

LARGE BUDGET SCREEN PRODUCTION GRANT

FREQUENTLY ASKED QUESTIONS

These Frequently Asked Questions and Answers (FAQs) are intended only as a guide to assist with the interpretation of the LBSPG Criteria issued on 19 October 2007. As such, these FAQs are not intended to be legal advice nor are they intended to be comprehensive. In the event of any conflict between these FAQs and the Criteria, the Criteria will prevail. Before acting on this information, readers are strongly advised to seek advice from the NZFC and/or other professional and legal advice.

DATE: 18 September 2008

The following abbreviations are used:

NZFC New Zealand Film Commission
LBSPG Large Budget Screen Production Grant
QNZPE Qualifying New Zealand Production Expenditure
PDV Post, Digital and Visual Effects Production
MED Ministry of Economic Development
IRD Inland Revenue Department

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1. ADMINISTRATION

1.1 Who administers the Grant?

The New Zealand Film Commission.

1.2 How do I get an application form?

Contact the New Zealand Film Commission. Application forms are available on the Film Commission website: www.nzfilm.co.nz.

1.3 What documentation will be required?

Completed Grant application form including Statutory Declaration; Audited Expenditure Statements; Auditor's Report; General Ledger of production expenditure; Proof of NZ residence; Confirmation of applicant's responsibility for the production; and DVD of the screen production. Note: if the production has not been completed then a DVD of footage is sufficient.

1.4 When should I apply for the grant?

When QNZPE on a screen production is completed OR once the QNZPE has exceeded NZD 50 million. Applications for the Grant must be lodged with the NZ Film Commission no later than 3 months after completion of the screen production.

1.5 Who can apply for the Grant?

An applicant must be the entity responsible for all activities involved in making the production or carrying out the PDV in NZ. Only one entity per screen production can be eligible for the Grant.

1.6 How long will it take for my application to be processed?

Assuming that all relevant information is included in the application, we aim to process applications within 3 months of receipt. If approved, payment of the Grant is made within 10 working days of receipt of an invoice.

1.7 If the Grant is approved, how do I get paid?

Once your application for the Grant has been approved you will be sent a Grant approval letter along with a pro forma invoice. Applicants must then send an invoice to the Ministry of Economic Development including bank account details and the payment will be made into the nominated bank account within 10 working days of the Ministry receiving the invoice.

1.8 Does the applicant have to be a NZ registered company?

An applicant must be either (a) a NZ resident company; or (b) a foreign corporation operating with a fixed establishment in NZ for the purposes of lodging an income tax return (both when it lodges the grant application and when the grant is paid); and must also be the entity that incurred the QNZPE.

1.9 If there are several companies working on the screen production, which company should apply?

An applicant must be the entity responsible for all activities involved in making the production or carrying out the PDV work in NZ. Only one entity per screen production can be eligible for the Grant.

1.10 Can I still access other incentives if I apply for the Grant?

An applicant seeking the Grant will not be eligible for any other NZ Government film finance or tax incentives in relation to the screen production (including year 1 deductions under section DS2 of the Income Tax Act 2004, or funding through government agencies such as NZFC, NZ On Air, Te Mangai Paho, or through the NZ Film Production Fund). Applicants will however continue to be eligible for development funding that is financed by the NZ Government agencies.

1.11 If I have received production funding from the NZFC can I still apply for the Grant?

No.

1.12 Can Co-Productions apply for the Grant?

A screen production which is financially and creatively structured to take advantage of a film co-production treaty between NZ and any other country will be eligible for the Grant as long as the production does not access any of the Government incentives above.

1.13 Can I apply for the LBSP Grant and the PDV Grant?

No, you can only apply for one grant per production. If you submit a final application for either the PDV Grant or the LBSP Grant and then incur additional QNZPE, you cannot submit another application.

1.14 Do I have to provide a credit to the NZ Government?

This is not a requirement, but an on screen credit would be appreciated along the following lines: "With the participation of the New Zealand Large Budget Screen Production Grant [or the New Zealand Post, Digital and Visual Effects Grant]".

