### ***Payment of Grant***

111. Payment of final funding will be dependent on the IRD verifying the tax information provided to the NZFC, and the NZFC's Final Certification of the production. Provided that the application for expenditure is complete and verified the NZFC will endeavour to provide payment (to the applicant or a bank account nominated by the applicant) within 3 months of application.

### ***Confidentiality***

112. Certain information supplied by the applicant will be provided to the NZFC, Inland Revenue Department, Ministry for Culture and Heritage, and independent consultants where reasonably necessary during the SPIF approval process.
113. The NZFC will use reasonable efforts to maintain the confidentiality of the information provided by the applicant. The NZFC notes however that it is subject to various disclosure requirements, for example under the *Official Information Act 1982*, and shall not be liable for any disclosure it believes (acting reasonably) it is required to make.
114. As such, the applicant should clearly indicate those parts of its proposal which it regards as commercially sensitive and confidential. In processing a request under the *Official Information Act*, the NZFC will consult the relevant applicant prior to a decision on release of documents.
115. Information held by Inland Revenue is usually confidential. However this confidentiality will be overridden to allow Inland Revenue to report on to the NZFC on the verification process and outcomes. The recipients of this information are subject to the same degree of secrecy as are Inland Revenue officers.

### ***Information for Research Purposes***

116. The NZFC 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 screen production. Information would only be used with the written agreement of the applicant.

### ***Further information***

117. For further information on these criteria and the process of applying for the SPIF contact the NZFC.
118. For information about taxation and other obligations of companies commencing business in New Zealand, filing business activity statements and annual income tax returns consult the IRD website at [www.ird.govt.nz](http://www.ird.govt.nz), or IRD's screen production desk's website at [www.ird.govt.nz/industry-guidelines/screen-production/](http://www.ird.govt.nz/industry-guidelines/screen-production/). The dedicated phone line is 0800 SCREEN (0800 727 336).