1.15 Who assesses applications for a Grant?

The LBSPG Panel assess all applications for LBSP or PDV grants. In coming to a decision, the Panel considers the Auditor's report, the Independent Consultant's report, the NZFC's report and the IRD's report. The Panel comprises:

- (a) The Chief Executive of the NZFC
- (b) The Deputy Chief Executive of the NZFC
- (c) A representative from the MED
- (d) A Senior Manager or Board Member of the NZFC
- (e) Up to 10 screen production industry practitioners.

1.16 Is there a process by which Panel decisions can be appealed?

No, the decisions of the Panel are final. Prior to each Panel meeting, the NZFC or the Independent Consultant will attempt to advise applicants of the proposed recommendation to the Panel and applicants will have an opportunity to comment on the recommendation.

2. PRE-APPROVALS

2.1 How do I obtain a pre-approval for a film to be shot in New Zealand?

You need to fill out the "Initial Assessment Application Form" which is available from the NZFC. In this form, you are asked about the nature of the project, the expected screen production format, the budget and anything else you might think is applicable. A non-binding assessment will be provided in writing by the New Zealand Film Commission.

2.2 How do I ensure that exchange rate fluctuations don't cause the QNZPE to fall below the spend threshold?

You will need to submit an application for initial assessment. At this time you will need to notify the NZFC that you may require any non-NZ dollar currency to be converted at the preset exchange rate and you will need to nominate the currency or currencies. On the date this is received, the NZFC will obtain the relevant exchange rate/s from the Reserve Bank of New Zealand's website (www.rbnz.govt.nz). This will be the 'preset exchange rate/s'.

However you should only do this if:

- your budget is close to an expenditure threshold (\$15m for LBSP Grant, and \$3m for PDV Grant); and
- part of your budget will be spent in non-NZ dollars; and
- you are concerned that exchange rate fluctuations over the production period may lead to your actual expenditure falling below the relevant threshold.

If you have submitted an application for initial assessment and at the time you submit your final application, your QNZPE is below the threshold, then the NZFC will recalculate your eligibility to meet the threshold. This recalculation will apply the preset exchange rate against QNZPE incurred in the nominated non-NZ dollar currency or currencies. If your QNZPE then meets the threshold and your application is approved, the amount of the grant will be calculated and paid on actual QNZPE.

3. FORMATS

3.1 What are eligible formats?

Feature Films (including those shot directly to video), television movies and a television drama series or mini-series. You can also bundle any of these formats provided they each have a minimum QNZPE of \$3 million to achieve a total QNZPE of \$30 million, and provided also that the principal photography or PDV (as the case may be) on each production within a bundle is completed with a 24 month period.

3.2 What formats are ineligible?

Documentaries, Reality TV shows, Advertising Programmes, Commercials, Training Programmes, Productions of Public Events/Sports Events, Discussion Programmes, Current Affairs, News, Panel Programmes, Variety Programmes.

4. DEFINITIONS

4.1 I note that I cannot apply later than 3 months after completion of the screen production - when is a screen production considered to be 'completed' for this purpose?

A screen production is regarded as having been completed when it is in a state where it could reasonably be considered ready for distribution, broadcast or exhibition to the general public. For example, when a film is at answer print stage. Note however, that you may apply for the grant as soon as the QNZPE (or qualifying PDV expenditure) is completed.

4.2 Does remuneration paid to cast and crew who perform services overseas qualify as QNZPE?

NO, remuneration paid for services performed overseas by a cast or crew member does not qualify as QNZPE.

4.3 Do cast and crew perks/expenses count towards QNZPE?

Perks do not count as QNZPE unless the applicant is contractually obliged to provide the 'perk' to the relevant cast or crew member in relation to their services in New Zealand (e.g. companion airfares – note however, that only the incoming fare can be claimed).

4.4 Does cast and crew remuneration count towards QNZPE?

Remuneration does count towards QNZPE when the services are provided in New Zealand, and for crew, when they have worked on the production in New Zealand for at least 14 days. Where a cast or crew member provides services in New Zealand and overseas, then only the proportion of the remuneration relating to services performed in NZ qualifies.

4.5 Chain of title?

The reference to "chain of title" in paragraph 26 of the Criteria refers only to the copyright in the script and not to cast and crew contracts, production service agreements and similar contracts. Legal costs incurred in relation to these other contracts may, however, qualify as New Zealand business overheads within the limits provided.

5. QNZPE

5.1 Costs excluded from QNZPE:

Costs excluded from QNZPE are contained in paragraphs 37 to 43 of the Criteria.

5.2 Can Freight count towards QNZPE?

Yes, but only if the freight costs are paid to a NZ supplier.

5.3 What about Agent's fees and similar costs?

Agent's fees that are paid by the production company and deducted from a cast or crew member's gross remuneration will qualify as QNZPE if the remuneration qualifies as QNZPE. Agent's fees paid by the production company in respect of services provided to that company will generally only qualify as QNZPE if the agent's services are performed in New Zealand.

5.4 Should wardrobe/makeup/props be treated as expenses or assets?

It depends on what the value of each item is at the end of the production. If items have no value at the end of production and are thrown away or destroyed, then the full purchase price can count towards QNZPE. If there is still some value at the end of production, and the item is sold, then the difference in price is what needs to be counted towards QNZPE. In other words, usual accounting practices should be applied here. For this, use the 'best estimate approach' for value of assets props/wardrobe etc. to evaluate how much they are worth at the end of the shoot.

5.5 Can Business Overheads count towards QNZPE?

Yes. New Zealand business overheads can count towards QNZPE. Expenditure on these overheads may be claimed as QNZPE to the extent that the amount does not exceed the lesser of: 3% of the total of the company's QNZPE on the screen production or qualifying PDV expenditure (as the case may be); or NZ\$500,000.

5.6 If NZ resident cast and crew are taken to another country for part of the shoot, does this remuneration for services performed outside New Zealand count towards QNZPE?

No. Only services performed in NZ qualify.

5.7 Can pre-production expenditure count?

New Zealand development and pre-production expenditure will count towards QNZPE.

5.8 If props are purchased outside of New Zealand but are brought into New Zealand for the production, will the cost of those props count towards QNZPE?

Yes (subject to paragraph 40 of the Criteria – costs embodied in goods), but if those props are also used outside of New Zealand the cost shall proportionately applied towards QNZPE.

5.9 If non-resident cast and crew are used in the production, do these costs count as QNZPE?

Non-resident crew costs for the portion of their time spent working on the production in New Zealand (with a 14 day minimum) do qualify as QNZPE. Similarly, all non-resident cast will qualify for QNZPE for the portion of costs applicable to their time in NZ (with no minimum number of days presence to qualify). In verifying an

application under the LBSPG, the New Zealand Inland Revenue Department (IRD) are likely to compare withholding tax and employee tax (as applicable) records with amounts claimed under cast and crew as QNZPE.

5.10 Do Auditors costs count towards QNZPE?

Yes, as long as the costs are incurred in New Zealand.

5.11 How does paragraph 40 of the Criteria apply (costs of services embodied in goods)?

This means that if you acquire goods from overseas for use in the screen production in New Zealand and more than 50% of the cost of those goods relate to services (e.g. labour costs) then that portion of the cost will not qualify as QNZPE. When acquiring goods from overseas, you should ask the supplier for a breakdown of the cost of such goods. It is not expected that you will be able to obtain this breakdown for 'off-the-shelf' goods but you should obtain this for all goods which are made to order for the production.

5.12 What publicity and promotion expenditure does NOT qualify as QNZPE?

Expenditure incurred in relation to publicity or promotion does NOT qualify unless:

- (a) it is incurred prior to the completion of the production, and
- (b) the copyright in the publicity or promotion material is owned by a person or company who is resident in NZ for tax purposes.

For example, costs which relate to the production of a trailer do not qualify unless the copyright in the trailer is held by a NZ tax resident. Also, the costs of any stills photography do not qualify unless the copyright in the stills is held by a NZ tax resident.

5.13 Can I claim a deposit paid on overseas goods before those goods are in NZ and being used on the production (i.e. when making an interim application)?

No, paragraph 23 of the Criteria only allows this cost to be claimed once the good is located in NZ.

6. EXCHANGE RATES/ IRD/BANKING/TAX/GST

6.1 I understand that the application needs to be in NZ dollars. What rate/s should I use to convert non-NZ dollar spend to NZ dollars?

The mid-month exchange rates published by the Reserve Bank of New Zealand or the Inland Revenue Department exchange rates should to be used to convert foreign currency QNZPE into New Zealand dollars are. You can also use the rate applying at either the date the expenditure is incurred or the date it is paid can be used, as long as the approach adopted is applied consistently to all foreign currency expenditure. The rates are published in a timely fashion. Links <http://www.ird.govt.nz/calculators/keyword/overseascurrencies/>

Note: if you are concerned that your QNZPE may not meet the expenditure threshold due to exchange rate fluctuations, refer to FAQ 2.2.

6.2 What is the role of the IRD?

The IRD's primary role will be to verify the information contained in the application against the GST, PAYE, income tax and other returns and information it holds.

6.3 Can transactions through foreign bank accounts and/or transactions in foreign currencies count towards QNZPE?

Yes, so long as the applicant is the person that spent the QNZPE.

6.4 Is it OK to be using different bank accounts in different currencies?

Yes.

6.5 Will payments in foreign currencies count towards QNZPE?

If the payment would otherwise qualify as QZNPE, it will still qualify whichever currency it is paid in as long as the transaction is linked back to the applicant company.

6.6 Does the grant include GST?

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.

6.7 Do I have to pay NZ Income tax on the grant?

No, the grant is tax exempt for the purposes of income tax.

7. INSURANCE

7.1 Is there a completion bond company operating in New Zealand?

Not currently.

7.2 When can production insurance and completion bonds be included within QNZPE?

If they are provided by a NZ provider.

7.3 If an Australian completion bond company is used, can this count towards QNZPE?

No.

7.4 Does Errors and Omissions insurance count towards QNZPE?

No.

8. TRAVEL

8.1 Does travel to and from NZ count towards QNZPE?

No, only inbound travel can count towards QNZPE, therefore you should claim for half of a commercial return airfare.

8.2 Can I claim taxi fares overseas for travel to NZ?

No.

8.3 Does travel count towards QNZPE?

Travel into New Zealand, being the equivalent of half a commercial return airfare to New Zealand, will qualify as QNZPE even though the services may be performed outside New Zealand possibly by an overseas airline and they may be booked through an overseas travel agent. This is a specific concession. However, additional fees charged by overseas travel agents do not qualify. Travel costs in relation to an overseas trip undertaken by a New Zealand resident do not qualify as QNZPE.

8.4 What is a return commercial airfare and what happens if I incur additional costs in changing the outgoing airfare only?

A return airfare is an airfare that is purchased for both legs (incoming and outgoing) of a journey between two countries. It is not the combination of two single airfares for a journey between two countries. If you purchase a return airfare between New Zealand and another country then you can claim as QNZPE, 50% of the value of that airfare. However, if you purchase two single airfares then only the cost of the incoming airfare can be claimed.

If you incur additional costs due to changing an airfare then only the costs relating to the incoming airfare may be claimed as QNZPE.

9. AUDITORS

9.1 How do I find out if the auditor I am using will be approved by the NZFC?

Contact the NZFC.

9.2 Are copies of contracts/invoices/paid cheques etc. acceptable?

The requirement for originals vs. photocopies of contracts, invoices etc. is to be left to the discretion of the auditor.

9.3 Do audit costs count towards QNZPE?

Yes, if provided in New Zealand.

10. BUNDLING

10.1 How does bundling work?

If you bundle several films, telemovies or TV series together to achieve a total QNZPE spend of \$30m you will qualify for the grant provided each production has a QNZPE of at least \$3m. Also, principal photography or PDV Production (as the case may be) on all screen productions within a bundle must be completed within a 24 month period.

10.2 Who can apply for a bundle of screen productions?

The applicant for each a bundle of screen productions must be either:

- the same entity for each production within the bundle; or
- related to the applicant for each other production within a bundle by having 50% or more of its shareholding in common with those applicants.

If there is more than one applicant per bundle, then, unless one of the applicants is applying for an interim grant, you should ensure that the applications are submitted at the same time or as a 'bundle' to the NZFC. The NZFC will not commence processing an application for a screen production within a bundle until such time as all applications for the bundle have been received.

10.3 What does 'shareholding' mean for the purposes of assessing whether an applicant in a bundle has 50% or more shareholding in common with the other applicants?

The test for shareholding will be the same as that used by the IRD for tax purposes. Please contact the NZFC if you need further information about this.

10.4 I need to set up a special purpose company for each production – will this qualify as a bundle?

Yes, but only if each special purpose company has 50% or more of its shareholding in common with the other special purpose companies.

10.5 Can I include PDV Production within a bundle?

Yes, in which case PDV production work (which has reached the qualifying threshold) must have been completed within the same 24-month period as would otherwise apply to principal photography.

10.6 If I include a TV series in a bundle, how long do I have to complete principal photography on this series?

You must complete principal photography on any TV series within a 12-month period.

11. PDV PRODUCTION

11.1 What if I incur QNZPE on a PDV activity that is not listed in annexure 1 to the Criteria?

You should contact the NZFC to see whether that activity can be included.

11.2 Can the NZ supplier of PDV Production apply for the grant on behalf of an overseas client?

Yes, if they are a NZ registered company and have incurred all of the QNZPE being claimed. However, it is expected that the NZ supplier will not have 'incurred' its own fees or overheads. Therefore to include these amounts in the claim, the applicant will need to be the entity that has contracted with the supplier.

11.3 Do the costs of PDV services sub-contracted to a country outside NZ qualify as QNZPE?

No, only the cost of services supplied in New Zealand can be included in QNZPE.

11.4 Can I include business overheads in my application for a PDV Grant?

Yes, you can include New Zealand business overheads provided they do not exceed the lesser of 3% of the total qualifying PDV expenditure or \$500,000.

11.5 Are file transfers included in PDV Production activities?

Yes, provided the cost is paid to a company in New Zealand.

12. SERIES

12.1 Is the completion date applicable to TV series the completion of Principal Photography (PP) or when the TV series is ready for release?

An applicant will need to apply for the grant no later than three months after completion of the "screen production" (this definition applies to films and television series). The definition of "completion" here means a feature film that was completed to answer print stage, or a television episode completed to master video tape stage with credits ready for broadcast. Therefore, the completion date for TV series is when the episodes that had completed principal photography (PP) within the 12 month period are completed and ready for broadcast. An application for the grant should be sent in within 3 months of the episodes that had completed PP within the 12 month period being completed and ready for broadcast. This could well be another few months beyond the 12 month period as post production can take place outside the 12 months.

12.2 Does the 12 month period which is selected only include the expenditure made within that period which relates to the episodes produced?

Only episodes shot within a 12 month period can be bundled together for the purposes of the Grant. However, it does not matter how much it costs to shoot the episodes in the 12 months, as long as at completion, the total cost (including Post Production costs which could have taken place outside the 12 month period) is on average a minimum of \$500,000 per commercial hour. The episodes bundled together then need to be at least \$15 million (or if bundled with other screen productions, \$3million). Therefore, the 12 months relates only to the shoot, ie: QNZPE can go beyond the 12 months but costs have to relate to the episodes shot within the 12 months.

Although there is a requirement that episodes must have completed principal photography within a 12 month period, they may or may not be totally completed ready for broadcast. For example, post production on the episodes might not yet have been started, let alone completed. Where episodes completed principal photography within the 12 month period, but were not yet completed ready for broadcast, then expenditure outside the 12 month period relating to the episodes that had principal photography completed within the 12 months will count for the purposes of the grant.

12.3 Can the 12 month period be nominated to obtain the greatest benefit?

If there is only a finite number of episodes for a TV series and they are shot (ie principal photography is completed) within a 12 month period or less, given that the costs for completion of the episodes outside the 12 month period will count, you do not need to nominate a 12 month period to obtain a greater benefit. If however, the TV series was ongoing, and shooting continued on episodes well beyond a 12 month period, it would make sense to choose a 12 month period which included episodes that were the most expensive to shoot.

12.4 Can I include a TV series in a bundle of productions?

Yes, provided it meets the format requirements set out above.

13. ACCOUNTING TREATMENT

13.1 When is a payment 'incurred'?

The LBSP and PDV Grant schemes are administered on a cash basis. This means that applications will be assessed on a cash basis and that an item of expenditure will generally be considered to have been 'incurred' at the time the payment is made.

13.2 Can non-cash payments be treated as QNZPE?

No, for the purposes of the LBSP and PDV Grant schemes, only expenses paid in cash can be claimed as QNZPE. In addition, the payment must have been made before the application is submitted.

14. MISC

14.1 Do the Cook Islands count as part of New Zealand for the LBSPG?

No.

FOR FURTHER INFORMATION, PLEASE CONTACT:

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